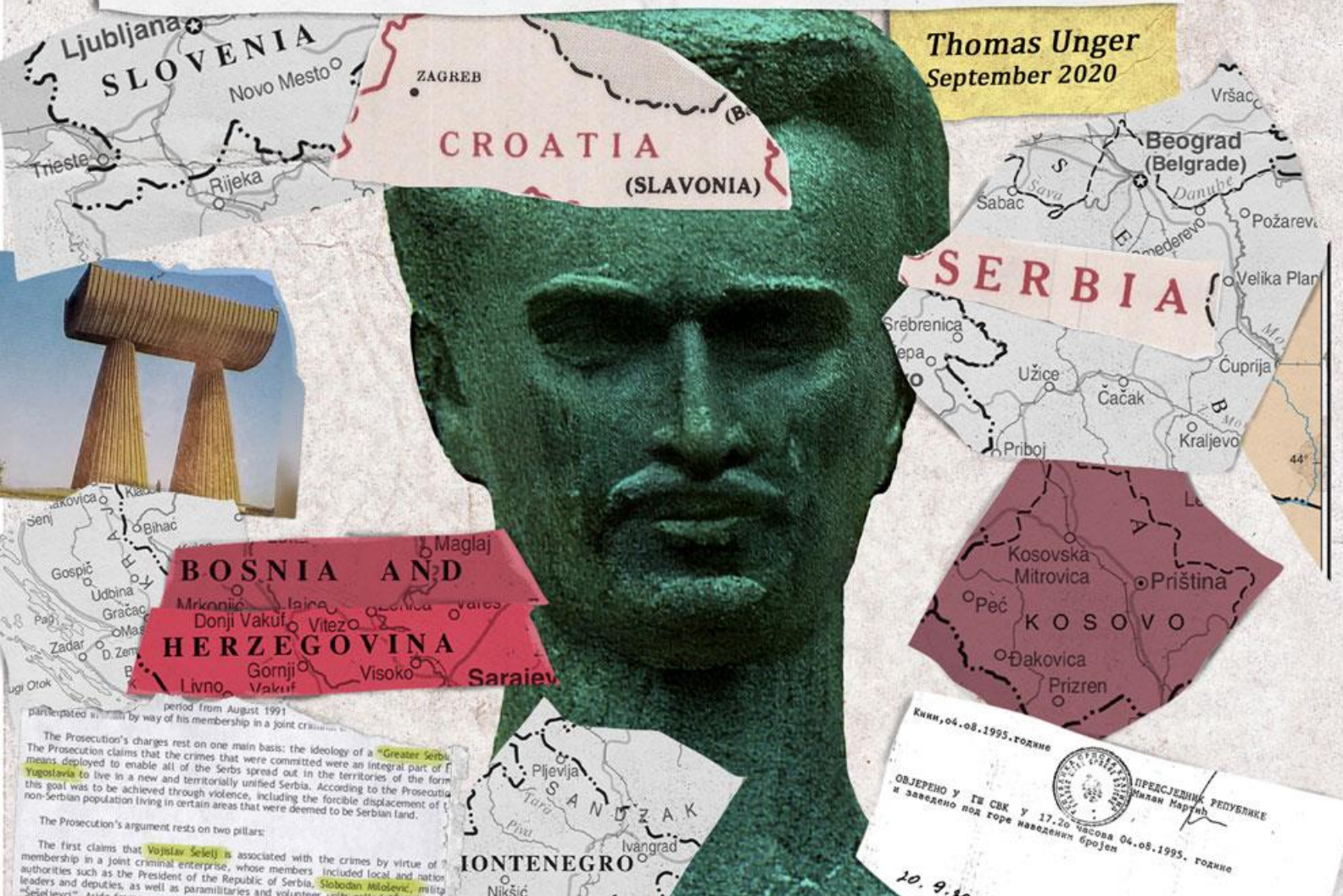


impunity watch

# Preventing recurrence: Policy alternatives for transitional justice in the Western Balkans

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# Table of contents

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3	<b>Introduction</b>
7	<b>Methodology</b>
8	<b>Elements for a comprehensive prevention agenda: Policy alternatives for dealing with the past that change the future</b>
8	<b>A. Transitional justice mechanisms: Revisiting their preventive potential</b>
17	<b>B. Civil society: Relentlessly strengthening its relative potential</b>
21	<b>C. Changing cultural and individual dispositions: Untapping their preventive potential</b>
26	<b>Way forward</b>
28	<b>Annex</b>



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## INTRODUCTION

The past has not been a good one in the region of the Western Balkans to say the least. The region has over the last 100 years and more experienced a spiral of recurring violence between different ethnic groups – usually motivated and incited by nationalistic ideologies. Victimisation and inter-generational trauma is all too common. The region has also seen other forms of violence that are more economic in nature, economic marginalisation and inequalities enabled a small elite over the years to exponentially enrich itself at the expense of the majority. As in other parts of the world, an engrained patriarchal structure has created an unequal power relationship between men and women in the Balkans, which has led to continuous and often invisible violence against women. The widespread rapes during the conflicts of the 90s constituted an appalling peak in the violent expression of male dominance in the political and social sphere of Western Balkan societies.

The region has been subject to regular interference by different external powers from the East to the West and the North to the South. This has at times actively spurred and increased the potential for conflict and violence. The Balkans has always been a geopolitical hotspot. Recent meddling by the US in the internal affairs of Kosovo is direct evidence of this ongoing interference.

Generation after generation has handed down stories of violence and unjust interference – passing on the need for revenge. Michael Ignatieff put this so eloquently in his book *Blood and*

*Belonging* when he describes the “learned feelings of vengeance” of an old man in the middle of demonstrations in Belgrade against Slobodan Milosevic in the mid-90s. The man lost two of his three sons on the front during ‘the Croatian war’. The third son took revenge when he found the killer of one of his brothers, and killed him. Ignatieff describes the recurring mechanics of vengeance that have kept societies in the Balkans hostage for decades: “From father to son, from son to son, there is no end to it, this form of love, this keeping faith between generations which is vengeance. In this village where everyone knows each other, where an old man keeps the picture of his son’s killer beside the picture of the son who avenged them both. There is no end, for when he dies, this old man knows, and it gives him grim satisfaction, there will be someone to do vengeance for him too.”

We cannot expect the old man to forget, even if we stand on the other side of history. There is no such thing as forgetting violence and atrocities and people in the Western Balkans have learned this in a traumatic way, perpetrators and victims alike. There is no neutral starting point after atrocities. Connecting the past and the present becomes unavoidable. And the memories that people carry with them inform their perceptions of risk and of opportunity. That means that these memories also shape the future, to a large extent. So if all of this is unavoidable, then the question for societies in the Western Balkans is: What is the most constructive way of dealing with all these legacies that

cannot be unlearned? How can the past be addressed to enable a better future?

The region has seen attempts after the end of the conflicts in the 90s to do exactly that, to deal with the past to ensure a better future. For the first time a strong call was made for dealing with the past for the purpose of never gain; a call that was omitted in the aftermath of the second world war which equally saw widespread atrocities. This call was led predominately by civil society and supported by members of the international community. The determination to face up to the past to move on to a better future was institutionalised by the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY). Hopes of joining the EU have provided political and economic incentives to ensure dealing the past is kept on the agenda.

However, we now know this strategy has not worked.

Placing the burden of facing the past and delivering justice for victims on a single institution has failed painfully. The combination of a highly technocratic and legalistic understanding of transitional justice and the lack of a broader vision for the day after the ICTY closes its doors has brought dreams of reconciliation and sustaining peace to a standstill. Nationalists have filled this void with divisive policies, blaming others for acts of violence while denying war crimes – particular when it comes to taking responsibility themselves for past atrocities. This combined with social and economic inequalities has created a tinderbox ready to explode at any time.

What becomes clear from our research is that new approaches are urgently needed to prevent the tinderbox exploding. These approaches need to

better understand the social, political and institutional mechanics within the different societies of the Western Balkans and how they link to the past, present and future. The report will seek to make suggestions on what can be done differently in managing the past for a better future, how to transform existing knowledge and experience into concrete, lasting change.

The report will suggest elements for a new policy framework on dealing with the past that has a vision for the future. It will to this end suggest policy alternatives covering institutions, civil society and cultural and individual interventions.<sup>1</sup>

• **First, transitional justice efforts have focused on institutions.** While strong institutions can help build trust which in turn foster stability and peace, today's institutions – including the judiciary – are weak and political interference and corruption are systemic. This report will suggest how to strengthen transitional justice mechanisms, such as criminal prosecutions.

• **Second, the report will look at civil society as a key factor for prevention of the recurrence of violence.** Civil society has been the driving force behind efforts to deal with the past. For civil society to play a preventive role it needs space to criticise contemporary practices and policies, articulate political demands

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<sup>1</sup> The proposed prevention framework has been inspired by work of Pablo de Greiff, former UN Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees of Non-Recurrence, see A/HRC/30/42 (2015). See also *Thomas Unger, Making Prevention A Reality: Interview with Pablo De Greiff, Former UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, in Zeitschrift fuer Menschenrechte, Jahrgang 14 (2020).*

for change and mobilise popular support. This report will present policy choices that strengthen civil society so it can perform this vital, preventive function.

• **Third, the report will look at cultural interventions around the past such as memorialisation.** Memorialisation is a battleground in the Balkans of different and conflicting narratives about the past that run along ethnic lines, promoting deeply divisive “us versus them” cultural practices that keep the ruling elites in power. At an *individual level*, the conflicts of the 90s have destroyed the social fabric and left a generation with unaddressed trauma. To build a viable future on this is difficult. Narrowly focusing on individual trauma without looking at the causes for the traumatising has individualised - and in many cases frozen - suffering of victims and undermined societal and community efforts for transforming the conflict towards sustainable peace. Here again the report will provide elements for a policy agenda that reinforces interventions at the cultural and individual level in order to prevent the recurrence of violence.

The purpose of this report is to bring the concept of “never again” back to the foreground of transitional justice. It is a call for a radical rethinking of policies around dealing with the past in the region. Narrow and piecemeal approaches around transitional justice have failed. To move on without addressing the past is however still not an option. While the past cannot be changed it must be recognised for the sake of a better future where vengeance is no longer needed.

### **Limitations and alternatives**

There can obviously be no absolutism in a policy for the prevention of atrocities and this report does not pretend that's

possible. The future is unpredictable and humans are frail. The report is therefore no blue print for action. It also does not want to moralise, as this would fail to recognise the grey zones and dilemmas around evil that humankind in the Balkans and elsewhere has brought down on itself. This does not mean to say that atrocities and violence, and the evil they produce, is natural or unavoidable. In the face of evil, one can individually be a moralist and seek to distinguish good from bad. One should, however, abstain from condemning human frailty. We all may do terrible deeds even with the best intentions. The past should not be used as teaching us a moral lesson or lead to conformism in responses since there is nothing black and white. The past should stand as a reminder what can happen if we don't refuse evil.

Evil will not disappear in the Balkans or elsewhere. As Albert Camus wrote in his book *The Plague* when hinting at fascist ideologies: “The plague bacillus never dies or vanishes entirely... it can remain dormant for dozen years in furniture or clothing.... it waits patiently in bedrooms, cellars, trunks, handkerchiefs, and old papers, and.... Perhaps the day will come when for the instructions or misfortune of mankind, the plague will rouse its rats and send them to die in some well-contented city.” By accepting this dilemma of evil staying among us, Camus nevertheless provides inspiration for action when he writes: “On earth there are pestilences and there are victims – and as far as possible one must refuse to be on the side of the pestilences.” Maybe this report could help provide intellectual inspiration not for policies that guarantee the prevention of atrocities but policies that give space to the possibility to refuse evil when its needed to do so.

The timing for this report is right. The COVID crisis has accentuated certain patterns and understanding of how the mainly authoritarian in nature. It shows, however, that alternatives are possible or at least imaginable. Even if temporary there was some solidarity across countries in the region beyond ethnic divisions, some successes were reported around collectively fighting arbitrary attempts to install widespread and intrusive surveillance. Politicians for the first time in years needed to call for unity and have not played the ethnic card, yet. All this will quickly change when we are back to "normality". The continuous corruption in the Balkans, not even hampered by the COVID crisis, stands as a testimony that nothing has changed.

But these alternative ways to deal with crisis will not be forgotten. So the timing is right to challenge nationalistic

political system works in the different countries of the former Yugoslavia. The reaction to COVID 19 in the region was interpretations of the past, the use of fear of other ethnic groups as a political tool to remain in power and the "us v. them" logic of politics in the Balkans - all well-known dynamics that have provided fertile ground for continuous conflict. Do we want the next generation to continue to learn the same ideas of violence, divisions, hatred and revenge? Dealing with the past can help to interrupt this if used more strategically and at different levels. It can allow another perspective on the past, not as a measure of control or from the perspective of power and identity but as a meeting place to jointly discuss and debate without ideology but as citizens of a region in the heart of Europe.

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## METHODOLOGY

This report is part of a joint Impunity Watch and Balkan Investigative Reporting Network (BIRN) project, funded by the European Union. The report is based on a yearlong extensive interview process that included multiple visits to the region. It has gone through a series of verification processes with trusted partners and actors.

It also addresses the link between prevention and transitional justice; a topic that has been under-studied and under-represented in policy analysis on transitional justice in the Western Balkans. The report does not take the form of a classical report with a content-part with conclusions and recommendations at the end. This report is more like draft elements for policy alternatives. It has three sections: one on the role of transitional justice (TJ) in preventing a relapse into violence, one on civil society and one on the

cultural/individual dimensions that are relevant for preventing recurring conflict. Each of the sections is a standalone tool that explores the exact nature of the problem and sets out how to change policy to better tackle it. The document could be seen as a comprehensive policy framework that links dealing with the past and prevention of violence from recurring. So the report is the policy framework and the policy framework is the report. In the annex readers will find a checklist of policy actions building on the sections and subsections of the report.

A key purpose of the report is to contribute to intellectual discussions and debates that ensure the articulation of policy claims and a vision. The main target of this report is civil society and policy-makers.

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# ELEMENTS FOR A COMPREHENSIVE PREVENTION AGENDA: POLICY ALTERNATIVES FOR DEALING WITH THE PAST THAT CHANGE THE FUTURE

What follows is a proposal of elements that hopefully will start a discussion around formulating policy alternatives to un-block the current standstill around dealing with the past. This standstill undermines transitional justice to play its important preventive function. The proposed elements should help to reclaim back this space. Each section will analyse the problem and make concrete actionable recommendations that could lead to change. Each section can be used as a standalone tool to kick start policy discussions.

## A. Transitional justice mechanisms: Revisiting their preventive potential

TJ mechanisms such as war crimes prosecutions, reparations for victims, truth seeking and reform of institutions like the security apparatus have shown in many contexts their potential to contribute to preventing the recurrence of violence. These mechanisms do this through: 1. The *building of trust* in the state and its institutions; 2. Their *norm-*

*affirmative power* that shows that no one is above the law can act as deterrence for future crimes; 3. The *recognition of suffering* in order for victims to move on; 4. Their *potential to tackle inequality and marginalisation* which can lead to transformation, meaningful change for

those historically left behind; 5. Their long-term effect to *promote democratisation and reconciliation* which are essential for sustaining peace and preventing relapse into conflict. They also have acted as *trigger for the creation of civil society*, which is in itself a guarantor for prevention.

TJ mechanisms increase their potential to contribute to the prevention of violence from recurring when taken in a holistic and context-specific manner. It has been shown by the World Bank and others, that holistic TJ approaches in post-conflict societies, as part of rule of law interventions, can significantly minimise the risk of relapse into conflict.<sup>2</sup>

In the post-conflict period in the Balkans after the atrocities of the 90s such a holistic framework on transitional justice has been missing despite some attempts. It has been assumed that prevention of violence from recurring will come automatically, mainly by putting perpetrators on trial. A more strategic

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<sup>2</sup> *World development report 2011: conflict, security, and development - overview (English)*. World development report Washington, D.C. : World Bank Group. <http://documents.worldbank.org/curated/en/806531468161369474/World-development-report-2011-conflict-security-and-development-overview>. See also Pathfinders for Peaceful, Just and Inclusive Societies, *The Roadmap for Peaceful, Just and Inclusive Societies – A Call to Action to Change our World*. (New York: Center on International Cooperation, 2019), available at <http://www.sdg16.plus>



vision looking at how to strengthen TJ mechanisms in terms of preventing a return to violent conflict was missing. As has been documented elsewhere, narrow and overly legalistic approaches that focused on criminal justice only and were, to some extent, detached from other political and economic processes, have seriously hampered TJ efforts. These approaches have provided ample space for ethno-nationalists to consolidate their power and deadly ideology without fear of any real opposition or consequences. Impunity was and remains widespread and systematic in the Western Balkans and significantly adds to the risk of relapse into conflict. The following lists some areas where improvements are in order to refocus transitional justice mechanisms on their preventive potential.

## ***1. Revisit the purpose of war crimes prosecutions from the perspective of prevention***

For many years thinking and reflecting around the purpose of criminal justice began and ended with the ICTY. The ICTY served like an authoritarian father one follows without question. It served as a building block for the region. It gave purpose and political weight to a cause. The EU picked up on this. Justice, in the sense of cooperating with the ICTY, was a condition of joining the EU. While this approach did not have as much impact as was hoped, as the case of Croatia with its continuous troubled approach to the past so sadly shows, it did however ensure that justice was at least for some time at the same level with power. After the father died, that is when the ICTY closed, one could sense disillusionment and loss of orientation. Many, especially among the international community, wrongly thought that justice has been done now through the prosecution of a significant

number of war criminals, or they decided to give up and/or moved on to other 'more important' issues, such as economic development, fighting terrorism or stopping the flow of migrants that are making their way through the Balkans to the EU. This shift in setting the political priorities away from justice was evidenced by a rapid decrease of political pressure on States in the region to make progress around transitional justice, especially from the side of the EU and its member states, as well as by the USA. While on paper justice for past war crimes remains a priority in practice we see a backsliding that is worrying and undermines sustaining peace in the region. Activities around justice demands, therefore, an urgent rethink. The impact of war crimes prosecution has lately been debated and one can say that there is a more realistic approach today in the Western Balkans. There is a growing acceptance that criminal justice alone cannot prevent violence. The critics of narrow approaches become louder. This can lead to a healthy and empowering discourse that emancipates itself from the "primacy role" of criminal justice only approaches, especially in a post ICTY world. There is no room for nostalgia for the good old ICTY times. Sober reflection on what criminal justice can and cannot do in the current political and social context is the best way forward. This will not undermine the very useful role criminal justice has and still can play in the Balkans. There is, indeed, a lot of unfinished business, with a huge backlog of cases, lack of capacity and political interference. This needs to be addressed and political pressure upheld by the international community.

Part of the current thinking today should be on how criminal justice can contribute to prevention of violence from recurring.

A prevention agenda around criminal justice could include:

- **Redouble efforts on outreach and education.** There needs to be a cultural shift from a passive approach that is satisfied when a judgment on war crimes is rendered to a more proactive approach that connects the dots and actively seeks to integrate them into education and the public space. The results of the many cases that have been prosecuted should be made available in a more systematic and strategic manner. Civil society, such as the Post-Conflict Research Center (PCRC), have started work on this, but are chronically underfunded and politically side-lined.<sup>3</sup> The work on a legacy project of the ICTY never made it out of expert discussions and round tables and its reach is minimal (see below section on archives).

- **Address gender stereotyping within the judiciary.** Establishing laws and institutions to prosecute war crimes is not enough. They are implemented and operate in a context. This is especially relevant from a gender perspective. As has been well documented, conservatism and patriarchal structures are enjoying a renaissance in the Western Balkans. There are staggeringly high levels of domestic violence. War crimes trials are taking place in such an environment and courts, even if we wish so, are not immune to cultural and ideological influences. TRIAL International has published in a report how gender stereotyping has been institutionalised in the judiciary.<sup>4</sup> This negatively impacts

rape survivors psychologically, socially and directly in undermining the chance of accessing criminal justice. Strategies to promote war crimes prosecutions need, if they aim to contribute to preventing structural violence against women, to tackle persistent gender hostile institutional cultures within the judiciary.

- **Support prosecutorial initiatives and strategies that link the past with the present.** War crimes prosecutions should not simply look back, a past-only exercise. They should also mean something today; change the context in which many victims live. As is well documented in the Balkans, some of the war criminals of yesterday are today's politicians, businessmen, community leaders and local heroes. They are the beneficiaries of a system that condones impunity. As with any other system, leaders have sought to legitimise their positions of power. Their ideology is ethno-nationalism. But in making this ideology their powerbase they constantly make the 'lion mad', making it 'normal' for members of the different communities in the Balkans to exclude, discriminate, seek revenge. They have nurtured this ideology in order to stay in power and financially enrich themselves. Criminal justice should call their bluff and contribute to dismantling these ideological structures, distorting their ability to grow and take deeper root. It will of course never entirely achieve this, but it can help at least to limit "the scope of the permissible lie". Elites can sell their ideology (the lie) far too easily even as during the COVID 19 crisis we can see how essential infrastructure has been depleted as a consequence of decades of corruption and bad governance. The Specialist Chambers in Kosovo, in theory, could stand as a symbol to link past

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<sup>3</sup> For further work of the PCRC please see its website: <https://p-crc.org>

<sup>4</sup> On gender stereotypes within the judiciary see TRIAL International report, Rape Myths in Wartime Sexual Violence Trials, Sarajevo, 2017, available at <https://trialinternational.org/wp-content/uploads/2018/01/20180112-TRIAL-Rape-Myths-ENG-WEB.pdf>

allegations of war crimes to current organised crime. It could send important signals for change and contribute to dismantle these systems. The chambers face however huge resistance and opposition. The country is split after a recent indictment against President Thaci for war crimes and crimes against humanity. The timing coincided with the start of a new round of a US backed dialogue between President Vučić and Thaci about the future status of Kosovo. The dialogue was hence cancelled, but efforts to work towards a settlement remain. The EU is trying as well to play again a role in the mediation process. We will see, therefore, a lot of debate in the upcoming period around peace v. justice. Part of this debate is already the question on what will happen with the proposed truth commission in Kosovo, an idea that was launched by President Thaci a few years ago. Some sources say that Thaci is trying to have the TRC adopted by presidential decrees to build up ammunition against the KSC. What all of this shows, however, is that prosecutorial initiatives happen within a political context and directly affect them. Thaci has so far understood it well to link his name very strongly with the KLA and the narrative that the KLA liberated Kosovo. An attack against him is an attack against the very origins of the new independent state of Kosovo. Independence is valued highly in Kosovo, it is valued over other goods and to bring down one of its main protagonists can be a dangerous undertaking. We hope that the prosecutor of the KSC has a good strategy in place.

• ***Continue building political awareness of structures that undermine prosecutions.*** Positive steps are taken in this respect by the EU in its annual progress report. In its 2019 progress reports for the Western Balkans, the European Commission emphasised the

message that strategies for prosecution should be particularly concerned with the systemic and/or structural dimensions of massive violations, such as crimes against humanity and war crimes.<sup>5</sup> For example, the reports on Kosovo and Serbia mention the challenges posed by systems of impunity. More consistent policy focus on conflict-related sexual violence cases and how they are reflected in prosecutorial strategies should, however, be constantly assessed. Here only the progress report for Bosnia consistently addresses this question. An obvious problem exists with Croatia, which is falling behind on the prosecution of war crimes cases, including cases of conflict-related sexual violence, but no real mechanisms exist within the EU to challenge that.

## ***2. Strengthen the focus around reparations that are transformative in nature***

Compared to criminal justice reparations for victims of the conflicts of the 90s has traditionally not received the same attention than her 'bigger brother' criminal justice, at least by the international community. Only lately the issue is back on the agenda in particular also through a donor focus on addressing conflict related sexual violence. But this can, like many other donor priorities, fade away very quickly. The lack of attention did not mean, however, that nothing has happened around reparations. As has been well documented elsewhere over the years,

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<sup>5</sup> For EC progress reports on the different countries of the Western Balkans see website of European Neighbourhood Policy and Enlargement Negotiations, available at [https://ec.europa.eu/neighbourhood-enlargement/countries/package\\_en](https://ec.europa.eu/neighbourhood-enlargement/countries/package_en).

the issue of reparations, with its monetary component and its strong recognition function for survivors, has been manipulated by nationalists who skilfully managed to subordinate the war and its consequences as part of their own political agenda.<sup>6</sup> Instead of recognising that harm has happened on all sides - irrespective of ethnic background - reparations have been turned into a terrain of division and competition about which group has suffered more. Instrumentalised like this, the issue of reparations has lost its transformative potential since they can no longer play a role in promoting social integration. This failure hits women the hardest, whose suffering and pain remains unaddressed and often invisible.

Policies need to urgently address these shortcomings and political space needs to be reclaimed to talk and think about reparations. A focus on how reparations can contribute to preventing the recurrence of violence could show the direction. Reparations should thereby focus more on needs and look at structural impediments that stop victims claiming their rights. What follows are suggestions on new policy agenda elements:

- ***Take a bottom-up and needs-based approach to identify reparation needs:*** Transitional justice in the Balkans has so far narrowly focused on addressing conflict-related violence as a crime. This has narrowed the focus of reparations that are closely related to a criminal justice agenda. Reparations should, however, capture the full spectrum of

harms experienced, and how they are lived and sustained over a period of time. Investing in participatory processes for programming and research, in particular around identifying needs, is important in this respect. A broader identification of needs would make harms visible that have so far been unaddressed to avoid grievances leading to future conflict.

- ***Look at reparation for conflict-related sexual violence from the perspective of prevention:*** Addressing and preventing gender-based abuses requires that the complexity and intersectionality of women's experiences are properly recognised and subsequently captured by any measure put in place. The dominant narrow approaches that focus on reparations for sexual crimes and physical violence not only fail to adequately deal with gender-based abuses, they also perpetuate a patriarchal construction that presents women as passive objects of sexual attacks and men as victims of political violence. The UN should play a leading role in jointly developing concepts of a broader prevention strategy for conflict-related sexual violence with grassroots civil society organisations.

- ***Reinterpret access to justice from a broader perspective:*** Access to justice is often narrowly seen from a normative perspective only: creating laws and institutions. Past experience work on conflict-related sexual violence shows, however, that access to justice needs to be interpreted in a much broader sense by acknowledging the possibility of structural problems such as stigma within the family and community that can create insurmountable obstacles for most women to claim their rights. Other factors such as lack of sustained political support for institutional reform, including the implementation of existing laws (e.g. victims can often not access

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<sup>6</sup> Research report, Keeping the Promise: Addressing Impunity in the Western Balkans, May 2018 (hereinafter Impunity Watch Report, Keeping the Promise, 2018), available at [https://static.wixstatic.com/ugd/f3f989\\_cbaa5a5e659b435399a1916995e40b83.pdf](https://static.wixstatic.com/ugd/f3f989_cbaa5a5e659b435399a1916995e40b83.pdf)



their rights because there is no money for the implementation of these rights, hence they give up trying) and the fight against impunity more broadly have led to frustration among victim groups and activists that change will not come. The number of women claiming disability pensions for conflict-related sexual violence, where these exist, is very limited in the Western Balkans and a result of stigma and other structural factors that create obstacles for would-be claimants.<sup>7</sup> Debates around the agenda 2030 sustainable development process should reflect these lessons and avoid re-packaging experiences from the Balkans as success stories, but as indications on where change in programming is needed.

**• Support region wide development of gender-sensitive reparation frameworks for civilian victims of war:**

There is a growing awareness among feminist groups in the region of the unsustainability of the currently existing 'reparation systems' in which both material and non-material reparations for harms and violations is based on the social welfare system. With the exception of Croatia, there is still no comprehensive compensation scheme in any of the countries of the former Yugoslavia and survivors are only eligible for a disability pension, which is a form of welfare rather than reparation. Bosnian civil society has worked on a draft framework that focuses on what a gender-sensitive process for the development of a reparations programme should look like, and identifies the gendered aspects of violations and harms specific for Bosnia

and Herzegovina.<sup>8</sup> The framework was finalised in 2015; nevertheless, it is still highly relevant and could serve as a regional model for civil society discussions and transitional justice programming.

**• Prioritise the issue of reparations in the accession process:** Despite the clear importance given to reparations in the 2015 EU policy framework on TJ, the regional engagement of the EU around TJ has side-lined the issue, focusing instead on criminal justice and truth seeking. But a clear policy focus by the EU could still effect change. This would mean increasing the capacity within the EU's delegation around reparations, conducting regular analysis on the topic in the country-specific progress reports in order to make it conditional for accessions and EU member states and addressing it in high-level political dialogues with decision makers. EU member states should take a more proactive approach around the topic of reparations. They should enable a regional exchange of experiences and lessons learned.

**• Take victim-sensitive assessments in the context of broader economic reforms:** There are currently no assessments of how economic reforms in the Western Balkans affect needs of victims of the conflicts of the 90s. Current reforms initiated in the context of EU enlargement are firmly based on structural adjustments programmes and austerity measures in the public sector. Deregulation of the public sector was the

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<sup>7</sup> For further reading please see Policy Brief, Balkan Chronicle: Gender Equality, Transitional Justice and the International Community (2019), available at [https://www.impunitywatch.nl/docs/PolicyBrief\\_Balkans\\_Chronicle\\_Gender\\_Equality\\_TJ\\_Intl\\_Community\\_eng.pdf](https://www.impunitywatch.nl/docs/PolicyBrief_Balkans_Chronicle_Gender_Equality_TJ_Intl_Community_eng.pdf).

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<sup>8</sup> Women's International League for Peace and Freedom as part of Women Organising for Change in Syria and Bosnia and Herzegovina, The Concept and Framework for the Development of a Gender-Sensitive Reparations Program for Civilian Victims of War in Bosnia and Herzegovina, 2015.

policy demand for many years. The public sector plays a crucial role in supporting victims of war (*inter alia*, for health and mental healthcare, education and vocational training, but also in supporting their livelihood projects). Smart reforms that are victim sensitive should, therefore, not circumscribe the public sector but rather address the prolonged failure of the state to ensure economic and social rights in the different countries of the former Yugoslavia, in particular for victims. Here awareness raising campaigns are needed *vis-a-vis* policy makers. The impact of the COVID 19 crisis in many EU member states was worsened by radical deregulation of public goods and underinvestment in public health services. This could lead to a rethinking in the parameters for the EU enlargement process. Those that have enriched themselves in this process of deregulation, through corruption and other illicit practices, need to be held accountable. Discussions should also be started with private actors and investors. In this respect, outreach could be done that provides advice around potentially harmful practices that undermine victims' needs and risk becoming drivers of future conflicts, including a better awareness around status, legality of land ownership, economic violence against women and the impact of investment and business activities in the area of remembrance and memorialisation (see Chapter C below.). Equally, the link between the informal and formal economy needs to be better understood. Investors should also use their leverage to ensure that those business enterprises that have negatively impacted conflict or engaged in other harmful practices do not enjoy impunity.

### ***3. Expand the scope of security sector reform to encompass political, societal and cultural dimensions, including the legacy of the past.***

Security sector reform has never really included elements of transitional justice efforts in the region. It should have done. As a consequence of the disintegration of the former Yugoslavia, institutions needed to be created from scratch during the post-conflict period throughout the region. Nationalist groups were adamant about keeping control of the security sector, a situation that has continued to this day. War crimes suspects continue to form part of the security sector in almost all Western Balkan states. Local trials for war crimes showed that many defendants at the time of their arrest were active members of the security services. Many units that are alleged to have committed war crimes during conflicts were subsequently dissolved but their members remained active in the police, armed forces and other state institutions. Some vetting has occurred in Bosnia and Herzegovina, albeit with minimal success.<sup>9</sup> At the very least it has increased the representation of women and minorities in the security sector and reduced the generally inflated police force numbers. The international community, however, interpreted its mandate too narrowly and approached reform as a technical, operational, and merely forward-looking task without addressing the legacy of the conflict. This has undermined the preventive potential security sector reform could have played from a transitional justice perspective. Opportunities have been lost and it is not

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<sup>9</sup> See Impunity Watch Report, *Keeping the Promise*, 2018, op. cit.

possible to turn back time. Today, we have moved – as one commentator has put it – from a post-conflict to a pre-conflict stage. The COVID 19 crisis has shown how governments in the region use security and emergency legislation as the only policy response to the crisis to control behaviour in an environment where there is no mutual trust between citizens and institutions that are controlled by the ruling elites. The international community, such as the EU and its enlargement process, which has been a key driver for security sector reform in particular around the police, has some share in that through a back and forth between human rights and democratisation approaches and security driven policies around containment and stability, triggered mainly by the obsession of some EU MS with migration and countering terrorism. The consequence is that standards have been set down on paper, and the EU integration process is to be thanked for that, but the daily implementation and enforcement does not reflect them. All of this should provide an impetus to kick-start a reform agenda that looks for alternative responses and ensures that security forces serve citizens in practice rather than on paper only. Such an agenda should not again fail to address the legacy of the past. The following are elements that could be considered from a transitional justice perspective in such a reform agenda:

- ***Address the issue of militarised masculinities in the security sector and beyond:*** One area that has so far received little attention in policy discussion around security in the Western Balkans - at least from the official side and as part of the EU enlargement process - is violent and militarised masculinity. Those in power in the Western Balkans consistently use certain images of maleness as a strategy to mobilise and

manipulate not only young men, but also women; images of a man that is aggressive, violent and uses weapons. Militarised masculinity in the Balkans and elsewhere forms a central component of political strategies of elites, and with them patriarchal structures, to stay in power. The phenomenon of militarisation is structural, connected to difficult democratisation processes, poverty and economic inequality, a lack of accountability for past crimes, corruption, clientelism and impunity. The purely technical and legalistic approaches used in the Balkans around Security Sector Reform and DDR did not have any lasting impact. Long-term and multidimensional approaches that seek to change discriminatory and violence-producing structures have to be the way forward. International assistance has to address the link between militarisation and reform. Reform efforts as part of the EU enlargement process should address violent masculinity not only through legislation, but by ensuring monitoring and follow up mechanisms. Feminist groups have for many years called for a renewed discussion around demilitarisation but there is, at present, little space for discussion. Here the UN, as the guardian of the Women, Peace and Security agenda, should provide some space for structured debates around militarisation, gender and justice. This should include security, development, peace-building and justice actors. The focus of a renewed effort around masculinities could be to highlight more systematically other masculinities that have been more peaceful and resistant to the 'violent image'. This refocus could create entry points for change.

- ***Dismantle right-wing networks and groups:*** Violent ideologies, such as Nazi and supremacist ideologies, have in the Balkans led to enormous suffering - we

just need to remember the pictures of concentration camps in Omarska, North Bosnia in the early 90s. These ideologies have persisted as a recent BIRN report has well documented.<sup>10</sup> They provide a security threat and efforts need to be made to dismantle these structures, including by prohibiting them and investigating activities by their members. Sanctioning alone will not, however, deter ideologies from spreading. Strategies to tackle violent ideologies need to address youth and work in and with communities to prevent radicalisation. This also requires digital strategies since radicalisation takes place more and more through the internet. Civil society should pursue strategic litigation cases to set precedents and also shine a light on the connection between right-wing groups, the business sector and political elites. This could produce pressure points and open political space for change. In addition, there should be a more diverse discourse and debate around migrants and minority groups promoted by politicians across Europe. This goes however against a broader trend in Europe. It is hoped that some of the ideas behind the current global demonstrations against racism, relating to redefining policing and security, will also take roots in Europe.

- **Strengthen civilian oversight mechanisms:** Oversight of the security sector is shockingly weak throughout the region, with rare, if any, compliance by the executive with recommendations rendered by these mechanisms. Parliamentary oversight is ineffective in the face of an overly powerful executive and there is blatant disrespect for independent oversight mechanisms, such as ombudsmen's offices or human rights

commissions.<sup>11</sup> That said, a proactive stance by independent oversight mechanisms in Serbia has opened up some space. Public participation is increasing, through the use of petitions, for example. Civil society oversight and participation in discussions about the security sector remains, however, limited throughout the region. The lack of transparency by policy and decision-makers - and access to information - is a major problem. To strengthen oversight mechanisms, especially for the security sector, is an area where more political weight should be invested. Examples of other countries such as Northern Ireland, which has established good practice around police reform and oversight mechanisms that were established after the Good Friday Agreement, could be instructive and should be shared with countries of the former Yugoslavia.

- **Address state capture through the development of a comprehensive strategy tackling its underlying conditions:** State capture has been widely recognised as a systemic and chronic issue in the states of the Western Balkans and it has undermined efforts to deal with the past.<sup>12</sup> Captured state institutions no longer work to the benefit of all citizens but for their "captors" instead and therefore they enable the types of exclusions, marginalisation and human rights violations that often lead to violence and conflict. There can be no effective comprehensive prevention policy in the Western Balkans unless institutions recover their independence. Civil society should be moving forward with demands to restore independence

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<sup>10</sup> The report is available at <https://balkaninsight.com/2020/05/12/ultra-right-groups-show-their-face-in-bosnian-town/>

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<sup>11</sup> See Impunity Watch Report, Keeping the Promise, 2018, op. cit.

<sup>12</sup> See the 2018 report by the EC on progress in the area of enlargement in the Western Balkans: [https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf)



to state institutions. Civil society should start a regional process to articulate political demands and develop strategies to overcome state capture. Elements for such a strategy could address the following conditions that lead to state capture: 1. The condition under which *corruption* has as its aim not merely the favourable implementation of existing laws (“administrative corruption” as the literature calls it), but the favourable formulation (and of course, subsequent application) of laws, where the aims are not only pecuniary advantage but include, for instance, retaining political power, 2. Conditions where the *corrupt actors* are not only businesses on the one hand and state officials on the other, but a more diverse group of actors including legal and illegal groups, political parties, media and other organisations, and 3. Conditions where the tools go *beyond bribery* and extortion to include the “packing” of state institutions with followers, the illegitimate (although not necessarily illegal) financing of political parties, businesses and different types of institutions not excluding educational, religious or other civil society organisations, threats to individuals including law and order officers, judges and members of oversight institutions, collective intimidation through the use of violence, and manifestations of territorial control, amongst others. A strategy to overcome state capture and to recover state institutions should also trigger a broader intellectual discussion around a vision on the role of the state in the different Western Balkan countries. There could be a political momentum with a tailwind of broader discussions in Europe around what the role of the modern state should be. The Balkan region has at least a lot of experience of how things should not be. Feminist groups and their ideas around demilitarisation and gender equality need to be part of such a discussion.

## B. Civil society: Relentlessly strengthening its preventive potential

Evidence from around the world demonstrates time after time that a strong and independent civil society correlates with positive human rights indicators and with lower probabilities of conflict.<sup>13</sup> Civil society initiatives that focus on transitional justice and dealing with the past has been considered as essential from a conflict and violence prevention perspective. Unfortunately, today in the Western Balkans, civil society in the area of dealing with the past lacks the strength to play a meaningful role in preventing the recurrence of violence. This was not always the case. Civil society has been a key driver of transitional justice in Western Balkan states. It has ensured that the question of accountability for war crimes and mass human rights violations was put – and has remained, although currently declining – on the political agenda throughout the region. It has stepped in for weak state capacity in the pursuit of post-conflict justice. Civil society has also been an alternative to often technocratic transitional justice interventions from outside actors. Today, however, this has changed and civil society is unable to play the role around dealing with the past and conflict-prevention that it should do. This negative outlook has to do with a shrinking civic space, as well with a lack of a tradition in the Western Balkans of political opposition. But it also, and importantly, has to do with the inability by members of civil society to articulate joint political claims. Larger movements

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<sup>13</sup> A/HRC/37/65 (1 March 2018), pars. 62, 65.

like RECOM have lost steam and needed to change direction, also due to a lack of political support to establish an official regional truth seeking body. There is currently no other region wide or countrywide coalition that works and formulates political claims around dealing with the past and prevention. Funding has also contributed to donor dependencies, where civil society slavishly follow donor agendas rather than follow their own independent agendas. Unhealthy competition for limited funding has also hampered civil society's ability to determine their own priorities. The increase in registered civil society organisations working on advancing transitional justice paints a misleading picture of their capacity to effect change.

Urgent support is needed to strengthen civil society. What follows are some suggestions that should be part of a political agenda, enforced by the international community, that is geared towards strengthening civil society to enable its preventive potential.

- ***Increase civil society potential to articulate political demands.*** Civil society is currently poor in its capacity to make political demands. Those who are working for change through addressing the past, often at the local level, are sidelined, silenced or directly attacked. Their voices of cooperation, solidarity and reconciliation, as in normalising relationships at the individual and societal level, are not heard amidst the overwhelming noise of ethno-nationalists. To give these voices a platform and help them translate into meaningful political demands should be a top priority in the next years. Donors should back the establishment of autonomous platforms, coalitions, movements or networks of NGOs and other civil society organisations. The EU

and its member states should politically follow up in taking forward demands made by these movements in bilateral meetings or through conditioning cooperation on fulfilling these demands, which has been a problem in the past. A region wide civil society coalition around prevention should be established with the aim of contributing to the articulation of political demands. One claim that could be pursued is the fight against denial. It is important that these initiatives stay at grassroots level and don't follow donor priorities. PCRC in Bosnia has started working on an idea of a coalition around prevention in cooperation with the UN Office for Genocide Prevention and Responsibility to Protect. Another idea that could be looked at is the creation of a prevention and dealing with the past hub. It would be an independent place supported through online means that makes regional and international experience around dealing with the past more accessible and aims to provide independent monitoring and connectivity. Also policy oriented seminars and trainings for grassroots activists around the do's and don'ts of policy-making could be envisaged. Importance in all of that is ensuring sustainability and a move away from the current reactive, *ad hoc* approach is paramount.

- ***Ensure civil society's financial autonomy through strategic funding at the local level:*** Financial dependency has shaped civil society's structure and perception by the broader society. Victims' associations that are financially dependent solely on the state have on various occasions become agents of the state's agendas rather than pursuing their own. Other organisations that turned to external donors for funding were criticised for pursuing "external" or "foreign" agendas. Such public

perceptions affected their standing as a legitimate actor for change in society. In addition, funding schemes that rely mainly on grant models have predominantly benefited larger, capital-based organisations. Smaller grassroots groups or organisations outside capital or main cities often do not have the resources or the knowledge to compete in calls for funding proposals. This has prevented that money and support arrives where the greatest potential for change lies. The dependency on increasingly limited donor funds has also contributed to a sharp increase in competition among civil society groups. All of this calls for a radical rethinking of how funding currently takes place around transitional justice. Ineffective and outdated funding methods, such as the grant model, have become an obstacle rather than a means to sustaining peace. There are many ideas and experiences out there that need to be channelled into the context of the Western Balkans.<sup>14</sup> Organising an expert workshop with the aim of developing new guidelines on funding civil society in the area of TJ could be an immediate next step. The workshop could operate around the following agenda: 1. Promoting participatory approaches to funding; 2. Creating partnerships for change; 3. Identifying ways to improve systems rather than providing services; 4. Facilitating ownership by local partners; 5. Addressing administrative burdens; 6. Supporting movements and collective action; 7. Collecting ideas on longer-term and “radically flexible” funding approaches, e.g. flexible pots of money, TJ funds. The EU has already started to pick up on thinking how to

support more local grassroots initiatives. A recent call for proposals for funding on TJ and the Western Balkans focuses in particular on youth and grassroots initiatives, and includes incentives to think further around sub-grants and other ways that make sure the money arrives where it's really needed. Here again sustainability will be important as well as to ensure that funding is locally led.

• **Look at preventive strategies for civil society in a highly networked online-based environment:**

A lot of civic action happens online these days. This presents new advantages but also potential risks. Civil society has been using social media for lobbying, but also for documentation and accountability. These need to be supported in a way that complements the necessary work in the offline world. One of the risks of moving online is the fragmentation of messages, lack of consistency in pushing for certain issues, as well as debating amongst the converted in so-called echo chambers. There are also security concerns, such as an increase in online threats and smear campaigns that require targeted capacity building. There is expertise on this, including at the level of the OHCHR, which could be more systematically channelled to activists in the region. A lessons-learned process should be started in the Western Balkans on optimising civil society work around dealing with the past online. The earlier proposed TJ hub could play an important function in this respect. The UN, which works on better linking digitalisation and operational work in the area of conflict prevention and promotion of peace, could work closely with civil society organisations to facilitate data collection and develop sustainable strategies and criteria for using technology and digitalisation for the purpose of dealing with the past and prevention. The advantage of launching into this area is

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<sup>14</sup> See e.g. Peace Direct and Riva Kantowitz, *Radical Flexibility: Strategic Funding for the Age of Local Activism* (2020), available at <https://www.peaceinsight.org/reports/peacefund/>

that already collected data can be more easily and systematically stored and made accessible. In addition, ongoing data collection - together with knowledge about the past - can predict problematic areas that prevention work could focus on. Another advantage is the possibility of a much broader involvement of different actors. There are, as already stated, risks of abuse and manipulation. A qualitative element to analyse data from an interdisciplinary perspective in accordance with real human experience around transitional justice will need to be a central part of such an endeavour; capacity building with civil society and those who are beneficiaries will be essential. Political action in response to what the data reveals will, however, always be necessary for change.

- ***Support regional initiatives and networks around grassroots and youth groups:*** Civil society in the Western Balkans, as has been highlighted above, is fragmented. Initiatives that go beyond national borders and are multi-ethnic in nature are rare. There is a regional trend of growing nationalism also within civil society. But sharing of experiences, avoiding duplications, having a common regional voice, regional solidarity and connecting across borders have been strong points in the past and addressed the consequences of the regional dimension of the conflicts after the breakup of the former Yugoslavia. The RECOM initiative stands as a testimony to the need for regional focus. Beside RECOM there are other regional networks that need to be supported. Positive initiatives that can be listed are youth initiative networks that seek to go beyond the ethnic divides. Another example is BIRN, which operates throughout the region and has employees from various ethnic backgrounds, creating a climate of

diversity and tolerance within the organisation. Another area are feminist groups which entertain some networks, also around the issue of dealing with the past, including reparations. Feminist groups and individual feminist activists are the only civil society actors that link dealing with the past to current structural inequalities and marginalisation of women. All of these organisations and networks need sustainable and long-term support.

- ***Support strategic litigation around contextual and structural problems:*** Civil society has invested over the years in strategic litigation around transitional justice issues before local and international courts and human rights bodies. There is a wealth of recommendations and court judgments which, if implemented, could make a difference in the area of transitional justice, including around donor priorities such as access to justice and reparations for survivors of conflict-related sexual violence. But regular calls by civil society to the international community to support them in their demand for compliance are not followed up by action. The setting of priorities around what strategic litigation to pursue should be locally led, taking into account opportunities and feasibility. The ultimate goal should be to address needs of victims and not exclusively advance international law.



## C. Changing cultural and individual dispositions: Untapping their preventive potential

There are undoubtedly both individual and cultural dimensions to violence and conflict. At the cultural level ideologies of ethnic purity, clerical conservatism, patriarchy and militarisation have brought the evillest, large-scale violence to the region and its population. These ideologies have coded the societies and its individuals for centuries in the Western Balkans. Generations have learned within these ideologies what is “normal”; what to do and what not to do. Victims of serious human rights violations of the conflicts in the 90s have seen the darkest side of what these ideologies are capable of unleashing. Victims continue to struggle for justice today within these unchanged ideological structures that have successfully undermined any serious efforts around transitional justice to date. Transitional justice, if given the political space to work, is a real challenge to these ideologies because if done right it asks questions that shatter the stability and pillars of the *status quo*.

Changing ideologies by dealing with the wrongs of the past with a view to achieving “never again” as a reality is no easy task. To change this, to unlearn ideologies, requires a tremendous societal effort. Transformation will not happen overnight and requires change at the economic, technological, cultural and social structures level. Pablo de Greiff, former UN Special Rapporteur on Transitional Justice, highlighted in his work around prevention and dealing

with the past that: “Sustainable social change is not merely a matter of clever institutional engineering; a comprehensive prevention framework needs to make sure that institutional change is accompanied by changes in culture and individual dispositions.”

The logic that more than institutional change is needed for transformation to happen has been heeded by civil society in the Western Balkans. Civil society, while traditionally working towards an institutional reform agenda, has also moved into the cultural and the individual sphere of dealing with the past. The region is, in this respect, a place of great innovation, artistic talent and persistent engagement and commitment. Throughout the region, various civil society-led documentation and memorialisation efforts exist and are geared towards changing perceptions of the war.<sup>15</sup> A multitude of methodologies are used including documentary films, oral histories, short-term visual art memorials and archives.

At the individual level, trauma work for civilian victims of the war is exclusively provided by private actors. Civil society-led programmes in the community work on education and removing obstacles preventing victims from accessing justice. All of this work by civil society has created some solidarity and needs to be applauded. But in the wider scheme of things, they often seem like a drop in the ocean. Identity politics around dealing with the past have also crept into civil society in the Balkans and risk distorting a ‘community of concern’ that goes beyond ethnicity and the national state. Also the years and years of uphill struggle in fighting for the truth without any meaningful societal change and

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<sup>15</sup> See Impunity Watch Report, Keeping the Promise, 2018, op. cit.

infighting among civil society organisations have left scars and high levels of frustration and despair. This serves to demonstrate that these ideologies must be tackled urgently.

Compared to civil society, the official side is completely absent from any meaningful engagement around dealing with the past and works actively against showing a more diverse and objective picture of the past. The official narrative is one that continues to support these deadly ideologies based on ethnicity and exclusion in order to stay in power. Challenging the official narratives will result in trouble and is perceived as a direct attack on the system. For example, activists are regularly targeted by nationalist groups and have even faced lawsuits for their memorialisation efforts. The international community that has been historically highly active and influential in the region has apart from statements and some pushes on the institutional level lacked the vigour to address ideologies, since they also come in handy when human rights need to be put on the backseat for hard security demands, such as to stop migrants from coming closer to the EU borders or in the fight against terrorism. There is a great deal of hypocrisy within the international community, which enables ideologies that have been so deadly in the past to continue to flourish today.

This all goes to show that working on the cultural side of transitional justice is not about supporting a nice feel-good project. This is the area where the ideological battleground takes place and it's the place where the future is decided. The following highlights some suggestions that could be part of a policy agenda that responds to that and to integrating the cultural and individual level into a comprehensive prevention strategy:

- ***Strengthen a sense of social solidarity: Work on region-wide policies around memorialisation:*** At the cultural level, as reported by BIRN and others over the past two decades, an unprecedented number of new monuments have been built all over the former Yugoslavia. However, governmental policies in the area of memorialisation appear to be absent throughout the region. The majority of monuments commemorate fallen fighters, conflict victims, historical heroes or foreign allies. In some cases, the individuals commemorated are considered to be war criminals in other jurisdictions. Streets and places are named after war criminals. Very few attempts are made to promote reconciliation or an ethnically-inclusive view of peace. Instead, monuments often promote selective and divisive views of recent history, exacerbating ethnic tensions. This issue is particularly acute in Bosnia and Kosovo. The issue is critical in the Western Balkans and requires a political response. According to one commentator, the main problem is not the monuments themselves but the socio-political context in which they are placed.<sup>16</sup> Monuments have a greater potential of becoming the focus of division and conflict. The problem is quite well known today but the appropriate policies and responses are absent. Civil society has an important function here to move from an identification of the problem to articulating a political demand. Recent discussions in Bosnia around denial are interesting and the call for a legal ban on denial, trivialisation, justification or

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<sup>16</sup> See Interview by BIRN with Nicolas Moll, available at <http://www.balkaninsight.com/en/article/a-different-kind-of-remembrance> (last visited 25 March 2018).

condoning genocide, the Holocaust, crimes against humanity or war crimes is a specific call for action. The call also makes a clear link to peace and security threats caused by the current official culture of denial. In parallel to legal action that need to adhere to international human rights standards a broader societal debate needs to start around symbols of denial, including memorials, public speeches by politicians denying any responsibility from “their side” for war crimes, but also of grey zones, which come with every conflict. The debate cannot be one-sided in distributing guilt or based on revenge. Museums can play an important role in this as a trigger for public debate. Also, the private sector and businesses need to be part of the discussions. The site of the notorious Omarska detention camp, which has been qualified as a crime against humanity, has been used for many years as a production site for the mining sector in the region. Likewise, former hotel complexes, which were the scene of many rape cases during the conflict in Bosnia, are functioning as commercial active and lucrative spa sites. The responsibility of the private sector, which often works closely with political elites, needs to be further addressed also in the area of remembrance and memorialisation. Discussions on ‘business or commerce free areas’, especially on sites where mass crime took place could be discussed and legislation in this respect ensured. Investors should do a ‘dealing with the past assessment’, to conduct historical assessments that measure the impact of using formers sites of suffering for commercial purposes. Current debates all over Europe around addressing the past, including around colonialism and fascism, could provide some political space to do so.

• ***Invest in archives:*** To little attention is being paid to the question of archives from the wars in the 1990s. Countries in the region have a non-transparent state policy when it comes to archives. As a result, many state archives, including security archives, are not accessible to the public. By the same token, the international community, including the UN, was generally inconsistent in the handling of its own archives. Limitations of this kind, as has been the case in Bosnia and Kosovo, impede access to important documents that could be used by transitional justice mechanisms. With the closing of the ICTY, uncertainty as to what will happen to its archive remains. Civil society organisations, including NGOs and victims’ groups, sometimes maintain their own archives, often without clear policies or standards on issues such as access and preservation. Another concern is that the economic violence that accompanied physical violence is not systematically documented and recorded, which leaves many stories untold and a high number of harms invisible, especially those suffered by women. Governments in the region need to develop policies in the area of access to archives containing records from the conflict of the 1990s that are in accordance with international standards. The international community needs to politically follow-up on this topic. Countries like Germany, with its own experience and vast capacity around the issue of archives could facilitate the discussions. New technical means should be considered and can provide opportunities.

• ***Dedicate the 2020-2030 decade to action on education and the teaching of history:*** At the level of education, there are two areas of concern that seriously undermine efforts to prevent the recurrence of violence. First, the continuing segregation in schools

remains an issue. Generations of children in Bosnia and Herzegovina, Croatia, Kosovo, and North Macedonia have been educated in ethnically-segregated schools under the pretext of the protection of the linguistic and cultural rights of a particular ethnic group. Ethnic prejudices are thus deeply engrained at an early stage and subsequently difficult to counter. Advocates of this approach are ethno-nationalist parties and politicians who benefit from such segregation since it solidifies ethnic divisions, breeds fear and mistrust and leads to homogenous voting blocs. The most egregious example of this practice is the “two schools under one roof” system in Bosnia and Herzegovina, which remains in practice despite a domestic court decision that found the system to be discriminatory. Human rights bodies have also issued numerous recommendations to the authorities on this issue. All remain unaddressed. On a positive note, some student-led civic action has caused local authorities to abandon their plan to create yet another ethnically-segregated school. Another area of concern is the teaching of history, which is used as a divisive tool in Western Balkan states. Within curricula, nationalist narratives of victimhood, dating as far back as the two world wars, and the legitimacy of liberation wars distort historical truth and obscure the responsibility for war crimes and human rights abuses, which could be dangerous in terms of preparing the ground for future conflict. In most of the Western Balkan states, history books support dominant nationalist narratives. There are efforts to revise history textbooks, such as in Croatia, but even if new textbooks do exist, whether or not they are used often depends on individual teachers. There is an urgent need to call for a decade of education and the teaching of history. The EC and other donors could fund civil society work,

especially at the community level around this. Support is needed in establishing participatory processes where grassroots civil society can feed into policy decisions around education. Also, work with teacher unions to garner support around a more diverse teaching of history will be important. There is no need to achieve a common narrative or a common history but rather a need for more objectivity and the presentation in class of multiple narratives. The international community in its bilateral contacts needs to support the implementation of court judgments and recommendations of human right monitoring bodies. Civil society should increase strategic litigation around the issue of discrimination in the education system as a direct consequence of the past.

• ***Strengthen the independence of the media:*** Broader public debate on the responsibility for the wars of the 1990s are largely absent, suppressed by the ruling elites and influential nationalist groups and parties. In addition, alleged war criminals maintain political influence in society. Media outlets lack independence and are used as tools to manipulate the discourse. Coverage of transitional justice topics is poor and when it does happen, it is often politicised, sensationalised and biased. Media reports often reflect ethnic divisions in society, while objective and holistic reporting is rare. Maintaining such a system lays the ground for future conflict. Civil society groups such as Dokumenta have shifted their focus towards balancing the public debate and regaining space for non-biased discourse about the past. With its focus on transitional justice, the BIRN network is also trying to contribute to this end. In particular, its investigative function needs to be preserved and protected. Nevertheless, these initiatives need support as part of a broader policy to



combat impunity in the Western Balkan states with the goal of preventing recurring violent conflict. Part of this support should be to provide capacity training for journalists around wider concepts of transitional justice, the exploration of the court archives in quality and investigative journalism focused on dealing with the past. Institutions that are dealing with transitional justice should be encouraged to be more transparent and open to the media, enabling them to create informative and meaningful content. The international community could monitor the independence of financial flows that support media also from the private sector. Private media companies bear responsibility for the parlous state of the media in the region. Creating an environment where commercial and non-commercial media firms must adhere to strict editorial and ethical standards is vital to conflict-prevention.

• ***Scale up psycho-social assistance to victims:*** The region is lacking a broader psycho-social strategy. The war and its consequences are mainly seen through the prism of individual trauma. This shifts the burden on dealing with the past onto individual victims, while the suffering has actually taken place within a society, a community. The societal factors that have contributed to suffering and in many cases prolonged it, need to be part of any response. Think for example about stigma triggered by

patriarchal societies that make a woman who has been the victim of rape feel guilty and shameful, which in turn prevents her from seeking support or claiming her rights. There are also economic factors that affect victims of war. The way in which current economic policies that promote austerity and are based on structural adjustment programmes affect war victims, in particular women, is not on the political agenda, including in the EU accession process. Likewise, the way in which organised crime and illicit economies are a direct consequence of failed policies in the post-conflict period and how that impacts on victims is under-researched. There is a need to carry out comprehensive psycho-social analysis that takes into account the needs of victims when designing policy responses and intervention in different spheres, such as security or the economy. There is comparative expertise from other countries, such as Northern Ireland, Argentina, Guatemala and elsewhere that could be tapped into. Also countries like the Netherlands, which has committed to focusing on psycho-social support as part of their engagement with peace-building, could play an important support function here. In all of these interventions, an inclusive and participatory approach needs to be taken that responds to the needs of the victims in order to make real change.

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## WAY FORWARD

This document demonstrates that transitional justice is still highly relevant today in the Western Balkans. Its calling today should be linked to the broader goal of preventing the recurrence of violence. In spite of the urgency to think about measures around prevention there is however currently no political will to do so in a determined and targeted manner. The political will for real action that goes beyond financing projects or reiterating once again in summit outcome documents or regional strategies that TJ and reconciliation are important is missing also by the EU and its member states. This document will most likely not change this. It aims, however, to assist policy makers to widen the space for arguments around transitional justice, to give it a direction by providing ideas for an alternative framework that links transitional justice to the prevention of recurrence of violence. This framework includes different dimensions: the institutional level, the level of civil society and the cultural and individual sphere. To take a comprehensive response that integrates these different dimensions will, we believe, make a significant contribution in sparing future generations from excessive violence.

We hope that the document can serve as a tool to reimagine what can be done differently to effect change. Transformation processes take a long time. They are dependent on many factors, some that can be influenced, others not. We focused here on those that can be influenced. This document calls for rethinking transitional justice and refocusing it to be an enabler for structural change. The conflicts of the 90s constitute a sad watershed moment

for the region and its consequences have shaped the region and its people, politically, socially and economically. The genocide in Srebrenica constituted a collapse of civilisation to the extent that recovery is difficult to even imagine.

The immediate post-conflict opportunities that presented transitional justice with an opportunity for making structural changes have been missed, due to narrow and overly technocratic approaches that left context and politics out of the equation. This has strengthened those who manipulate the past for their own personal gain. They have felt secure knowing that they are essentially untouchable since then. It has weakened those in the region who were genuinely interested in redefining the state as an entity that protects its citizens and does not leave anyone behind. This can, however, change.

Today, as part of the COVID 19 impact, we see broader changes and thinking on policy alternatives all around Europe. For the first time EU member states led by Germany and France, are thinking about common debt; a discussion that would have been unthinkable just a few years ago. We see a refocusing of the EU's foreign policy that identifies European interest driven by a changing geopolitical landscape with a decline of US hegemony. All of this opens up of political space and can provide opportunities, but also risks. One has to take on this new political space and start shaping it. This also holds true for ideologies such as nationalism. We see a new form of nationalism emerging as part of the COVID 19 crisis that is more territorial but in its nature inclusive and less divisive. In the migrant crisis,

nationalisms were more ethnically motivated and had split the society. What all of this means for the region is difficult to say, but it means that there is space for politics. A rethought policy around transitional justice with a focus on prevention can contribute to filling this space. It can fill it by triggering the contextual articulation of political demands by civil society, ensuring better interaction between the normative, political and cultural dimensions of addressing past atrocities and providing a long-awaited vision that aims to make a difference and shape the future.

As next steps, we will engage in broader discussions in particular with civil society around the policy alternatives presented in this document. The present document should be considered as a living document and should be an intellectual tool that opens discussion. It should complement ongoing discussions by civil society and policy makers. It is intended to create a group, a community

of practice, which links policy makers, practitioners, activists and civil society representatives to enable learning as we go and jointly forming strategies to effectively implement next steps.

The long-term goal should be to think about institutionalizing the link between dealing with the past and prevention by establishing a regional agency or observatory. Countries like Germany and Austria have interesting practice born out of their own historical experiences that they could share around the establishment of a “fund for the future” that supports projects and initiatives around tolerance, a culture of remembrance, human rights education and the strengthening of democratic values. An institution that connects, shows trends and patterns and collects data around dealing with the past would help to create sustainable engagement on a topic that will remain a live issue for a long time into the future.

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# ANNEX

## Checklist - Policy Alternatives for dealing with the past: elements for a comprehensive prevention agenda

### A. Transitional justice mechanisms: revisiting their preventive potential

1. *Revisit the purpose of war crimes prosecutions from the perspective of prevention*
  - *Redouble efforts on outreach and education.*
  - *Address gender stereotyping within the judiciary.*
  - *Support prosecutorial initiatives and strategies that link the past with the present.*
  - *Continue building political awareness of structures that undermine prosecutions.*
2. *Strengthen the focus around reparations that are transformative in nature*
  - *Take a bottom up and needs-based approach to identifying reparation needs.*
  - *Look at reparations for conflict-related sexual violence from the perspective of prevention.*
  - *Reinterpret access to justice from a broader perspective.*
  - *Support region wide development of gender-sensitive reparations frameworks for civilian victims of war.*
  - *Prioritise the issue of reparations in the EU accession process.*
  - *Take victim-sensitive assessments in the context of broader economic reforms.*
3. *Expand the scope of security sector reform to encompass political, societal and cultural dimensions, including the legacy of the past*
  - *Address the issue of militarised masculinities in the security sector and beyond.*
  - *Dismantle right-wing networks and groups.*
  - *Strengthen civilian oversight mechanisms.*
  - *Address state capture through the development of a comprehensive strategy tackling its underlying conditions.*

### B. Civil society: relentlessly strengthening its preventive potential

- *Increase civil societies ability to articulate political demands.*
- *Ensure civil society's financial autonomy through strategic funding at the local level.*
- *Look at preventive strategies for civil society in a highly networked online environment.*
- *Support regional initiatives and networks around grassroots and youth groups.*
- *Support strategic litigation around contextual and structural problems.*
- *Monitor civil society organisations with nationalist agendas and far-right movements.*

### C. Changing cultural and individual dispositions: untapping their preventive potential

- *Strengthen a sense of social solidarity: Work on region wide policies around memorialisation.*
- *Invest in archives.*
- *Dedicate the 2020-2030 decade to action on education and the teaching of history.*
- *Strengthen the independence of the media.*
- *Scale up psycho-social assistance to victims.*



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