TRANSITIONAL JUSTICE STRATEGY
FOR BOSNIA AND HERZEGOVINA
2012- 2016

WORKING DOCUMENT

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INTRODUCTION

Facing the past is one of the key preconditions for building stable future in Bosnia and Herzegovina. Various interpretations of the recent past and contradictory ideas about the whole approach to redressing the legacies of war crimes and gross human rights violations continue to strain the political development and alienate generations of citizens of this country. Acknowledging the entire complexity of the BiH society’s addressing its recent past and also the need for approaching the past in a systematic and comprehensive way, the Council of Ministers of BiH decided to launch the process of drafting a Transitional Justice Strategy.

The decision to launch the drafting process is based on one of the recommendations from the Report on Consultations which the BiH Council of Ministers adopted at its 87th meeting held on 14 May, 2009. Prior to the decision, the BiH Ministry for Human Rights and Refugees and the BiH Ministry of Justice, in cooperation with the United Nations Development Programme (UNDP), held over the course of several months a series of consultations\(^1\) within which the representatives of the government institutions, organisations and individuals from the civil society and the representatives of the associations and families of victims exchanged in a direct interaction, for the first time after the end of the war, their views on transitional justice issues. It was during those discussions that they defined the need for approaching the issues of the past in a new, systemic and inclusive way, through the drafting of a national Transitional Justice Strategy. The conclusions of the survey that the UNDP conducted in the early 2010 follow this same line of thinking. Namely, nearly 90% of all respondents agree that the authorities in BiH should work out a concrete plan for the issues of addressing the past.\(^2\) The very first consultations, as well as the findings of the survey, showed most directly a huge interest in the implementation of the process within which the BiH society would come to terms with past human rights abuses and war crimes, committed during the armed conflict in 1992 - 1995.

Since the end of the war in BiH, a number of international, national and local transitional justice initiatives have been launched. Criminal prosecution of those accountable for human rights abuses and war crimes began; the institutions at different levels and some civil society organizations implemented, and continue to

\(1\) The first round of consultations was held in Fojnica on 4-6 June, 2008, while another round of consultations was held in Brcko on 28-29 April, 2009. Immediately after the BiH Council of Ministers approved the Report on Consultations, a third round of consultations was held in Mostar on 26-27 May, 2009.

implement, the fact-finding and truth-telling activities; the relevant legislation governing reparations to some extent is in place; vetting was, and still is, conducted to examine and evaluate the professional capacity and moral integrity of those working in the public administration; new institutions have been formed; the old ones were closed down; and some reform laws were adopted. However, those initiatives have not resulted in a consensus within the BIH society on the ways in which the war-related traumas could be overcome.

The following are the most commonly cited reasons for such an outcome:

- Partial activities, i.e. insufficient coordination and link among the activities launched within different transitional justice mechanisms;
- Limitation of transitional justice initiatives to the local or regional level;
- Dominant engagement of the civil society and international organizations in creating different initiatives, without direct participation of the government institutions;
- The absence of a single strategic approach at the state level to recommending, in a balanced way, a comprehensive set of legal remedies.

The adoption of the Justice Sector Reform Strategy in Bosnia and Herzegovina in 2008 (JSRS) and the inclusion of the need for drafting a Transitional Justice Strategy in the JSRS formed the basis for a more active and a more focused approach to the process of addressing the past. The BIH Ministry of Justice and the BIH Ministry for Human Rights and Refugees committed themselves to drafting a Transitional Justice Strategy. The drafting process includes other relevant institutions at the state and entity levels and from the Brcko District, as well as the civil society and associations of victims from all parts of BIH.

The overall aim of the Transitional Justice Strategy is to create an acceptable platform for more effective and realistic mechanisms and activities through which it will be possible to redress injustice and heel the traumas related to the armed conflict in 1992-1995, to restore confidence in institutions and to prevent human rights’ abuses and war crimes from recurring in the future. The Strategy represents a political agreement which is in harmony with the constitutional system of BIH and international standards for the protection of human rights, and is fully understood and supported by all stakeholders involved in the drafting process.

The Transitional Justice Strategy considers the relevant transitional justice issues, in particular those which have not been adequately treated within the government institutions and the legal system. Specifically, this Strategy covers non-judicial transitional justice mechanisms: fact-finding and truth-telling, reparations and memorials, and institutional reforms. The Transitional Justice Strategy does not cover the mechanism of criminal prosecution of those held criminally responsible for human rights abuse and war crimes since it is elaborated in detail in the
National War Crimes Strategy which was adopted in December 2008. However, it is important to emphasize that the Transitional Justice Strategy generally and through some of its activities provides unreserved support to prosecution of war crimes and to the full implementation of the National War Crimes Strategy.

Below is the scheme of strategic goals and objectives defined in this Strategy as well as the general vision of the overall Transitional Justice Strategy and its individual pillars.
### THE STRATEGY VISION

At all levels of the BiH society an open, functioning and productive dialogue on the past established in order to prevent future manipulation of the past, deliver satisfaction to victims and form efficient, professional, representative and credible public institutions.

### FACT FINDING AND TRUTH TELLING

**Vision of mechanism:** The non-judicial mechanisms for fact-finding and truth-telling about the 1992–1995 events are improved and operate as an integrated system, thereby creating a platform for a public dialogue on the past events in order to pay tribute to victims, prevent the culture of denial and strengthen confidence among citizens.

**Strategic goal 1:** To improve and strengthen institutional non-judicial fact-finding and truth-telling mechanisms and initiatives of the civil society with the aim to ensure their effective functioning and quality contribution to this process.

**Strategic objective 1.1:** To strengthen and improve the process of tracing missing persons

**Strategic objective 1.2:** To develop legally defined, harmonised and efficiently protected system of collecting data on all victims of violations of international human rights law and international humanitarian law

**Strategic objective 1.3:** To strengthen the existing and support new civil society’s fact-finding and truth-telling initiatives by creating a platform for mutual dialogue and interaction

**Strategic objective 1.4:** To ensure the right to the truth to individuals and the society as a whole through ensuring an unimpeded prosecution and trial of war crimes cases, the full operation of a new fact-finding and truth-telling non-judicial mechanism and an unimpeded vetting process

**Strategic objective 2:** To establish an institutional fact-finding and truth-telling mechanism to investigate human rights violations in the period 1992 – 1995 which is complementary to existing judicial and non-judicial mechanisms and among citizens.

**Strategic objective 2.1:** To adopt a legal framework for a new institutional non-judicial fact finding and truth-telling mechanism

**Strategic objective 2.2:** To ensure public support for establishment of an institutional non-judicial mechanism and its activities

### REPARATIONS AND MEMORIALS

**Vision of mechanism:** Right to reparations is ensured and collective memory of the events from the period 1992-1995 preserved in order to overcome the consequences of violations of international humanitarian law and international human rights law and to restore dignity to all victims of war and to ensure their social reintegration.

**Strategic goal 1:** To ensure full protection of the right to compensation of all victims of violations of international human rights law and international humanitarian law.

**Strategic objective 1.1:** To improve the existing system of ensuring the right to compensation of all victims of war in BiH

**Strategic objective 1.2:** To establish a coherent system of data on all beneficiaries of this right, regardless of benefit or type of compensation

### COMPENSATION

**Strategic goal 1:** To improve mechanism for employment and self-realisation of this right to survivors and persons with disabilities in various forms of creative and sporting activities

**Strategic objective 1.1:** To improve institutional standards for providing adequate psycho-social services to war victims of war and traumatised persons

**Strategic objective 1.2:** To improve mechanism for employment and self-employment of victims of war and persons with disabilities for the purpose of their social reintegration and economic independence

**Strategic objective 1.3:** To ensure a systemic approach to inclusion of victims of war and persons with disabilities in various forms of creative and sporting activities, as specific forms of rehabilitation.

### MEMORIALS

**Vision of mechanism:** To improve and strengthen institutional non-judicial fact-finding and truth-telling mechanisms and initiatives of the civil society with the aim to ensure their effective functioning and quality contribution to this process.

**Strategic goal 1:** To build and preserve collective memory through erecting memorials and launching a dialogue on the past with a view to preventing recurrence of crimes.

**Strategic objective 1.1:** To establish standards and criteria for erecting memorials and holding commemorative activities

**Strategic objective 1.2:** To launch a dialogue about the past through adequate processes of memorialisation and commemoration, with a view to build a culture of memory

### REHABILITATION

**Vision of mechanism:** To improved professionalism, representativeness and credibility of public institutions in the context of their development into guarantors of respect for the highest human rights standards.

**Strategic goal 1:** To enact a law on vetting in public institutions and to improve present laws governing this issue.

**Strategic objective 1.1:** To establish a modern legal framework for continuous vetting of employees in public institutions at all levels of government and to ensure that public institutions act in compliance with the principles of professionalism, transparency and full accountability to citizens

**Strategic objective 1.2:** To improve internal and external monitoring mechanisms of functioning of public institutions and of vetting process, and to organize symbolic activities of institutions to ensure their accountability to citizens and legitimacy

**Strategic goal 2:** To raise awareness and understanding of citizens and institutions about the importance of transitional justice process and institutional reforms in post-conflict societies and of activities of institutions

**Strategic objective 2.1:** To develop a mechanism for informing and educating citizens and institutions on transitional justice, vetting process and institutional reforms in broader terms

**Strategic objective 2.2:** To improve existing training programmes for the staff of institutions which will be covered by the vetting process with a view to building their capacities, sensitising them about particularly vulnerable groups and ensuring respect for highest human rights standards in performing their duties
Transitional Justice Strategy Drafting Methodology

The process of drafting a Transitional Justice Strategy began in March 2010. The work methodology was envisaged as a two-way process of communication between the victims' associations and other civil society organizations, on the one hand, and the institutions, on the other, primarily through consultations but also through other forms of a public dialogue, with a view to ensuring their agreement on systemic solutions offered by this Strategy. The arrangements defined in the Transitional Justice Strategy rely on:

- international standards and obligations of the states in the field of human rights protection;
- opinions of the participants of the consultation process on the drafting of a Transitional Justice Strategy;
- opinions of the professional community;
- existing capacities and systems at the state and entity levels;
- the investigation of the needs of the BIH society related to addressing the past.

Visions, strategic goals and objectives and a series of strategic activities are defined within each of the three transitional justice pillars covered by this Strategy in order to solve the key issues identified through the survey and the consultation process. The visions for every individual pillar will contribute to achieving the vision of the overall Transitional Justice Strategy.

Bodies responsible for the development of a Transitional Justice Strategy

The BIH Council of Ministers adopted on 21 January, 2010 a Decision to Form an Expert Working Group for Drafting a Transitional Justice Strategy in BIH and an Action Plan for its Implementation. On the basis of that Decision, the BIH Ministry of Justice appointed in March of 2010 fifteen members to the Expert Working Group (hereinafter: the EWG) of whom ten represented the institutions at different levels of government in BIH (three representatives from each entity, one representative for the Brcko District and three representatives for the state-level institutions), while the remaining five members represented the civil society.3

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3 The list of EWG members is attached to this Strategy (Annex 3). The representatives of government institutions to the EWG were appointed by their respective institutions, while the civil society representatives were chosen through a transparent process, taking care of geographic, gender and professional representation.
**Thematic sub-groups**

In order to ensure quality of the drafting process, the EWG members divided themselves into three thematic sub-groups to deal with each of the three transitional justice pillars. The thematic sub-group members were those from the EWG and also the representatives for the victims' associations. The thematic sub-groups participated in organizing and monitoring of, and reporting from, the thematic consultations.

**Secretariat of the EWG of the BIH Council of Ministers**

During the process of drafting a *Transitional Justice Strategy*, the EWG was continually provided with professional, technical and administrative support from the Secretariat, formed by the UNDP.

**Public consultations, thematic sub-groups, focus groups and individual consultations**

While discussing its *Work Programme*, the EWG agreed that one of their leading principles during the process should be the group's openness to active participation of all interested citizens. As a result, a dialogue in the form of open consultations involving all relevant representatives of different categories of the population within the BIH society was the central part of the process of drafting a *Transitional Justice Strategy*. This work method was adopted with a view to ensuring a forum within which both the government institutions and the civil society would be able to recognize each other as partners in the process of building sustainable peace and the rule of law.

The *Transitional Justice Strategy* is in harmony with international standards for the protection of human rights and is adapted to the local context. Its greatest value lies in its being broadly inclusive and the fact that its creation is steered by the local stakeholders, i.e. the domestic authorities, the civil society and the associations and families of victims in particular. In order to ensure inclusiveness and participation, the EWG held public consultations that focused primarily on the rights and needs of victims, their families and, eventually, the society as a whole. The thematic consultations, as a special form of consultations, were the backbone of the process of creating a *Transitional Justice Strategy*. Those consultations were envisioned as the exchange of information and views between the associations and families of victims, individuals and organizations from the civil society and the professional community, on the one hand, and the government institutions, on the other. Through thematic consultations, the EWG was able to obtain opinions from the key stakeholders involved in the process on specific issues that the *Transitional Justice Strategy* deals with.

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4 The list of participants of thematic sub-groups is attached to this Strategy (Annex 3).
During the process of drafting the *Strategy*, five rounds of thematic consultations were held, focusing on the issues from within the three transitional justice pillars which were relevant for different stages of its creation.\(^5\) During the first phase of creating a *Transitional Justice Strategy*, which lasted between April and July 2010, consultations focused on the situation analysis and identification of strategic issues, i.e. strategic problems. During the second phase, which lasted between August and December 2010, the participants of the consultations discussed the relevant strategic objectives and strategic activities as responses to the previously identified problems. During the third phase of developing a *Transitional Justice Strategy*, the EWG discussed, in accordance with defined strategic issues and objectives, the impact assessment indicators, initial budget factors for the implementation of the activities required to reach the objectives, and organized a series of public debates on the proposed *Strategy*.

The participants of consultations were individuals and representatives of the civil society organisations, such as journalists, representatives of religious communities, human rights organizations, women and other organisations dealing with gender equality issues, youth organisations, veterans' associations, associations of the people treated for post-traumatic stress disorder, experts from the relevant fields of expertise, representatives of institutions at all levels of government responsible for the issues covered by the *Transitional Justice Strategy*, as well as the representatives of associations and families of victims. When people were invited to consultations, the following was taken into account:

- geographic representation,
- representation of civil society organisations in terms of categories of the population involved in their activities, and
- gender equality.

During the process of drafting a *Transitional Justice Strategy*, also other forms of a dialogue with the public were organized, including conferences, focus group meetings, public calls for comments on the draft of the *Transitional Justice Strategy* announced through the media, in order to ensure as inclusive, transparent and comprehensive a process as possible.

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\(^5\) The list of consultations and other forms of a dialogue held within the process, as well as of participants, is attached to this Strategy (Annex 4).
PART I – Transitional Justice Concept and Obligations of BiH

Transitional Justice

Transitional justice is a new method in theory and practice of human rights protection. This concept gained wider recognition during the years and decades after the World War II, primarily through the international military tribunals in Nuremberg and Tokyo, then through the development and implementation of large-scale reparations programs for the victims of the Nazi regime, through denazification process, etc. However, transitional justice took form and gained full recognition over the last decades of the 20th century, by following the development and implementation of specific activities which led to political, legal, socio-cultural, economic and other transformation processes in the states affected by the legacies of human rights abuse during authoritarian regimes or armed conflicts, such as the countries of South and Central Europe and the Balkans, Central and South America, South, North, West and Equatorial Africa and the Great Lake region, South-East Asia, etc.

The aim of transitional justice is to initiate the process of redressing the legacies of human rights abuse and war crimes by the states and societies, which will result in political, legal, socio-cultural and economic transformations, i.e. in forming such an institutional and social framework which will ensure the introduction and protection of democratic values and human rights of citizens, acknowledgement and recognition of past atrocities and general prevention of human rights abuse in the future.⁶

Within the transitional justice concept, criminal prosecution of those bearing responsibility for human rights violations and war crimes is one of the main ways of initiating the process within which states and societies will address their past. The insistence on delivering justice to victims and the society as a whole through prosecution is a dominant position in nearly all contexts which are going through turbulent political, legal, socio-cultural and economic transformations caused by the process of facing up to the past, including BIH. More specifically, the insistence on criminal prosecution is based on a deep-rooted belief that no other mechanism of transitional justice has such a strong impact on individuals, victims’ groups and society as a whole in terms of reaching the feeling of justice being served and conviction that the system is functioning indeed, which is one of the preconditions for restoring citizens’ confidence in institutions and for prevention of crimes from recurring.

However, the issue of transitional justice goes beyond the prosecution efforts and thus the “incomplete justice” and “impunity” phenomena are the general characteristics of all states and societies which are going through the above-said complicated processes of coming to terms with their traumatic past. The reasons are numerous, for example: political, institutional and social reluctance to face up to the legacies of human rights abuse and war crimes; potential procedural, legal and constitutional restrictions on prosecution efforts and characteristics of the judicial system; safety risks for witnesses, their families and communities; inaccessible documentation and other material evidence; insufficient funds; a huge backlog of cases; the emergence of new social realities, such as organized crime, which require an equally vigorous social, political and institutional engagement, and other reasons. All these factors, as well as many others which have not been mentioned here, are crucial for the efficiency of criminal prosecution of those responsible for human rights abuse and war crimes, and characterise legal, political and social realities in Bosnia and Herzegovina.

Due to the above, the transitional justice concept indicates the need for initiating the activities beyond prosecution, i.e. the activities which fall within the so-called “non-judicial mechanisms” of transitional justice. The judicial and non-judicial mechanisms, in an integrated, complementary and holistic form, have the necessary capacity to ensure a successful process in which the states and societies will face up to the legacies of the past and deliver justice to victims and the society as a whole.
Transition to Justice Mechanisms and Their Implementation in BiH

Theory and practice speak of the four basic (judicial and non-judicial) mechanisms of transitional justice.\(^7\)

1. Criminal justice
2. Fact-finding and truth-telling
3. Reparations and memorials
4. Institutional reforms

These four mechanisms of transitional justice correspond to the obligations of the states, including Bosnia and Herzegovina, towards victims and all citizens, in accordance with their respective constitutions and national and international law.

In case of human rights violations:

1. The states are obliged to carry out a swift and impartial investigation into human rights violations and to identify the victims as well as the violators;
2. The states are obliged to prosecute, try and punish, through a fair procedure, those responsible for human rights violations;
3. The states are obliged to ensure an adequate legal remedy and satisfaction;
4. The states should take all measures necessary to prevent recurrence of human rights abuses.\(^8\)

Criminal Justice

The states have a constitutional, legal and international obligation to prosecute the criminal offenses punishable under national and/or international law, such as war crimes, the crime against humanity and genocide. In accordance with this

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\(^7\) Although the transitional justice mechanisms are generally focused on some issues, it is necessary to emphasize that they are mutually related and dependent on each other and that a specific activity can be a characteristic of each individual mechanism. For example, although the primary goal of criminal justice is to establish individual criminal responsibility of the accused, a judgment establishes, beyond a reasonable doubt, the facts about an event covered by the indictment (fact-finding and truth-telling mechanism). A verdict also has the effect of delivering a symbolic reparation to the victim in terms of serving justice (reparations programmes mechanism), while prosecution and trial of the responsible ones, in the end, indicate the will on the part of the state and institutions to respect the Constitution, laws and international norms, i.e. that those bearing responsibility for human rights abuses will be punished, which leaves the impression that the system is functioning indeed and ensures restoration of citizen confidence in institutions (institutional reform mechanism). In the end, it is necessary to emphasize that the transitional justice mechanisms touch upon some other important issues relevant for a society which is addressing the legacy of past human rights abuses, such as protection and preservation of memory, democratisation, reconciliation, etc.

\(^8\) For more information on the legal basis of the transitional justice concept, see Links of Transitional Justice Strategy with International Law and International Obligations of BiH
obligation, the states must carry out a swift and impartial investigation and prosecute, try and punish the responsible ones in a fair trial and following due process of law. The purpose of this mechanism is to adjudicate individual criminal responsibility of the defendant as well as to protect democratic, social and civilization values and human rights and to ensure prevention of traumatic past from recurring. Perpetrators of war crimes are at the centre of this transitional justice mechanism.

Trials on charges of war crimes committed during the war in BiH are taking place before the International Criminal Tribunal for the former Yugoslavia (ICTY), the courts in Bosnia and Herzegovina, the courts in the region of the former Yugoslavia as well as before the courts in third countries. The National War Crimes Strategy was adopted in December 2008 with a view to identifying a more effective approach to a successful completion of the war crimes cases. However, opposite opinions continue to prevail in the public in BiH about criminal prosecution of those responsible for human rights abuse and war crimes. Also, despite the fact that the trials conducted so far have made a huge contribution towards delivering justice to victims and the society as a whole as well as towards adjudicating the facts about war crimes through trials and convictions of a number of perpetrators, the still pending issues regarding prosecution in BiH indicate the limitations of the this transitional justice mechanism and the need for non-judicial mechanisms which, together with criminal prosecution, will achieve the goals of the process of coming to terms with the past.

**Fact-finding and truth-telling**

The states have the obligation to investigate human rights violations, to identify and name victims and perpetrators, to protect the documentation on past abuses and to allow access to the archives in order to facilitate the work of the institutions or individuals who will be using that documentation. The main goals⁹ of this transitional justice mechanism are: to establish the facts about human rights violations and political and social circumstances that led to those violations, as well as about the consequences of past human rights abuses; to contribute towards building an environment in which victims will be able to exercise their rights; to

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inform the public about the findings and to ensure acknowledgement and recognition of the harm suffered; and to contribute to prevention of recurrence of war crimes and human rights violations. One of the ways to achieve these goals is to form institutional, independent, non-judicial, ad hoc investigative bodies which will be mandated and authorised to assist in achieving those results. The focus of this transitional justice mechanism is on victims and acknowledgement of their suffering through ensuring a platform for public hearings of victims' accounts.

BIH has already seen organized institutional efforts to establish facts about the war crimes committed between 1992 and 1995, which were made through an endeavour to form truth and reconciliation commissions and three investigative bodies, i.e. the Srebrenica Commission, the Sarajevo Commission and the Bijeljina Commission. However, the lack of knowledge about non-judicial mechanisms and insistence on criminal prosecution prevented their formation or recognition of the conclusions of those formed, which had completed investigations.

In addition to the above-mentioned investigative bodies, the BIH Law on Missing Persons was adopted in BIH and the BIH Missing Persons Institute was formed to clarify the fate of missing persons. Also, the civil society in BIH and the region has launched, and is still launching, different initiatives for truth-seeking and truth-telling about the war crimes committed during the 1992-1995 armed conflict. However, the widely held view in BIH is that the facts about the war have not been established yet and that no platform for public hearings of victims, recognition and acknowledgement of their sufferings has been created yet. This speaks of the need for a more integrated approach to fact-finding and truth-telling in order to achieve the goals of this mechanism of transitional justice.

**Reparations programmes**

The states are obliged to ensure programmes for reparations for past human rights violations. The reparations programmes imply material and non-material methods which have individual and collective effects. They contribute both directly and indirectly to restoring dignity of victims; acknowledging and accepting the harm suffered; overcoming the effects of human rights violations; achieving devictimisation; and improving the socio-economic status of victims, all with a view to achieving their social reintegration.

There are five basic forms of reparations, known in practice: 1. **Compensation** is meant to cover any economically assessable damage, either physical or non-physical, and is awarded through administrative and judicial decisions; 2. **Restitution** means different activities such as restoration of the rights to citizens which they were once deprived of, physical and sustainable returns and other activities the aim of which is to restore the victim to the original situation in which the victim was before human rights violations; 3. **Rehabilitation** includes medical
and psychological care as well as legal and social services; **4. Different forms of satisfaction** include various symbolic forms such as apology, erecting monuments and memorials, reforms of the curricula, finding and verifying facts about the past, etc. **5. Guarantees of non-repetition** mean the reform of institutions, primarily of the judicial and law enforcement institutions, as well as a new legislative framework etc. in order to prevent war crimes from recurring. All these forms of reparation are included in the Resolution 60/147 of the UN Security Council: *The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. ¹⁰

The best known form of reparations in BIH is compensation. Compensation is provided on the basis of the entity laws on the rights of civilian victims of war and disabled war veterans (DWV) and, to a lesser degree, through judicial proceedings seeking compensation for physical and non-physical damage. Restitution, as one form of reparations, is done within the implementation of Annex VII to the *Dayton Peace Accords* and relevant laws and strategies at different levels of government dealing with returns. Regarding rehabilitation, as another form of reparations, there is the relevant legal, institutional and strategic framework in BIH for the implementation of this process, and the activities towards symbolic satisfaction of victims, primarily through the processes of memorialisation and commemoration, are also developed. However, reparations in BIH continue to trigger opposite discussions and controversies, as a result of insufficient knowledge about this mechanism of transitional justice and of insufficient coordination and comprehensiveness of activities in this policy area.

Memorials ¹¹

The process of memorialisation is directly related to the obligations of the state to ensure satisfaction for violations of human rights and to protect historical remembering in order to prevent denial, revisionism and negation of the past and to ensure prevention of human rights violation from recurring. Generally, memorials serve to provoke an emotional reaction and to provide the information on an event. However, the concept of transitional justice gives memorials also a

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¹¹ In transitional justice theory, memorials are often grouped under symbolic and collective reparations. However, the process of preserving historical memory is far more complex than its grouping into any of the transitional justice mechanisms precisely because memorialisation contributes to other processes as well, such as truth-telling, protection of democratic values and respect for human rights, building confidence in government institutions, keeping peace, building new and restoring old social relations, reconciliation, etc.
pedagogical function in terms of education and stimulation of an open and widespread social dialogue on what memorials represent and their link to the contemporary social developments, in order to protect democratic values and human rights and to ensure prevention of traumatic past from recurring.\(^\text{12}\)

In BIH there is a tendency to erect monuments in memory of events and individuals related to the armed conflict 1992-1995. However, for the most part, those are insufficiently coordinated activities which take place under the inappropriate legislation. Also, there is no understanding in BIH of the issue of memorials in the context of transitional justice. For example, most of memorials in BIH are static physical representations of some events, with an emphasized emotional function and often with sacral characteristics, while the pedagogical function of memorials remains imperceptible. In any case, memorials continue to generate heated and controversial debates in the BIH society, which makes it possible for the Transitional Justice Strategy to offer more precise strategic objectives and direction in this area in order to narrow room for manipulation.

**Institutional reforms**

Under the Constitution, laws and international law, the states are obliged to protect human rights and safety of their citizens, i.e. to take all adequate actions (investigation of allegations of war crimes, naming victims and perpetrators, organisation of a fair trial of those accountable for war crimes, delivering satisfaction to victims and implementation of structural reforms) in order to restore citizens’ confidence in institutions and to prevent human rights abuses from recurring. From the transitional justice perspective, institutional reforms mean primarily the vetting procedure (the background checks on professional capacity and moral integrity) with a particular focus\(^\text{13}\) on the staff working in the judicial and security institutions, in prisons and in the public administration in general.\(^\text{14}\) The

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\(^{14}\) Focus on judicial institutions, repressive institutions and prisons within institutional reforms as a transitional justice mechanism is justified by the fact that those institutions are most often tied with past human rights violations. Also, on the basis of the present level of their functioning, it is assessed
goal of these activities is to build institutions of integrity and legitimacy which will promote social values, protect democratic norms and human rights and ensure prevention of recurrence. However, the vetting process itself is not sufficient for achieving the goals of this transitional justice mechanism. Also other reforms are necessary, which will result, in the broadest sense possible, in raising awareness about their responsibility for institutional actions, an increased independence and representativeness of institutions, responsiveness to the needs of citizens, and legitimacy through initiation of various symbolic activities.  

In BIH, the vetting activities were carried out in the police (certification) and the judiciary (reappointment). Also, many new institutions were formed and some laws were adopted which are important for the concept of transitional justice. However, in most cases those activities were not initiated domestically; rather, they were either a requirement under the Dayton Peace Accords or represented efforts by the international community, while the domestic political elites were merely the agents that implemented those ideas. Nevertheless, public confidence in institutions remains weak. One of the arguments is that the vetting was not done in a comprehensive way and that the persons accountable for human rights violations during the armed conflict in 1992-1995 can still be seen working in public institutions. In this regard, the Transitional Justice Strategy finds solutions which will make a contribution, in an organized way, towards improving the institutions in order to restore full confidence of citizens.

Links of Transitional Justice Strategy with international law and international obligations of BiH

By becoming a member of the United Nations, at the global level, and of the Council of Europe, at the regional level, Bosnia and Herzegovina committed itself to a whole range of international obligations and to respecting certain standards set as a framework of action of these two organisations. In parallel, Bosnia and Herzegovina is in the process of moving forward to the European Union and eventually becoming the full member of the EU. From this, as well as from the explicit obligations, which will be discussed later in this Strategy, arise the obligations of BiH to take into consideration the appropriate recommendations of these organisations when developing its activity policies, with a view to respecting fully its

whether legal security of citizens has been achieved, whether the system is functioning, i.e. whether there is generally citizen confidence in institutions.

international commitments made to the international organisations that BIH is a member of, and to fulfilling the requirements for the accession to the EU. Regarding human rights, the key requirements set by those organisations refer to the recognition of the inherent dignity and equal and inalienable rights of all members of the human family and to the deep commitment to fundamental freedoms as the foundation of freedom, justice and peace in the world, as it is enshrined in the United Nations Charter, the United Nations Universal Declaration of Human Rights, the Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms and in the whole range of other international human rights instruments.

Transitional justice is not an isolated practice in international sphere; on the contrary, it is based on international law, i.e. on the obligations of the states to respect, at the national level, the provisions that they committed themselves to by ratifying some international agreements, the relevant parts of which refer also to transitional justice. The same is true for Bosnia and Herzegovina. In addition, there are numerous international standards which, in strict legal terms, do not represent obligations, although they exist as guidance for the states to develop their own programmes for achieving the desired goals.

**Fact-finding and truth-telling**

From a historical perspective, the right to the truth primarily refers to the rights of families to know the fate of their missing relatives, which is codified in Articles 32 and 33 of the Protocol I Additional to the Geneva Conventions, as well as in the International Convention for the Protection of all Persons from Enforced Disappearance, the Universal Declaration on Human Rights (Article 3), and the International Covenant on Civil and Political Rights (Article 23). However, the right to truth relative to human rights violations is not codified in international law. “The right to truth” is regarded as an emerging right and is fully established through the Human Rights Resolution of the Human Rights Commission: Right to the Truth, from

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16 It is necessary to emphasize that respect for international commitments of BIH is monitored through regular and special human rights reports submitted by the United Nations and the Council of Europe member states and potential candidates for EU membership. Although those are complex mechanisms, it is important to mention some of them: some UN committees are responsible for monitoring of implementation of human rights conventions at national level, the UN special rapporteurs report on violations of human rights at the national level, the monitoring mission of the Parliamentary Assembly of the Council of Europe regularly submits human rights reports, the Ministerial Committee of the Council of Europe monitors the implementation of the rulings of the European Court of Human Rights at national level, while respect for human rights is monitored, inter alia, through the European Commission’s progress reports for BIH, in the context of EU enlargement. 
17 BIH acceded to the Geneva Conventions and its Protocols through succession, on 31 December, 1992.
18 BiH signed the Convention on 6 February, 2007 but has not ratified it yet.
2005\textsuperscript{19}, as well as through various interpretative papers such as \textit{Question of the Impunity of Perpetrators of Violations of Human Rights (civil and political rights)}\textsuperscript{20} (principles 1 – 18) and \textit{Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity}\textsuperscript{21} (principles 2 – 18), and the report by the Human Rights Committee and the UN Working Group on Enforced or Involuntary Disappearances and other bodies. All these documents promote the right to truth as an independent right the impact of which goes beyond the issue of clarifying the fate of missing people, i.e. it is recognized as the right of victims and their families, and of the society as a whole, to learn the truth about what happened (violations of human rights), why something happened (causes) and to identify the victims and the perpetrators and to preserve the documentation about human rights violations in order to prevent revision of the past and denial of crimes.

Regarding the promotion of the right to truth, it is important to mention the development of standards through the case law of the \textit{European Court of Human Rights}, towards the obligation of the state to conduct an effective investigation and identify the circumstances of disappearance or killings or persons. The \textit{European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention)} as well as other international agreements come into force in a country the moment the country has ratified the agreement. In other words, the \textit{European Convention} may not apply to the human rights violations committed prior to the date of its ratification. However, the \textit{European Court of Human Rights} introduced the standard under which some violations are exempted from this rule. For example, the violation of Article 3 (Prohibition of Torture) of the \textit{European Convention} in case of disappearance of a person represents a continuing violation of the right since the state failed to conduct an effective investigation into the circumstances surrounding the disappearance, or the state failed to enable criminal prosecution and trial of the perpetrators. In addition to this procedural violation of the right, the same Article refers also to the family members of the missing person, who remain exposed to the continuing suffering until the circumstances of disappearance of their relative are clarified.\textsuperscript{22} And the same is true for the violation of Article 2 of the \textit{European Convention} (Right to Life). Regardless of deprivation of someone's liberty prior to the date of entry into force of the \textit{European Convention}, the state continues to violate this Article by failing to conduct an effective

\textsuperscript{19} Human Rights Resolution 2005/66, Right to Truth, Commission on Human Rights
\textsuperscript{20} Louis Joinnet, \textit{Question of the impunity of perpetrators of violations of human rights (civil and political rights)} E/CN.4/Sub.2/1996/18, 29 June, 1996
\textsuperscript{22} See the ruling of the \textit{European Court of Human Rights} in \textit{Cyprus vs. Turkey}, mentioned in the context of violation of Article 3 of the \textit{European Convention} in a ruling by the Human Rights Chamber in \textit{Selimović at al vs. Republika Srpska}. Also see the ruling of the \textit{European Court of Human Rights} in \textit{Varnava vs. Turkey}, paragraph 112.
investigation into the circumstances in which the person was killed, and by failing to launch the necessary procedures in order to clarify the cause of the death and to identify the person/persons accountable for the death.  

Reparations programmes

In December 2005, the United Nations General Assembly adopted the Resolution: The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. This Resolution calls upon a series of the legally binding instruments that BIH signed. Those are The United Nations Universal Declaration on Human Rights, (Article 8), the United Nations International Covenant on Civil and Political Rights (Article 2), the United Nations International Covenant on the Elimination of All Forms of Racial Discrimination (Article 6) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 13), all of which contain a provision about an effective remedy, and the United Nations International Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment (Article 14) and the United Nations International Convention on the Rights of the Child (Article 39), which contain specific provisions regarding the obligation on the part of the state to ensure appropriate compensation, i.e. rehabilitation to the victim. All these instruments are mentioned also in the Dayton Peace Accords as an obligation for BIH to implement them at the national level.

Under the state's obligation contained in the above-said Resolution, the state primarily has to harmonize its domestic law with its international obligations, in compliance with the international law requirements. In other words, the state needs to ensure that the domestic law provides at least the same level of protection for victims as that required by its international obligations. Apart from being based on international law, the Resolution provides concrete guidelines for what the state should take into consideration while developing its own programme for reparations to the victims of gross violations of international human rights law and serious violations of international humanitarian law.

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23 See the ruling of the European Court of Human Rights in Šilih vs. Slovenia, paragraph 153.
24 See footnote 10.
25 BiH acceded to the Covenant through succession, on 1 September, 1993.
28 BiH acceded to this Convention through succession, on 1 September, 1993.
29 BiH acceded to this Convention through succession, 1 September, 1993.
Institutional reforms

The Report of the United Nations Secretary General entitled *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*\(^{30}\) mentions vetting as the process of background checks on individuals and human rights screening, which helps establish stable rule of law in post-conflict societies with a view to increasing citizens’ confidence in institutions. This process is described in the Report as a formal process of identification and dismissal of individuals accountable for violations, particularly from the law enforcement structures, prison services, the military and the judiciary. Also, in its periodical reports on the implementation of the *International Covenant on Civil and Political Rights*, the UN Human Rights Committee recommends regularly to the States Parties to the Covenant that they should remove from public office the persons or applicants found to have been directly involved in human rights violations (vetting), as a prevention measure\(^{31}\).

In addition to the above-mentioned Report, there are many international documents which include individual segments of this process. Namely, the *Discrimination Convention (employment and occupation)* of the International Labour Organisation\(^{32}\), *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions of the United Nations Economic and Social Council*\(^{33}\), *Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity*\(^{34}\), *Question of the Impunity of Perpetrators of Violations of Human Rights* (civil and political rights)\(^{35}\), *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* of the UN General Assembly\(^{36}\), *Declaration on the Protection of all Persons from Enforced Disappearance* of the UN General Assembly\(^{37}\) and, as said above, the reports of the UN Human Rights Committee.

\(^{30}\) See footnote 13.
\(^{31}\) The UN Human Rights Committee recommended such activities, for example, to Bolivia, Argentina, Brazil, Chile, Columbia, Guatemala, Haiti, Paraguay, Serbia and Montenegro, etc. Alexander Maxer-Rieckh and Pablo de Greiff, ed. *Justice as Prevention, Vetting Public Officials in Transitional Societies*, ICTJ, 2007.
\(^{32}\) *Discrimination (Employment and Occupation) Convention, International Labour Organisation*, Article 4
\(^{33}\) *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, UN Economic and Social Council*, principle 15
\(^{36}\) *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN General Assembly*, principle 3(b)
\(^{37}\) *Declaration on the Protection of all Persons from Enforced Disappearance, UN General Assembly*, Article 16 (1)
speak of the removal or suspension from office of the persons who are potentially involved in prohibited procedures related to some violations of civil rights.

But here it is very important to mention that the aim of vetting as a background screening process is not to punish individuals believed to be accountable for human rights violations because the punishment is the responsibility of the judiciary; rather, the aim is to protect the newly-fledged democracy and to restore integrity and legitimacy of the government institutions. For these reasons, all the measures taken towards institutional reforms have to be compatible with democratic principles, the rule of law and the highest standards for the protection of human rights (the right to take part in the conduct of public affairs, directly or through freely chosen representatives; the right to protection from unlawful attacks on honour and reputation; the right to an effective remedy; the right to be presumed innocent; the right to a fair hearing by a competent, independent and impartial tribunal; the right to equality before the law and to equal protection of the law; the right to work; etc.).

38 Resolution 1096 on Measures to Dismantle the Heritage of Former Communist Totalitarian Systems, Parliamentary Assembly of the Council of Europe, Article 12
39 International Covenant on Civil and Political Rights (ICCPR), Article 25
40 ICCPR, Article 17
41 ICCPR, Article 2 (3 – a, b, c)
42 ICCPR, Article 14(2)
43 ICCPR, Article 14(1)
44 ICCPR, Article 26
45 International Covenant on Economic, Social and Cultural Rights (ICESC), Article 6
**Gender Equality in Transitional Justice Strategy**

Within the process of developing human rights protection at the international level, special attention is given to gender equality as a crucial requirement for the social and economic development of a country. In addition to general provisions and guidelines for respect of human rights without discrimination on any ground, including gender-based discrimination, international standards for the protection of human rights have gradually grown into various instruments which not only promote gender equality in terms of equal participation of women in politics, economy and culture, but require affirmative actions to protect gender equality generally.\(^{46}\)

By adopting the *Gender Equality Law, the Gender Action Plan and the Action Plan for the Implementation of UNSCR 1325 in Bosnia and Herzegovina 2010-2013*, Bosnia and Herzegovina made important steps forward to achieving gender equality. However, women and men had different experiences of the specific circumstances during the war 1992-1995, and consequentially, of their post-war situations. While the above Law and Action Plans deal with their specific situations only partially, the *Transitional Justice Strategy* deals solely with the war-related past. It is estimated that during the past war, although there is no reliable statistics yet, around 20,000 women and men were victims of rape or another form of sexual violence.\(^{47}\) Furthermore, women were not only victims of sexual violence; they were also victims of expulsion, loss of relatives, loss of “breadwinners”, etc. Also, women are witnesses of human rights abuses and war crimes; war veterans, perpetrators, etc. The question is how the transitional justice mechanisms can address the needs of this population and, knowing the specific experiences of men and women, how the transitional justice mechanisms can contribute to developing the BIH society towards achieving gender equality and preventing further gender-based violence? Although the *Transitional Justice Strategy* does not deal with women or women victims of the war as a separate category, the implementation of the proposed strategic programmes and activities will certainly contribute to improving the gender equality in BIH. Among other things, the *Strategy* will contribute, through the proposed activities, to achieving gender equality in such areas as material and non-material forms of reparations; allowing the victims of the war to share their traumatic experiences and get their voices heard in the transitional justice process, through the non-judicial mechanism\(^{48}\); improving psycho-social services; economic empowerment of victims of war, etc.

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\(^{46}\) These documents include the *United Nations Convention on Elimination of All Forms of Discrimination Against Women, the Beijing Declaration and Platform for Action*, as well as many other documents of the Council of Europe that BIH acceded to.


\(^{48}\) The narratives about wartime and post-war experiences of women are extremely important for the purpose of this mechanism
Due to the fact that an initiative has already been launched to draft a *Strategy for Improvement of the Status of Women as Victims of Sexual Violence During the War*, the *Transitional Justice Strategy* does not define actions specifically intended for women as victims of war; rather, it makes sure that the basic principles of gender equality are incorporated, that the special needs of this category of victims are recognized and taken into consideration when developing concrete programmes. More specifically, although women victims of war are not treated within the *Transitional Justice Strategy* as a separate category of victims of war, the proposed activities in all policy areas aim at empowering women victims of war, as part of the generic category of *civilian victims of war*, to seek and eventually exercise their rights. In parallel to these activities, the *Transitional Justice Strategy* empowers also institutions at all levels of government in BIH to work on improving those rights within their respective mandates and authority.

Bearing in mind the obligations of BIH arising from international law to include the principle of equality of men and women, as well as the constitutional and other legal provisions, a strong commitment was made during the *Transitional Justice Strategy* development process to making all of its objectives *gender* sensitive, with a special emphasis on the issue of *gender-based violence* committed during the war. Also, where necessary, the need for a *gender*-sensitive approach is reiterated.
PART II – Analysis of Problems and Proposed Solutions

Part II gives a detailed analysis of the current situation in Bosnia and Herzegovina regarding the transitional justice mechanisms covered by the Transitional Justice Strategy, with clearly defined challenges and obstacles, as well as proposals for solutions to identified problems. The analysis of the situation and proposed solutions are based on the review of the present legal and institutional capacities and systems in the state and its entities, the analysis of international standards, as well as on the opinions and positions of the government institutions and the civil society, particularly of the associations and families of victims, obtained during the survey and the consultation process.

Prior to analysing the current situation in each of the three pillars of the Transitional Justice Strategy, we present a summary overview of criminal justice in BIH. As emphasized above, although criminal justice is not dealt with in the Transitional Justice Strategy, since it is explained in elaborate detail in the National War Crimes Strategy, it is still necessary to refer to it, at least in basic outline, in order to build the full picture of transitional justice in BIH and to reiterate the need for a more systematic, a more integrated and a more comprehensive approach to facing up to the past.

Criminal Justice

Criminal prosecution of those accountable for human rights violations and war crimes committed during the armed conflict in 1992-1995 is the best known and the most developed transitional justice mechanism in BIH. The prosecution and trials of war crimes cases are taking place at four levels: at the international level, before the ICTY and the courts in third countries under the principle of universal jurisdiction; at the national level, before the War Crimes Department of the Court of BIH; at the local level, before five district and ten cantonal courts, and before the Basic Court of the Brcko District; and at the regional level, before the courts in the region of the former Yugoslavia. In December 2008, the BIH Council of Ministers adopted the National War Crimes Strategy. By adopting the Strategy, BIH clearly demonstrated its commitment to finding a more systematic and a more efficient approach to the successful prosecution of war crimes in order to fulfil its constitutional, legal and international obligations and to ensure the basic conditions necessary for the process of coming to terms with the past and fighting impunity to begin.
The Tribunal in The Hague played an immeasurable role in establishing individual criminal liability and in fighting impunity. It is widely accepted that without the ICTY it would not be possible to prosecute domestically those accountable for war crimes, particularly the most responsible ones the civilian, military and police authorities, prior to the successful implementation of the structural reforms of the judicial system. It was believed that the national judiciaries would not be able to prosecute and try such cases in a professional and impartial way, in compliance with all international standards of fair trial, because of the lack of capacities or potential political pressure and ideological limitations.

However, after the Tribunal in The Hague announced its completion strategy, and after the War Crimes Departments of the Court of BiH and the Office of the Prosecutor of BiH began to function, the focus of prosecution shifted to national judiciaries.\(^4\) Since 2005 until present, the judicial institutions in BiH have completed over 200 cases in which final judgments were rendered,\(^5\) thereby making a significant contribution to establishing individual criminal responsibility of those accountable for human rights abuses and war crimes. The organizations which are systematically monitoring the war crimes trials in BiH, such as the Organisation for Security and Cooperation in Europe (OSCE), have given the highest appraisal for professionalism and expertise demonstrated by prosecutors and judges, and have concluded that the cases are prosecuted and tried in full compliance with the standards of fair trial.\(^5\)

However, the process of criminal prosecution of the responsible ones in BiH is facing some serious challenges. Also, concerns remain in BiH about the prosecution of war crimes. The dissatisfaction of the public is based, on the one hand, on insufficient knowledge about how judicial institutions function and what their goals are and on the lack of knowledge about legal and procedural rules, and, on the other hand, on some substantial and real problems.

Specifically, the implementation of a number of segments of the National War Crimes Strategy has been slowed down, which largely reduces chances of achieving the goal set in the Strategy, which is that all war crimes cases will be completed within fifteen years, and the most complex cases within seven years from the date of adoption of the National War Crimes Strategy.

\(^{4}\) The ICTY’s Completion Strategy was released in 2002. Under the Strategy, all investigations should be completed by the end of 2004; all trial proceedings by 2008 and all appeal proceedings by the end of 2010. Since the beginning of 2005, ICTY has not issued new indictments. Since a number of cases remain pending, the UN Security Council adopted Resolution 1966 on 22 December, 2010 extending the ICTY’s mandate until 2014. ICTY stopped issuing new indictments in early 2005.


\(^{5}\) Ibid.
There are many reasons that led to disbelief over the set deadlines\textsuperscript{52}, such as, for example: different views on applicability\textsuperscript{53} of the laws resulted in different case laws, which, in turn, resulted in different legal qualifications of the same or similar criminal offences and, consequently, to different sentences, which challenged the legal certainty and equality of citizens before the law; the judicial institutions are facing strong public pressure and also political pressure to some extent; by reason of prohibition of extradition of nationals, the judicial institutions in BiH are facing the problem of inaccessibility of the suspects, since some of them obtained citizenship of neighbouring states; the judicial institutions in the region are conducting parallel investigations against those suspected of war crimes committed in BiH; with the exception of the Court of BiH, the courts in BiH in most cases lack capacities necessary for psychological and physical support to victims and witnesses; and other problems.

As it is said at the beginning of the Transitional Justice Strategy, criminal prosecution of perpetrators, as a separate mechanism of transitional justice, cannot respond to all challenges of the process of facing up to the past. The Transitional Justice Strategy provides unreserved support to the prosecution of the war crimes cases and the full implementation of the National War Crimes Strategy. Through the elaboration of the transitional justice mechanisms which it covers, the Transitional Justice Strategy establishes complementarity with the process of criminal prosecution of the responsible ones, with a view to setting an approach to the facing up to the past in a systematic, integrative and comprehensive way. This approach will result in delivering justice to victims and the BiH society as a whole, i.e. in creating such an institutional, legal, socio-cultural and political framework which will ensure the introduction and protection of democratic values and human rights of citizens, acknowledgement of past atrocities and general prevention of human rights abuses from recurring in the future.

**Fact-finding and truth-telling**

The trials of individuals on charges of human rights abuses and war crimes committed in BiH during the armed conflict in 1992-1995 are held before the ICTY, the courts in Bosnia and Herzegovina, the courts in the region of the former Yugoslavia and the courts in third countries. Although the basic role of the courts of law is to establish, beyond a reasonable doubt, individual criminal responsibility,\textsuperscript{52} This is not an exhaustive list of the factors that prevent accomplishment of the goal of the National War Crimes Strategy.\textsuperscript{53} The courts in BiH which try war crimes cases are using two substantive laws, the Criminal Code of the former SFRY from 1977, which was in force at the time of the commission of war crimes, and the Criminal Code of BiH, which became effective in 2003. The reasons for applying different laws lie in different legal positions taken by the courts regarding the interpretation of the principle of legality and prohibition of retroactive application of the Criminal Codes and the exceptions thereto, and the principle of applicability of the law, i.e. the mandatory application of a more lenient law.
the courts also decide the factual allegations made in an indictment. Simultaneously with the criminal prosecution of the responsible ones, the process of clarifying the fate of missing persons has been continually going on since the beginning of the war. Also, the institutions at different levels of government, academic institutions and the civil society organisations have launched, and continue to launch, activities aimed at finding facts and telling the truth about the events related to the 1992-1995 armed conflict.

Despite the efforts made, the survey that the UNDP conducted in the early 2010 found out that around 70% of all respondents believe that the relevant facts about the war in BIH remain unknown.54

The consultations held in connection with the development of the Transitional Justice Strategy confirmed the findings of the survey and identified the key problems preventing an efficient and comprehensive approach to the fact-finding and truth-telling:

- Limited results of the previous fact-finding and truth-telling initiatives;
- Some associations of victims and families of missing persons do not think that the results of the process of tracing missing persons are satisfactory;
- The data on all victims of violations of international humanitarian law and international human rights law remain inaccessible;
- An institutional non-judicial mechanism for a comprehensive fact-finding and truth-telling about all human rights violations and war crimes in a period between 1992 and 1995 has not been established yet.

It was emphasized during the consultations that the main reasons for a limited success of the fact-finding and truth-telling activities were the lack of a shared goal of those initiatives, the absence of coordination and cooperation among them and insufficient involvement of the public at large in creation, implementation and monitoring of those initiatives.

Although a great effort has been made through criminal prosecution to establish facts about human rights violations and war crimes, the judicial institutions, as said above, are unable to cope with all the challenges of the facing the past process. For this reason, in order to establish fully all the facts about the 1992-1995 armed conflict, it is necessary to integrate non-judicial forms with the criminal prosecutions efforts. In this regard, the Transitional Justice Strategy defines the relevant arrangements which will contribute to overcoming those problems and to achieving the goals of this transitional justice mechanism.

54 This view is shared by 84.4% of Serb respondents, 57.9% of Bosniak and 64.7% of Croat respondents. Facing the Past and Access to Justice from a Public Perspective, Special Report of UNDP 2010. The Report is available at: www.undp.ba
**An overview of the current situation**

During the consultations on the development of a *Transitional Justice Strategy*, the following problems were mentioned:

**Limited results of the existing fact-finding and truth-telling initiatives**

It is estimated that close to 100,000 people were killed during the war in Bosnia and Herzegovina and that, of that number, around 35,000 were held missing, and that 2.2 million people are refugees or internally displaced. Also, although the armed conflict in Bosnia and Herzegovina ended nearly two decades ago, neither a credible description of violations or patterns of human rights abuses and findings on institutional responsibility or causes that led to the violations of human rights have been provided yet nor has an undeniable, credible and objective estimation of the human losses been made (or register of the killed persons by name and surname) or a platform for the public hearing of victims’ accounts provided.

After the *Dayton Peace Agreement* was signed, numerous fact-finding and truth-telling initiatives have been carried out in BIH. The civil society carried most of them.\(^{55}\) Those initiatives are diverse in BIH\(^ {56}\), albeit sporadic, insufficiently coordinated and focused primarily on urban areas or certain regions.\(^{57}\)

Also encouraging is the official registration of the *Regional Coordination of the Families of the Missing in the Territory of former Yugoslavia (Regional Coordination)* with active participation of the members of the unions, associations and families of the missing in BIH.\(^ {58}\) This creates the possibility for a more coordinated approach to advocating and exercising the rights and entitlements available for the families of missing persons and more intensive activities on clarifying the fate of the missing. However, the issue of the lack of professional, technical and financial resources of

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\(^{55}\) One of important activities of the civil society in this field is the initiative to form an inter-state truth commission, the so-called *Regional Commission for Establishing the Facts about War Crimes and Other Gross Violations of Human Rights Committed on the Territory of the former Yugoslavia between 1991 and 2001* (REKOM). However, it remains to be seen how the states in the region will react to this initiative.

\(^{56}\) In the area of fact-finding and truth-telling, for example, NGOs were primarily focused on the projects for documenting human rights violations through victims’ accounts, positive stories about helping neighbours or members of other ethnic groups, filming documentaries, the publishing activity, etc.

\(^{57}\) The most comprehensive fact-finding and truth-telling project in BIH was implemented by the Research and Documentat... citizens of BIH who were killed or went missing during the 1992-1995 conflict. This organisation established that around 96,000 citizens of BIH were killed during the 1992-1995 armed conflict.

\(^{58}\) For more details see *Dealing with the Missing Persons Issue*, under Fact-Finding and Truth-Telling.
the unions and associations of the families of the missing, and of the Regional Coordination, remains unsolved, which directly affects the achievement of their goals.\textsuperscript{59}

Apart from the civil society activities, attempts were made to institutionalise the fact-finding and truth-telling process: two initiatives were launched to form a truth and reconciliation commission\textsuperscript{60} and three bodies of inquiry were formed: the Srebrenica Commission\textsuperscript{61}, the Sarajevo Commission\textsuperscript{62} and the Bijeljina Commission\textsuperscript{63}, focusing on the war-related events in those places, within a set period of time. However, these initiatives did not yield any visible long-term results for the BIH society.

The attempts to form the truth and reconciliation commissions and the above-mentioned bodies of inquiry were heavily criticized for the lack of involvement of the public at large and in particular of the associations of victims, in the process of their creation and operation and definition of their mandate.\textsuperscript{64}

Furthermore, the public at large and especially the associations of victims believe that criminal prosecution is the most suitable mechanism which will help the BIH society to address its past, and there was a prevailing opinion that non-judicial fact-finding initiatives could undermine the efforts made by judicial institutions. This opinion arises from the belief that the courts have delivered a relative feeling that justice has been served and that the judicial institutions are capable of establishing all the facts about human rights abuses and war crimes. However, such expectations are often the result of the lack of understanding of the mandate and role of the courts, the way in which they function and the above-said limiting factors which affect the pace of war crimes trials.\textsuperscript{65}

\textsuperscript{59} Ibid.
\textsuperscript{60} Initiative of the Civic Association Truth and Reconciliation (2000) and initiative of the NGO Dayton project/USIP and eight parliamentary parties (2005)
\textsuperscript{61} The full name of this body of inquiry is Commission for Investigation of Events in and around Srebrenica of 10-19 July, 1995.
\textsuperscript{62} The full name of this body of inquiry is State Commission for Finding Truth about Killings of Serbs, Croats, Bosniaks, Jews and Others in Sarajevo During a Period 1992-1995
\textsuperscript{63} The full name of this body of inquiry is Commission for Truth and Reconciliation of the Municipal Council of Bijeljina;
\textsuperscript{65} Courts are limited by procedural and legal requirements, they are focused solely on the crime/s charged and their goal is to establish individual criminal responsibility of the suspect. See Transitional Justice Concept and Obligations of BIH and fact-finding and truth-telling section below.
Dealing with the issue of missing persons

Under the BIH Law on Missing Persons, the Central Records of Missing Persons in BIH (hereinafter: the CEN) was developed and the final verification of the names and family names of the people who went missing during the 1992-1995 war is in the process of continuous implementation.

The state of Bosnia and Herzegovina committed itself to and is making efforts towards clarifying the fate of missing persons. The adoption of the BiH Law on Missing Persons and the formation of the BIH Missing Persons Institute as well as many exhumations and identifications helped achieve some important results. Among other things, by forming the Missing Persons Institute, Bosnia and Herzegovina made a step further towards fulfilling its duty to ensure that the families of missing people can exercise their “right to know” and to ensure equal treatment of all victims. Nevertheless, the process of tracing missing persons remains burdened with politicization and dissatisfaction of some victims over the slow pace of the process of finding the missing persons. The main reasons are the lack of full implementation of the BIH Law on Missing Persons, the lack of professional and technical capacities necessary for the full functioning of the Missing Persons Institute and insufficient capacities of the institutions engaged in locating individual and mass graves and carrying out exhumations. The process is slowed down also by the lack of information on the locations of graves and insufficient support of government institutions at all levels to an efficient and adequate process which would bring this issue to an end.

66 By merging the primary databases (the databases of the International Commission for Missing Persons – ICMP, International Committee of the Red Cross - ICRC, Federal Commission for Missing Persons, the Republika Srpska Office for Missing and Detained Persons and The State Commission for Missing Persons) a list of 172,584 names was created. After the consolidated list was revised, 34,965 non-verified names were found and now make the CEN. Verification means, among other things, that the name of every missing person verified gets its INO number. Data from the BIH Missing Persons Institute.

67 The responsibility of the BIH authorities in the search for missing persons is highlighted in Articles 3 and 5 of Annex VII and Article 9, para 2 of Annex I (A) to the Dayton Peace Agreement, and arises from international humanitarian law and human rights conventions that BIH signed.

68 The BIH Law on Missing Persons, Article 3 (right to know): Families of missing persons have the right to know the fate of their missing family members and relatives, their place of temporary/permanent residence or, if they are dead, the circumstances and cause of and location of burial, if such location is known, and to receive the mortal remains.

69 The BIH Law on Missing Persons in Article 10 recognizes the need for non-discrimination and makes it incumbent upon the authorities to ensure “on equal conditions, regardless of whether a missing person had been a member of the armed forces or a civilian, exclusive of any form of discrimination, including sex, race, skin colour, language, religion, political or other beliefs, national or social origin, inclusion in a national minority group, property status, age, mental or physical disability, status acquired by birth or any other status”, the rights to families of missing people.
Regarding the criminal legislation, the families of missing persons are concerned particularly over plea bargaining and over the state’s failure to recognize enforced disappearances as a separate criminal offence.

These drawbacks in the process of clarifying the fate of missing persons were identified by the participants of the consultation process related to the development of a Transitional Justice Strategy as well as by different international bodies such as the UN Working Group on Enforced or Involuntary Disappearances, the UN Committee Against Torture (recommendations from November and December, 2010) and others.

**a) The lack of full implementation of the BiH Law on Missing Persons**

The lack of full implementation of the *BiH Law on Missing Persons* makes it more difficult for the families of missing persons to exercise some of their rights which are guaranteed by this Law. The consultation process emphasized insufficient implementation of the following sections of the *BiH Law on Missing Persons*:

- Article 27 – Entry into the Register of Deaths;
- Article 15 – Establishment of the Fund for Missing Persons

The lack of full implementation of the *BiH Law on Missing Persons* is reflects also in insufficient respect for the obligation of the relevant authorities and institutions at all levels of government to provide the available information to the families of missing persons and to the relevant institutions for missing persons, which is defined in the following articles of the law:

- Article 4 – Obligation to provide information
- Article 5 – Method of exchanging information
- Article 30 – Prevalence in application

**b) Lack of professional and technical capacities in the process of tracing missing persons**

The work of the *BiH Missing Persons Institute* is made difficult, among other things, also by the lack of staff in the technical and professional departments of the Institute, the lack of capacities in the police and the insufficient number of experts involved in exhumations (forensic experts, archaeologists, anthropologists, geologists, etc.). There is a noticeable lack of state-of-the-art technology necessary for finding individual and mass graves and for exhumations. In the end, the experts employed by the *BiH Missing Persons Institute* to the positions under the Institute's organization chart, who are responsible for collecting the information and locating individual and mass graves, do not have the necessary powers or expertise, which makes the work of the *BiH Missing Persons Institute* even more difficult.
c) **Enforced disappearance is not recognized as a separate criminal offence**

Under the *International Convention for the Protection of All Persons from Enforced Disappearance*, the crime of enforced disappearance is treated as a separate criminal offence\(^{70}\), however, that is not the case in BIH. In BIH, enforced disappearance is treated a state-level crime (Article 172 (1) of the BIH Criminal Code), committed in the context of crime against humanity and as part of “a widespread and systematic attack directed against any civilian population”, while the same provision does not exist in the Criminal Codes of the entities or the Brcko District of BIH.

d) **Non-formalised cooperation in the process of tracing missing persons at the regional level**

In view of the regional character of the conflict, the process of tracing missing persons goes beyond the BIH borders, i.e. beyond the efforts of one state. Although the relevant institutions in the countries of the region maintain intensive cooperation, their cooperation has not been formalised yet.\(^{71}\)

e) **Dissatisfaction of victims and families of victims over plea bargaining**

The BIH public knows about the plea bargaining mechanism primarily through the activities of the Hague Tribunal. The reasons for its application lie primarily in the expeditiousness and efficiency of the proceedings (in terms of reduced costs and number of closed cases), building a pyramid of the case, i.e. crime, preventing retraumatisation of victims/witnesses during giving testimony, etc. In BIH, plea bargaining is defined in Article 231 of the *BIH Criminal Procedure Code* (BIH CPC). The participants of the consultation process of drafting a *Transitional Justice Strategy for BIH* criticized that Article of the CPC. Specifically, the BIH CPC does not define a stage of the criminal process at which plea bargaining can take place, which is the reason why a plea agreement is concluded even in later stages of the criminal proceedings, after a significant number of victims/witnesses have already testified, which affects one of the plea bargaining goals (prevention of retraumatizing victims) and trust in the plea bargaining mechanism.\(^{72}\) The BIH CPC does not define the mechanism which would ensure the implementation of a plea bargain agreement, or more precisely, a clause regarding defendant’s cooperation

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\(^{70}\) *International Convention for the Protection of All Persons from Enforced Disappearance* A/HRC/16/48/Add.1, para 87(b)

\(^{71}\) Formalisation of cooperation among the relevant institutions which are tracing missing persons includes, among other things, the signing of an agreement/memorandum which would regulate the way of exchanging the information, access to archives, etc. At this moment, the signing of an agreement on the exchange of information on missing persons between BIH and the Republic of Croatia is in a final stage.

\(^{72}\) For example, the cases before the BIH Court - Ljubisa Cetic, Rade Veselinovic, Pasko Ljubicic and Dusan Fustar. *Delivering Justice in Bosnia and Herzegovina*, op.cit. OSCE BiH, May, 2011. [http://www.oscebih.org/documents/osce_bih_doc_2011051909500706bos.pdf](http://www.oscebih.org/documents/osce_bih_doc_2011051909500706bos.pdf)
in other cases, if it is part of the agreement. Further, it was said that the BIH CPC does not specify the requirements of a plea bargain agreement and that its conclusion does not ensure that the defendant will disclose all the information known to him or her, e.g. the information about locations of individual or mass graves, i.e. the crimes which are not covered by the counts of the indictment. In the end, the participants of the consultation process of drafting a BIH Transitional Justice Strategy, particularly those from the associations of victims, said that victims were not included in the plea bargaining process, which was generally deemed as a problem.

f) Insufficient capacity of the associations of families of the missing persons
A number of associations of the families of missing persons, as well as unions that bring together some of the associations, exist in BIH. However, most of them lack professional, technical and financial resources which would be necessary for the families of missing persons to be able to exercise their rights more effectively and to prevent all sorts of manipulation. In this regard, as said above, the formalisation and registration of the Regional Coordination of Families of Missing Persons in the Territory of former Yugoslavia, with active participation of the members of unions, associations and families of missing persons in BIH is quite an encouragement. In this way, their capacities are built and a possibility is created for a more coordinated approach to advocating and exercising their rights and speeding up efforts to clarify the fate of missing people.

Inaccessible data on all victims of violations of international humanitarian law and international human rights law
Within the fact-finding process about the armed conflict, including that in BIH, systematizing the existing databases and their accessibility to the public emerge as a pressing issue. Different databases are kept by some associations of victims, the relevant institutions at all levels, the BIH Missing Persons Institute, etc. They potentially form a basis for creating an integrated database on all victims of violations of international humanitarian law and international human rights law, as

73 Although true, this statement can be taken with some reservations. Although it is true that the moment the court has agreed with the terms of the plea bargain, under Article 231 of BIH CPC, it does not have a mechanism available to reject it, i.e. to revoke it or to change a punishment even if the defendant refuses to comply with the clause on cooperation (for example, to testify in another case). In order to ensure compliance with the cooperation clause, some judges have developed a practice of delaying consideration of the plea bargain agreement until all terms of the cooperation clause have been fulfilled. However, this approach is possible if the delay is for a short period of time, while delaying the criminal process over a long period of time for the purpose of having the cooperation clause complied with fully would be contrary to the right to a speedy trial.

74 The Regional Coordination of the Families of Missing Persons in the Territory of former Yugoslavia was registered at the level of BIH in June, 2011. Just like other bodies, like Management Boards or Boards of Directors, it is led by citizens of Bosnia and Herzegovina, members of the families of missing persons. The Regional Coordination, prior to its formal registration, existed under the International Commission for Missing Persons (ICMP).
a base for the fact-finding process. However, those databases are not integrated, systematized or accessible to the general public.

**Personal data protection and violations of international humanitarian law and international human rights law**

As said at the beginning of this Strategy, the basic transitional justice postulates are to investigate allegations about abuses of rights and war crimes, to inform the public about the findings, to name both the victims and perpetrators, to organise a fair process against the accused and to ensure satisfaction to victims through the reparations programmes, in order to ensure an open and frank social dialogue about human rights violations and war crimes, to prevent revisionism and denials of the past and to ensure prevention. All these postulates also represent the obligations on the part of the states under international law and, as such, they are part of BIH legislation and the Constitution of BIH.

*The BIH Law on the Protection of Personal Data* was adopted in 2006 and the *Law on Amendments to the Law on the Protection of Personal Data* was adopted in 2011. Under these laws, the *Personal Data Protection Agency of Bosnia and Herzegovina* was formed which is responsible for monitoring the implementation of these laws as well as of other laws dealing with personal data protection and handling. The purpose of the *Law on the Protection of Personal Data* is to ensure to all persons in the territory of Bosnia and Herzegovina, regardless of their ethnicity or residence, the protection of their human rights and fundamental freedoms, and particularly the right to secrecy of personal data handling. This Law defines the situations in which the information on the personal data handling will not be released, i.e. when no access is allowed to personal data and allows for the publication of personal data for reasons of public interest. However, the *Law on the Protection of Personal Data* or the relevant institutions in BIH have not defined public interest i.e. whether the publication of information on international law violations with the focus on war crimes, crimes against humanity and genocide would be in public interest. In this way a direct influence is made on the impossibility/possibility of implementing the above-said transitional justice

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75 [http://www.azlp.gov.ba/images/PropisiBOS/Zakon_o_%20zastiti_licnih_podataka_u_BiH_BOS.pdf](http://www.azlp.gov.ba/images/PropisiBOS/Zakon_o_%20zastiti_licnih_podataka_u_BiH_BOS.pdf)
77 Under Article 28 of the Law, the information on handling personal data shall not be released and no access to personal data shall be allowed if there is a risk of jeopardising the legitimate interests of the following categories in Bosnia and Herzegovina: a) state security; b) defence; c) public security; d) prevention, investigation and detection of crimes and prosecution of perpetrators as well as violations of ethical regulations of the profession; e) economic and financial interests, including monetary, budgetary and tax issues, f) inspections and duties related to control; g) protection of data subjects or rights and freedoms of other people. (2) These restrictions shall be allowed only to the extent required in a democratic society for any of the aforesaid purposes.
postulates, which is crucial for a successful process of facing the past and prevention of human rights violations from recurring in the future.

**Absence of institutional non-judicial fact-finding and truth-telling mechanism for human rights violations and war crimes committed in 1992-1995**

There is no clearly defined and comprehensive approach to creating an institutional fact-finding and truth-telling mechanism in BIH. The previous activities have not yielded results which would meet the need of the BIH society for establishing the facts about human rights violations and war crimes. The only institutional fact-finding and truth-telling mechanism in BIH is the *Missing Persons Institute of BIH* which treats this area solely from the missing persons perspective. However, the need for finding facts goes beyond individual categories of victims and represents also the national, individual and social need for getting a response to the questions of “what happened” (description of the human rights abuse) and “why something happened” (the context of abuse).

As stated above, the ICTY and judicial institutions in BIH have made a significant contribution to the process of finding facts about violations of human rights and war crimes committed during the period 1992-1995. However, the contribution by judicial institutions to the fact-finding and truth-telling process is limited, as said above, by procedural and legal limitations and by the focus of the judicial proceeding itself. In the fact-finding area, the courts adjudicate facts solely about those events which are covered by the indictment, while the events outside the scope of an indictment and the context of the conflict that led to the violation of human rights and war crimes (a response to the question of “why something happened”) remain outside the focus of criminal trial. In the end, the role of victims in the criminal prosecution although important, it remains passive and comes down to giving statements or testimonies focusing on the events covered by an indictment, under strict procedural requirements and without any institutional empathy for or understanding of the needs of victims. For all these reasons, the role of judicial institutions in the fact-finding and truth-telling process is important, albeit largely limited. In this regard, the *Transitional Justice Strategy* recognizes the need for forming an institutional non-judicial mechanism which will focus on victims and their needs (unlike a criminal procedure which focuses on a perpetrator) and which will contribute to creating an official and comprehensive narrative about the armed conflict, with a view to preventing denial of committed war crimes, negation and revisionism.

**Proposed solutions**

Various fact-finding initiatives, both institutional and those of the civil society, have been launched in Bosnia and Herzegovina from 1995 until present. However, those activities are not coordinated or linked together nor are they integrated into other
initiatives from within other transitional justice mechanisms. Such a non-coordinated approach has caused the following problems: limited results of the fact-finding and truth-telling initiatives; dissatisfaction of some victims with the results of the process of tracing missing persons; inaccessible data on all victims of the war; and finally, the absence of an institutional non-judicial mechanism for comprehensive fact-finding and truth-telling about violations of human rights and war crimes committed in 1992-1995.

The *Transitional Justice Strategy* defines solutions to overcome problems listed in the situation analysis and to achieve the vision of the fact-finding and truth-telling mechanism.

**VISION OF THE MECHANISM:**
The non-judicial mechanisms for fact-finding and truth-telling about the 1992–1995 events are improved and operate as an integrated system, thereby creating a platform for a public dialogue on the past events in order to pay tribute to victims, prevent the culture of denial and strengthen confidence among citizens.

In accordance with the vision of this mechanism of transitional justice, the *Transitional Justice Strategy* defines the following strategic goals:

**STRATEGIC GOAL 1**
To improve and strengthen institutional non-judicial fact-finding and truth-telling mechanisms and initiatives of the civil society with the aim to ensure their effective functioning and quality contribution to this process.

**STRATEGIC GOAL 2**
To establish an institutional fact-finding and truth-telling mechanism to investigate human rights violations in the period 1992 – 1995 which is complementary to existing judicial and non-judicial mechanisms.

**STRATEGIC GOAL 1**
To improve and strengthen institutional non-judicial fact-finding and truth-telling mechanisms and initiatives of the civil society with the aim to ensure their effective functioning and quality contribution to this process;

In order to make the defined strategic goal measurable and specific, the following strategic objectives are defined in the *Transitional Justice Strategy* to lead the way to the goal achievement:
STRICT ORDERIVE 1.1
To strengthen and improve the process of tracing missing persons

STRICT ORDERIVE 1.2
To develop a legally defined, harmonised and efficiently protected system of collecting data on all victims of violations of international human rights law and international humanitarian law.

STRICT ORDERIVE 1.3
To strengthen the existing and support new civil society’s fact-finding and truth-telling initiatives by creating a platform for a mutual dialogue and interaction

STRICT ORDERIVE 1.4
To ensure the right to the truth to individuals and the society as a whole through ensuring an unimpeded prosecution and trial of war crimes cases, the full operation of a new fact-finding and truth-telling non-judicial mechanism and an unimpeded vetting process

STRICT ORDERIVE 1.1
To strengthen and improve the process of tracing missing persons

The problems identified in the process of clarifying the fate of missing persons refer to improving the performance of the BIH Missing Persons Institute and the implementation of the BIH Law on Missing Persons. The Transitional Justice Strategy defines solutions which will contribute to speeding up the process of tracing missing persons as a response primarily to the needs of the families of victims but also to the country’s legal and international commitments. Regarding international commitments, the Transitional Justice Strategy defines solutions which are in harmony with the recommendations of the UN Committee Against Torture as well as those of the UN Working Group on Enforced or Involuntary Disappearances from November and December of 2010 as well as with the recommendations of the Organisation for Security and Cooperation in Europe Mission in BIH (OSCE BiH78).

As a first step, it is necessary to change the fundamental documents of the BIH Missing Persons Institute (Statute, the Rule Book on Internal Organization and Jobs/Positions, the Rules of Procedure, etc.) in order to increase the professional and technical capacities needed for exhumations, and to ensure the full operation and efficacy of the Institute and its financial stability.

The Transitional Justice Strategy defines the arrangements in support of the full implementation of the Law on Missing Persons, with a special emphasis on Article 15 (Establishment of the Fund for Missing Persons), Article 27 (Entry into the register of death), Articles 4 and 5 (Obligation to provide Information and the Methods of exchanging information) and Article 30 (Prevalence in application). The full implementation of these Articles of the BIH Law on Missing Persons would simplify registration of the death of a missing person, help the families of missing persons exercise their entitlement to a monthly benefit and would improve the process of collecting information and locating graves of missing persons. The recommendations of the UN Committee Against Torture and those of the UN Working Group on Enforced or Involuntary Disappearances put a strong emphasis on the non-implementation of Article 15 of the Law which is the reason for the absence of the full protection of the rights of the families of missing persons. 79

Within the arrangements for improvement of the process of searching for missing persons, the Transitional Justice Strategy recognizes the importance of ensuring the necessary capacities in the relevant police agencies in order for the search process to be as effective as possible. Specifically, the Strategy recommends that officers be appointed or divisions be formed within the relevant police agencies at the entity and the Brcko District levels to collect information on the grave locations. Also, it is necessary to form an office for missing persons within the War Crimes Investigation Centre of the SIPA (State Investigative and Protection Agency), which would collect information on the grave locations. Further, the Transitional Justice Strategy establishes the need for amending the BIH Criminal Code in such a way that an enforced disappearance is treated as a separate criminal offence, in compliance with the International Convention for the Protection of All Persons from Enforced Disappearance. The Strategy also recognizes the need for amending Article 231 of the Criminal Procedure Code of BIH in order to improve the plea bargaining process, i.e. the plea agreement. As a result of these amendments, the interests of victims should be taken into consideration in the plea bargaining process and when designing plea agreements; the relevant information on the locations on individual and mass graves and the information on the crimes not covered by the relevant indictment should be uncovered; the defendant's cooperation in other war crimes cases should be ensured; apologies and acknowledgement of the facts about war crimes, exclusively at trials open to public and a punishment mechanism should exist in case the defendants fail to comply with any of the terms of the plea agreements. These amendments would define the conditions for and elements of a plea agreement.

79 The UN Working Group on Enforced or Involuntary Disappearances, Report, November 2010, A/hrc/16/48/Add.1; UN Committee against Torture, Concluding Observations: BiH, November 2010, para 24
In view of the regional character of the conflict, the countries of the region can do more in the process of collecting and exchanging information in order to find the locations of individual and mass graves. In this regard, the *Transitional Justice Strategy* supports efforts by relevant institutions in BIH towards signing bilateral and multilateral agreements /memorandums of cooperation in order to formalise fully the cooperation in the process of tracing missing persons (exchange of information, etc.) with the countries in the region, and to speed up the search process.

Furthermore, the unions and associations of the families of missing persons can make a huge contribution to clarifying the fate of missing persons. In this regard, it is necessary to continue to strengthen these unions and associations, as well as the *Regional Coordination of the Families of Missing Persons on the Territory of former Yugoslavia*, professionally, financially and technically if they are to engage as actively as possible in clarifying the fate of their loved ones and if a possibility is to be created for a more coordinated and a more efficient approach to advocacy and exercise of their rights. The ICMP plays an important role in this process, but also the *Transitional Justice Strategy* recognizes the importance of involvement of the state institutions in empowering those unions and associations of the families of missing persons, as well as of the *Regional Coordination*. This is why, it is extremely important that the *Fund for Missing Persons* is formed as soon as possible.

**STRATEGIC OBJECTIVE 1.2**

*To develop a legally defined, harmonised and efficiently protected system of collecting data on all victims of violations of international human rights law and international humanitarian law.*

The institutions at all levels of government, associations of victims and other civil society organizations keep the databases on the victims of violations of international humanitarian law and international human rights law. However, they are not compatible or integrated. The *Transitional Justice Strategy* recognizes the importance and need for consolidating, within the fact-finding process, all the information on the victims of the war in a single database. A new database would be based on a relevant law which will govern the consolidation of the existing databases, define the way in which the database can be used, levels of access and data protection. Such a central database will serve, among other things, as a tool for protecting the data on all victims of violations of international humanitarian law and international human rights law and will facilitate academic and other researches of the armed conflict in BIH. A new database should ensure that collected information is gender-segregated.
STRATEGIC OBJECTIVE 1.3
To strengthen the existing and support new civil society’s fact-finding and truth-telling initiatives by creating a platform for a mutual dialogue and interaction

In accordance with the identified problem of the lack of coordination among the civil society’s fact-finding and truth-telling initiatives as well as the lack of funds for the implementation of the existing and new projects in this policy area, the *Transitional Justice Strategy* defines arrangements for defining ways for a more effective coordination and networking of NGOs that carry out the fact-finding and truth-telling activities and for continued financial support for initiatives in this area. Furthermore, the networking of such institutions will contribute to the implementation of the strategic objective 2.2. – *To ensure public support for the establishment of a non-judicial mechanism and its activities* – because the formation of a network of non-governmental organisations dealing with fact-finding and truth-telling processes will potentially create an important tool for external monitoring of the activities of a new non-judicial mechanism.

STRATEGIC OBJECTIVE 1.4
To ensure the right to the truth to individuals and the society as a whole through ensuring an unimpeded prosecution and trial of war crimes cases, the full operation of a new fact-finding and truth-telling non-judicial mechanism and an unimpeded vetting process

The *BiH Transitional Justice Strategy* establishes the need for exploring international standards and practices regarding the protection of personal data, with a special focus on the publication of personal data in relation to human rights violations and war crimes. In order to obtain complete information and to ensure the implementation of Strategic Goal 2 in the area of fact-finding and truth-telling and Strategic Goal 1 in the area of institutional reforms, this Strategy recommends that the case law of specialised international courts, internationalised and national courts dealing with war crimes cases and the practice of truth commissions and other non-judicial bodies of inquiry and of institutions responsible for the vetting process in regard to the publication of personal data be explored. It is also recommended that amendments be made on the basis of the findings to the *Law on the Protection of Personal Data in BiH* and to all relevant laws, decrees, decisions and other official texts at all levels of legislative, executive and judicial

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80 To establish an institutional fact-finding and truth-telling mechanism for human rights violations in 1992-1995, which will be complementary with the already existing judicial and non-judicial mechanisms.

81 To establish a modern legal framework for the implementation of continuous vetting of the staff in public institutions at all levels of government and to ensure that public institutions are functioning in accordance with the principles of professionalism, transparency and full accountability towards citizens.
authorities. The goal of the analysis of both legal, policy and other interventions is to ensure that the information regarding violations of international humanitarian law and international human rights law is regarded as public interest, which will ensure the implementation of the right to the truth and all above-mentioned transitional justice postulates.

Further, fully respecting the transitional justice postulates and the right of individuals and the society as a whole, the Transitional Justice Strategy recommends, in respect to Strategic Objective 1.4, that the judicial documentation be released in the way the Hague Tribunal releases similar documents and that the findings and reports by non-judicial bodies of inquiry responsible for finding facts about human rights violations and war crimes and the findings and reports by the vetting bodies be released, assuming that all the texts to be released are in public interest. This would ensure successful prosecution of war crimes, individualisation of criminal accountability and satisfaction to victims and would make a contribution to an open and inclusive dialogue about the past and prevention.

In the end, in regard to the above, the Transitional Justice Strategy for BiH emphasises the obligation to ensure full legal protection to citizens of BiH in compliance with the highest human rights standards\(^\text{82}\) and the obligation to implement Article 28 of the Law on the Protection of Personal Data. However, in regard to the implementation of this Article, the BiH Transitional Justice Strategy does not consider as secret those documents and information that indicate human rights violations and war crimes and/or their perpetrators, i.e. those documents which were created for the purpose of concealing those violations, war crimes and/or their perpetrators. In case the accessibility of some information, in terms of the right of an individual and the society to the truth, would, nevertheless be in contravention of Article 28 of the Law, the Strategy recommends that reasonable measures be taken in order to overcome that situation.

\(^{82}\) For example, the right to protection from unlawful attacks on honour and reputation— ICCPR, Article 17; the right to an effective legal remedy - ICCPR, Article 2, (3 – a, b, c); the right to presumption of innocence - ICCPR, Article 14 (2); the right to a fair and public hearing by a competent, independent and impartial tribunal – ICCPR, Article 14 (1); the right to equality before the law and to the equal protection of the law– ICCPR, Article 26, etc.
<table>
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<tr>
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<th>Time frame (months)</th>
<th>Responsible institution/s</th>
<th>Performance indicators measuring whether the objective is achieved</th>
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<td><strong>1.1</strong> To strengthen and improve the process of tracing missing persons</td>
<td>12</td>
<td>BIH Ministry for Human Rights and Refugees, BIH Ministry of Justice, BIH Missing Persons Institute, BIH Council of Ministers, RS Ministry of Interior, FBIH Ministry of Interior, Brcko District Government</td>
<td>Institutions responsible for tracing missing persons strengthened in terms of human and technical resources. Process of exhumations and identification of missing persons faster than in the past years. Activities in this field harmonised with international obligations and recommendations.</td>
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<tr>
<td><strong>1.2</strong> To develop a legally defined, harmonised and efficiently protected system of collecting data on all victims of violations of international human rights law and international humanitarian law</td>
<td>24</td>
<td>BIH Ministry for Human Rights and Refugees</td>
<td>Consolidated and institutionally stored data on all victims of violations of international human rights law and international humanitarian law from the period 1992-1995.</td>
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<tr>
<td><strong>1.3</strong> To strengthen the existing and support new civil society's fact-finding and truth-telling initiatives by creating a platform for a mutual dialogue and interaction</td>
<td>36</td>
<td>BIH Ministry for Human Rights and Refugees, BIH Ministry of Justice</td>
<td>Networking of the civil society initiatives; System for continuous financial support to civil society fact finding and truth-telling initiatives.</td>
</tr>
<tr>
<td></td>
<td>To ensure the right to the truth to individuals and the society as a whole through ensuring an unimpeded prosecution and trial of war crimes cases, the full operation of a new fact-finding and truth-telling non-judicial mechanism and an unimpeded vetting process</td>
<td>BIH Ministry for Human Rights and Refugees, BIH Ministry of Justice, RS Ministry of Justice, Federation Ministry of Justice, Cantonal Justice Ministries, BIH Personal Data Protection Agency, the Institution of Ombudsmen of BIH, HJPC</td>
<td>The right to the truth of individuals and the society as a whole ensured. Prosecution of war crimes and operation of non-judicial fact-finding and truth-telling bodies of inquiry and vetting bodies ensured.</td>
</tr>
</tbody>
</table>
STRATEGIC GOAL 2
To establish an institutional fact finding and telling truth mechanism to investigate human rights violations in the period 1992 – 1995 which is complementary to existing judicial and non-judicial mechanisms

In order to make the defined strategic goal measurable and specific, the following strategic objectives are defined in the Transitional Justice Strategy to lead the way to the goal achievement:

<table>
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<th>STRATEGIC OBJECTIVE 2.1.</th>
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<tr>
<td>To adopt a legal framework for a new institutional non-judicial fact-finding and truth-telling mechanism;</td>
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<th>STRATEGIC OBJECTIVE 2.2.</th>
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<tr>
<td>To ensure public support for establishment of an institutional non-judicial mechanism and its activities;</td>
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STRATEGIC OBJECTIVE 2.1
To adopt a legal framework for a new institutional non-judicial fact-finding and truth-telling mechanism

As stated above, the role of judicial institutions in the fact-finding and truth-telling process is important, albeit largely limited primarily due to legal and procedural and mandatory restrictions. On the other hand, the survey that the UNDP conducted in the early 2010 shows that around 70% of all respondents believe that the relevant facts about the war in BiH have not been established yet. In order to overcome the problems mentioned in the analysis of the current situation in this area, the Transitional Justice Strategy foresees the establishment of a new institutional non-judicial fact-finding mechanism. However, this Strategy does not prejudge the form or mandate of a non-judicial mechanism or the way in which it will be formed; rather, the Strategy leaves these issues fully open. Nevertheless, taking into consideration the experiences of other states, it is possible to mention the tasks which the future non-judicial mechanism could perform: 1) findings about violations of human rights and their detailed description, 2) establishment of socio-cultural, political and historical circumstances that led to violations of human rights and war crimes (why they happened), 3) establishment of the pattern of violence, 4) establishment of findings about institutional responsibility, 5) establishment of an objective and credible estimation of human losses or a register of killed by name and surname, 6) creation of a platform for public hearing of victims’ accounts and other persons who have knowledge about human rights violations, and 7) release of reports on findings and recommendations for the improvement of the socio-

In view of the fact that BIH has made an attempt on a number of occasions to establish various forms of investigative commissions as non-judicial mechanisms, there is a need for detailed analyses of those attempts in order for a new non-judicial mechanism to have a real basis. Also, both international and domestic experiences in forming these investigative bodies indicate the need for holding broad and open consultations as a tool which will ensure that a new non-judicial mechanism is responsive to the needs of victims of the war, the society as a whole and that it is suitable for the context of the conflict. Although the Transitional Justice Strategy does not define a form and mandate of a non-judicial mechanism or how it will be formed, the consultation process held for the purpose of developing a Transitional Justice Strategy showed that a new consultation process should be organised to discuss its form, mandate, powers and authority, tasks and goals and that all conclusions would be included in a specific legal framework. It was emphasized during the consultations that it is necessary to ensure complementarity between the non-judicial mechanism and the already existing activities, such as war crimes prosecution, those of the Missing Persons Institute etc. Prior to the consultation process, a proposal for the concept of a new non-judicial mechanism will be developed, which will be used as a platform for consultations.

Also, in view of different approaches applied so far in both BIH and other contexts, the development of pilot projects and their implementation in smaller but representative communities would help the BIH society make a final decision on the best approach to fact-finding and truth-telling.

Relevance of a gender-sensitive approach

In forming a new institutional non-judicial fact-finding and truth-telling mechanism, it will be necessary to give attention to victims of gender-based violence. The reason for that is the nature of that crime. For example, only 7-10% of victims of sexual violence during the war in the former Yugoslavia reported this crime. Many victims of rape have not reported this crime, among other reasons, out of their fear of being stigmatised, on the one hand, while, on the other, they were too traumatised to admit to their families what they had experienced. The fear of stigmatisation remains widespread. This is why, it is important to pay a particular attention precisely in this segment to the development of measures for the protection of dignity of those victims in order to spare them new traumas. The defining of the role and mandate of an institutional non-judicial mechanism implies also a decision on which crimes or experiences will be in focus. In this regard, it is of

extreme importance that the crimes committed against women or generally the war-related experiences of women are not ignored in making these decisions.

STRATEGIC OBJECTIVE 2.2
To ensure public support for establishment of an institutional non-judicial mechanism and its activities

As said above, the public in BIH is generally not aware of the non-judicial fact-finding and truth-telling mechanism, which contributes to the lack of confidence in the forming of such a mechanism. Raising public awareness about the non-judicial mechanisms, their characteristics, the way they function, tasks, goals and effects would create room for a broad and comprehensive social dialogue on the form, mandate, structure and activities of such a body, appropriate to the BIH context. Educational and promotional activities defined in this Transitional Justice Strategy are meant to promote and enhance the feeling of the entire BIH society of ownership of the overall fact-finding and truth-telling process and to ensure that the needs of the target groups are continually taken into consideration. These activities can be based on print and/or electronic media, websites, TV promotional videos, roundtables, panel discussions, etc. It is also important that promotional and educational activities are designed in accordance with the needs of the target group – associations and families of victims, young people, women, disabled people, religious communities, displaced persons, people in the Diaspora, war veterans, journalists, NGO community, etc. Due to the general interest of the society in forming an institutional non-judicial fact-finding and truth-telling mechanism and its activities and the overall implementation of the Transitional Justice Strategy, the public broadcasting services should play a crucial role in informing the public. This is why, it is necessary that the relevant institutions, in cooperation with the public broadcasting services, ensure space and build capacities for the promotion of the activities of such a body. Within the process of ensuring public support for the formation and activities of an institutional non-judicial mechanism, special attention should particularly be given to such vulnerable groups as women-victims of war. In view of their specific war-connected experiences and yet untold stories, the awareness raising projects intended for such groups of victims would allow women-victims of war to learn about the activities of and possibilities offered by an institutional non-judicial mechanism in the appropriate way, which would ensure their effective contribution to the fact-finding and truth-telling process and support for the activities of such a body.

As stated above, it is possible to establish a link between the implementation of the strategic objective 2.2 and the strategic objective 1.3. The use of the NGO network involved in this area, to be formed under the strategic objective 1.3, would facilitate the dissemination of information to some groups; a number of organisations and individuals from the civil society would get involved in providing support to the non-judicial mechanism and eventually, apart from the formal
implementation monitoring mechanism for the *Transitional Justice Strategy*, the network of the non-governmental community could perform external monitoring of the implementation of strategic fact-finding and truth-telling activities.
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Reparations and Memorials

All forms of reparations included in the UN General Assembly Resolution: The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law are implemented in BIH. As stated above, the best known form of reparations in BIH is compensation paid on the basis of the entity laws on the rights of civilian victims of war and DWV, and to a lesser degree, a court’s award of damages for a physical impairment or emotional distress. Restitution, as a form of reparations, is reflected in the implementation of Annex VII to the Dayton Peace Agreement. Regarding rehabilitation, as another form of reparations, in BIH there is a relatively developed legal, institutional and strategic framework for the implementation of this process and also activities on symbolic satisfaction to victims are developed primarily through memorialisation and commemoration.

Reparations in BIH, however, continue to provoke sharply opposed discussions and controversies, as a consequence of the lack of knowledge about this transitional justice mechanism as well as of insufficient coordination and comprehensiveness of the initiatives across the whole territory of BIH. According to the findings of the above-mentioned survey, around 80% of respondents believe that victims should enjoy the same rights regardless of the entity or region in which they live, that victims are abandoned by nearly all segments of the society and that the existing activities are insufficient. The problems regarding reparations to victims of war were identified also in the opinions of different international bodies, such as the UN Human Rights Committee, the UN Committee Against Torture, the UN Committee on Economic, Social and Cultural Rights and the UN Working Group on Enforced or Involuntary Disappearances. The Transitional Justice Strategy defines systemic solutions in this area which promote the need for a more integrated and a more systematic approach to reparations to victims of war, in order to achieve the goals of this mechanism of transitional justice.

Importance of gender-sensitive approach in the area of reparations and memorials as a transitional justice mechanism

Within the reparations and memorials segment, the victims of gender-based violence need a special attention. In this regard, it is important to develop a specialized, integrated and multidisciplinary approach, in view of the multidimensional and long-lasting disproportionate effects of these crimes on women, girls, their families and their communities, as it is stated in the Nairobi

85 Facing the Past and Access to Justice From a Public Perspective, Special Report, UNDP, 2010, the Report is available at: www.undp.ba
Declaration on Women’s and Girl’s Right to a Remedy and Reparation, from 2007. Since the strategic objectives and activities relevant for this segment require amendments to the existing laws and development of new legal and institutional arrangements, it is extremely important that the analyses made beforehand are gender-sensitive in order to determine the impact of the proposed arrangements on both women and men. This is particularly relevant for rehabilitation, as a form of reparations, since the implementation of activities in this segment will have a crucial impact on the improvement of quality of life of victims of gender-based violence, on breaking down stigma and improvement of their psycho-physical health, which, in turn, will lead to their de-victimisation and reconciliation.

Compensation

Starting from the UN General Assembly Resolution: The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, and from the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War and the Geneva Convention (III) Relative to the Treatment of Prisoners of War, BIH has the obligation to define the entitlement to compensation based on the status of a war victim as a civilian victim of war or a war veteran. Under the UN Resolution, compensation should be provided “for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

a) physical or mental harm;
b) lost opportunities, including employment, education and social benefits;
c) material damages and loss of earnings, including loss of earning potential;
d) moral damage;
e) costs required for legal or expert assistance, medicine and medical services, and psychological and social services.”

In BIH the entitlement to compensation is exercised in two ways. First, this entitlement is exercised on the basis of administrative decisions, i.e. on the basis of the entity laws which regulate the rights and entitlements of the civilian victims of war and disabled war veterans, and secondly, through civil lawsuits filed under the Law of Obligations Act which the BIH Federation and RS took over from the former Yugoslavia. However, the present compensation system in BIH is burdened with various limitations. More specifically, there is no comprehensive approach to

compensation to all victims of war throughout the territory of BIH, which results in unequal treatment of different categories of victims and in the complete absence of compensation to some groups of victims, such as victims of torture. The participants of the Transitional Justice Strategy consultation process emphasized the following problems:

- Inefficiency and unsustainability of compensation through judicial decisions;
- Inconsistent treatment of victims in terms of compensation provided on the basis of administrative decisions: different treatment of civilian victims of war in the two entities and different treatment of the disabled war veterans and civilian victims of war within the same entity;
- Unsustainability of the existing compensation system;
- Compensation to victims of torture at places of confinement is not sufficient.

In its Concluding Observations from 2010, on the basis of the reports submitted by the member states under Article 19 of the UN Convention against Torture, the UN Committee against Torture recommends, under paragraph 18, to the authorities of BIH:

“The Committee recommends that the member state adopt the draft Law on the Rights of Victims of Torture and Civilian Victims of War and also the Strategy for Transitional Justice without delay in order to fully protect the rights of victims, including the provision of compensation and as full a rehabilitation as possible, with the aim of obtaining physical and psychological recovery and their social reintegration.”

With a view to addressing these problems, the Transitional Justice Strategy provides the relevant solutions for the creation of a comprehensive and financially sustainable system of compensation in order to achieve the goals of this form of reparations.

An overview of the current situation

During the consultations on the development of a Transitional Justice Strategy, the following problems were emphasized:

Compensation through judicial decisions: ineffective and unsustainable system

Civilian victims of war are entitled to compensation in the form of non-material damages for physical and mental harm, disability in activities of daily living, harm to reputation, honour, freedom or individual rights, death of a close relative and for the fear suffered. This entitlement is exercised by filing a civil lawsuit in a court of law, which is an ineffective, very long procedure which does not guarantee that a
damage award will be sufficient for the victim to exercise his or her entitlement as only a small number of these awards have been enforced. Moreover, the Law on Obligations Acts set forth a general five-year statute of limitations, although, under international standards, statutes of limitations do not apply to war-related civil damages claims. In the end, this part of compensation refers to the exercise of only one part of this right, which covers material and non-material injuries, death or disappearance of a relative who was the breadwinner, which does not fully ensure the right to compensation, as it is set forth in international standards that BIH is obliged to implement. However, it is necessary to emphasize that regardless of the need to allow citizens’ access to court and to file damage claims, this approach to solving the problem would result in a financial collapse of the state.

Compensation through administrative decisions: inconsistent treatment of victims

Compensation through administrative decisions is done on the basis of the following laws:


Both entities applied the same principle in drafting the laws and regulating the status and rights of civilian victims of war and disabled war veterans. In substance, that principle comes down to a different treatment of these categories of persons. These laws set forth the rules for payment of monthly monetary benefits to eligible civilian victims of war and disabled war veterans who are disabled by an injury that was incurred during the war, making them partially or permanently incapable of work, and to the families of killed or disappeared civilian victims of war and veterans and to the victims of torture, sexual abuse and rape. Regarding their possibility to get a status on the basis of a physical injury, in both entities, veterans with disability ratings of at least 20% are eligible to get a status of disabled war veterans and civilians with disability ratings of at least 60% are eligible to get a status of a civilian victim of war.

The same categories of civilian victims of war and disabled war veterans receive different amounts of monthly disability benefits. The base for a monthly benefit

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88 For example, Basic Guidelines and Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/RES/60/147, 21 March, 2006), paragraphs 6 and 7
89 or 40% in the RS if disability resulted from illness and was not caused by an instrumentality of war.
paid to civilian victims of war is the amount of personal disability allowance for
disabled war veterans with a 100% disability rating reduced by 30%. In practice, this
means that a civilian victim of war with the same disability rating as a disabled war
veteran receives 70% of the base amount. Also, disabled war veterans can count on
a broader range of rights and entitlements in comparison to the rights and
entitlements granted to civilian victims of war, which includes an additional
veterans benefit, one-time grants, housing, etc.

Different treatment of civilian victims of war in BiH
Since the entities are responsible for these issues, each entity has regulated the
status, rights and amounts of benefits independently from the other entity, which is
the reason why victims are treated differently in the two entities.

There is a problem regarding inter-entity cooperation in the area of the rights and
entitlements of the civilian victims of war and members of their families. Upon
return to their pre-war homes, internally displaced persons who resided in the
territory of the BiH Federation prior to their returns lost their right to disability
benefits. The RS failed to include them in the RS programme for the civilian victims
of war as beneficiaries of benefits since Article 36 (a) of the Amendments to the RS
Law on the Protection of Civilian Victims of War sets limitations on the exercise of
the right to apply for those persons who acquired certain rights as civilian victims of
war under the laws of the BiH Federation or the laws in the countries of the region.
Under that law, such persons may not apply for a certificate of a civilian victim of
war, while the BiH Federation removed their names from the list of beneficiaries
after they changed place of residence. This issue is solved through the amendments
to the Law on Principles of Social Welfare, Protection of Civilian Victims of War and
Protection of Families with Children of the BiH Federation, adopted in 2006. As a
result, civilian victims of war and their families, upon return to their pre-war homes
in the RS or the Brcko District, are allowed to exercise their rights and entitlements
which they enjoyed during displacement in the Federation. However, since the law
cannot be applied retroactively, all those persons who returned from the BiH
Federation to the RS before the date of enactment of the amendments to the Law
on Principles of Social Welfare, Protection of Civilian Victims of War and Protection
of Families with Children of the BiH Federation in 2006 cannot exercise their rights
and entitlements.

The RS Law on the Protection of Civilian Victims of War sets a five-year deadline for
applying for a certificate of a civilian victim of war, regardless of whether they seek
the recognition of the status of a civilian victim of war on the basis of a damage to
the body, killing, death or disappearance.\(^9\) The amendments to the Law extended
the deadline by an additional six months for filing an application. The new deadline

\(^9\) Article 33 of the RS Law on the Protection of Civilian Victims of War.
expired on December 31, 2007.\footnote{Article 34 of the RS Law on the Protection of Civilian Victims of War.} However, as the participants of the consultation process emphasized, the additional six-month period was not long enough for all those persons who could exercise their right to apply under this Law because they had not been informed or failed to apply for other reasons, which was why they were unable to acquire the status of a civilian victim of war i.e. to exercise their legal entitlements.

**Different treatment of disabled war veterans and civilian victims of war in BiH**

The problem regarding different treatment of these two categories lies in the principles of international humanitarian law. The protection of civilians in time of war is the basis of international humanitarian law (*Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War*) and they are a protected category entitled to compensation in case of violations of human rights. On the other hand, combatants who suffered a damage during military operations in time of war are considered to have suffered a violation of their human rights only if they were subject of illegal warfare (e.g. use of prohibited weapons) or if they are injured as prisoners-of-war (*Geneva Convention (III) Relative to the Treatment of Prisoners of War*). These examples amount to gross violations of international humanitarian law. Other injuries or death of combatants in a legitimate warfare do not amount to human rights violations and thereby the same international legal obligation to ensure them reparations does not exist.

This problem has been noticed by the UN bodies responsible for monitoring the implementation of international human rights instruments that BiH signed. In its Concluding Observations for BiH, in 2006 the *UN Human Rights Committee* expressed its concern over disability allowances paid to civilian victims of war being much lower than those paid to the veterans in both entities. Accordingly, the Committee recommended that disability allowances paid to civilian victims of war be harmonised between the entities and among the cantons and equated with disability benefits paid to war veterans.\footnote{UN Human Rights Committee, Concluding Observations: BiH, November 2006, CCPR/C/BIH/CO/1, para 15} Also, in its Concluding Observations for BiH, the *UN Committee for Economic, Social and Cultural Rights* from 2006 said that the Committee notes with deep concern the extent of the discrepancy between the significant budget allocations for financing the disabled veterans’ pensions and comparatively low resources allocated to social welfare, as reflected by the fact that, under the *Law on Amendments to the Law on Social Protection, Civilian War Victims, and Families with Children of the Federation of Bosnia and Herzegovina*, civilian victims of war will receive only 20 percent of the pension benefits received by disabled war veterans. Accordingly, the Committee invites BiH to ensure a more just distribution of the existing funds for social welfare, particularly for civilian victims of war, in order to reduce the extent of discrepancy between the budgets
for civilian victims of war and disabled veterans.\footnote{UN Committee on Economic, Social and Cultural Rights, Concluding Observations: BiH, January 2006, E/C.12/BIH/CO/1, paragraphs 18 and 39} Furthermore, the \textit{UN Committee on the Elimination of Discrimination Against Women} (CEDAW) emphasized in its recommendations from 2006 the need for elimination of discrimination against women victims of sexual violence during the war by adopting the appropriate legislation, allocating funds for the purpose of, inter alia, health insurance and housing. It stresses that the rights and benefits of this category have to be raised to the level of benefits paid to disabled war veterans in order to prevent additional forms of discrimination.\footnote{UN Committee on the Elimination of Discrimination against Women, Concluding Observations: Bosnia and Herzegovina, June 2006, CEDAW/C/BIH/CO/3, para 38}

\textbf{Unsustainability of the existing benefit payment system}

Under the present legislation, the overall amount of social welfare benefits cannot ensure a sustainable fiscal system, which is why it is necessary to make some changes. As we know, the \textit{World Bank} loans are approved under a set of requirements related to the legislative reform. In this regard, the \textit{World Bank} has repeatedly emphasized the need for stabilizing the budgets and for creating a sustainable fiscal system.

\textbf{No compensation to survivors of torture at places of confinement}

The victims who suffered torture at places of confinement in time of war can exercise their right to compensation only if they fall under one of the above categories, i.e. if, in addition to being torture survivors, they have a disability rating, on the basis of which they receive benefits as civilian victims of war or as disabled war veterans. All other torture survivors without a required minimum disability rating are not entitled to any benefit or compensation for their suffering.

Finally, the \textit{UN Committee Against Torture} released in 2006 its Concluding Observations for BiH regarding the implementation of the \textit{Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment}. The Committee expresses its concern over the failure to recognize survivors of torture (including sexual violence) as victims of conflict, which would allow them to receive benefits and enjoy the right to fair and adequate compensation and rehabilitation. In this regard, the Committee recommends to the authorities in BiH that they should develop legal and other measures, enforceable throughout the State, including an official programme for the rehabilitation of victims of torture (including sexual violence), providing them recognition as victims and the capacity to pursue redress and their right to fair and adequate compensation and rehabilitation in accordance with the requirements from the Convention.\footnote{UN Committee against Torture, Concluding Observations: BiH, December 2005, CAT/C/BIH/CO/1, para 10}
As stated above, the Committee expresses concern in its observations from 2010 over the slow process of adopting the *Rights of Torture Victims Bill*, the lack of an adequate definition of status and rights of civilian victims of war in the domestic legislation and insufficient psycho-physical support for and availability of legal protection to victims, primarily to the victims of sexual violence who suffered violations in time of war. The Committee proposes that BIH adopt a draft *Law on the Rights of Torture Victims and Civilian Victims of War* in order to provide full protection to the rights of victims, including provision of compensation and as full rehabilitation as possible, with a view to achieving their psychological and physical recovery and their social reintegration.\(^{96}\)

In its response to these recommendations, the *BIH Ministry for Human Rights and Refugees* launched an initiative to draft a state-level framework law on the rights of civilian victims of war and victims of torture. The draft has been prepared but not adopted yet.

**Rehabilitation**

In BIH there is a rather well-developed legal, institutional and strategic framework which, to some extent, regulates rehabilitation, as a separate form of reparation. The framework covers all forms of rehabilitation defined in the *UN General Assembly Resolution: The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*: medical and psychological care, as well as legal and social services.\(^{97}\) These forms of rehabilitation have a direct impact on the psychological development and display of individual potential of every individual as well as on successful devictimisation and social reintegartion of war victims and disabled people. It was emphasized during the consultations, which were organised within the process of drafting a *Transitional Justice Strategy*, that employment of victims of war and disabled persons, as well as their involvement in various creative, sporting and other social activities, were instrumental for the full devictimisation and social reintegration of those categories of persons.

The participants of the consultation process emphasized that the existing legal, institutional and strategic framework did not correspond fully to the needs of citizens of BIH, in terms of rehabilitation, as a form of reparations.

The following was emphasized within the area of psycho-social protection, as a form of rehabilitation:

\(^{96}\) UN Committee against Torture, Concluding Observations: BiH, November 2010, para 18

\(^{97}\) *Basic Principles and Guidelines*, op.cit.. (A/RES/60/147), 21 March, 2006, para 21
• the level of traumatisation of citizens of BIH has not been determined yet;
• the citizens of BIH are not yet fully informed about war-related trauma, the ways in which trauma demonstrates and transmit itself, or about consequences of trauma;
• stigmatisation of traumatised persons is noticed in both the society and family;
• the existing institutional framework for psycho-social care is not effective enough;
• the civil society is not engaged enough in the process of providing psycho-social care.

In the area of employment, as a form of rehabilitation, the following was emphasized:

• the legal framework for employment of war victims as beneficiaries of reparations on the basis of human rights violations is not adequate;
• implementation of the laws regulating professional rehabilitation and employment of persons with disabilities is not sufficient;
• the civil society is not engaged enough in the process of professional rehabilitation of war victims and persons with disabilities.

Regarding the involvement of victims of war and disabled persons in creative, sporting and other social activities as a form of rehabilitation, the following was emphasized:

• the present initiatives for inclusion of persons with disabilities in the sporting activities are not sustainable due to the lack of financial support and the appropriate inspections which would ensure physical access to and use of the sports facilities;
• insufficient inclusion of potential beneficiaries in the designing of strategies, policies, programmes and activities which would result in their social reintegration;
• Insufficient institutional inclusion of the civil society organisations in engaging victims of war and persons with disabilities in various creative activities.

The international organisations mandated to monitor the BIH progress in the implementation of international conventions agree that there is room in BIH for improvement of rehabilitation as a form of reparation. More specifically, in its 2010 report for BIH, the UN Committee Against Torture suggests to the BIH authorities some measures such as the Law on the Rights of Victims of Torture and Civilian Victims of War and a Transitional Justice Strategy in order to fully protect the rights
of victims, and “as full a rehabilitation as possible, with the aim of obtaining physical and psychological recovery and their social reintegration”.

Through the development of a Transitional Justice Strategy, Bosnia and Herzegovina recognizes the need for the appropriate solutions within rehabilitation as a form of reparation in order to meet the needs of citizens and to ensure equality of all citizens in accordance with the constitutional, legal and international obligations of BIH.

**An overview of the current situation**

**A Psycho-social protection of traumatised persons**

During the consultations held in connection with the drafting of a Transitional Justice Strategy, the following problems in this area were emphasized:

**Unknown level of traumatisation of citizens of BIH**

The level of traumatisation of citizens of BIH, as a consequence of the armed conflict in 1992-1995, has not been determined yet nor is the territorial prevalence of trauma known yet. Over the past years various surveys have been conducted to determine the scope of trauma, focusing on some categories of the population or on some regions. The conclusion of all these surveys is that a high level of traumatisation is present among the respondents in BIH. To illustrate this, the Ministry for Health and Social Welfare of Republika Srpska conducted a survey in 2008 on a sample of 553 veterans of whom 45.4% suffered from some form of PTSD. The World Health Organisation (WHO) estimated on a larger sample of the population that around 10% of citizens of BIH (around 400,000 people) have been diagnosed with some form of mental disorder caused by war-related stress, including PTSD. The civil society organisations working with traumatised persons and providing psycho-social services to these categories of the population have reported that nearly one half of the total population of BIH are traumatised. Furthermore, in view of different experiences of women and men during and after the war, there are no data to indicate precisely the mental health condition in BIH from the aspect of gender.

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98 UN Committee Against Torture, Concluding Observations: BiH, November 2010, para 18
99 Esmina Avdibegović, Mevludin Hasanović, Abdullah Kučukalić, Miro Klarić, Dragan Babić, Alma Džubur-Kulenović and others.
100 Amina Milic, Bosnians Still Traumatized by War, IWPR, Bosnia Daily, April 14, 2011.
101 Ibid.
102 Ibid.
Citizens of BIH are insufficiently informed about the war-related trauma

The public in BIH is generally not aware of the war-related trauma, its symptoms and transmission or of its consequences. There is a stereotyped belief that members of various armed forces are the first ones to get traumatized because of the period of time they spent in direct armed operations. However, the primary traumatisation affects all segments of the society that were exposed to direct or even indirect conditions and consequences of the war, such as civilian victims of war, among them primarily victims of sexual abuse and rape, victims of torture at places of confinement, members of the families of the killed and the disappeared, persons who sustained injuries from war, but also internally displaced persons, refugees, returnees, etc. In the end, the challenges of transmission of trans-generational trauma, or more precisely, secondary forms of traumatisation that family members, partners, children, friends of the killed and the disappeared individuals, tortured people and others are exposed to, i.e. tertiary impact of trauma on parts of the society that belong to an injured ethnic group and space that experienced fragmentation, are little known or studied in practice. Taking into consideration all of these circumstances, it can be concluded that the level of traumatisation of the citizens of BIH is high.

Stigmatization of traumatised persons

The BIH society is not sufficiently sensitised with respect to traumatized persons. This phenomenon has been noticed in both the society and the families of traumatised persons. This leads to social segregation and isolation of this category of population as well as to further development of the already existing stigma. Out of fear of being stigmatized, and of the social and family exclusion, traumatised persons and also their families refuse to face up to the problem of traumatisation and hide it from the society in order to preserve their social status. It is precisely these circumstances that are one of the key limiting factors preventing a successful psycho-social care for traumatised persons, their social reintegration, as well as spreading the knowledge about trauma. Stigmatisation is particularly strong among victims of sexual abuse and rape (both women and men), primarily due to cultural reasons and family relationships.

Insufficient efficiency of the existing institutional framework for provision of psycho-social services

In BIH there is a relatively well-developed legal and institutional framework for the provision of the psycho-social services to traumatised persons. In accordance with the constitutional arrangements, this framework falls under the responsibility of the entities and the Brcko District. The psychiatric care was reorganised within the process of the health system reform which began in 1996, when community-based mental health centres were formed. The goal of the reform was to build a more effective community-based health care system, which carries out activities on prevention, rehabilitation, health promotion and deinstitutionalisation of the
process and makes the services of the mental health centres friendly to client, his or her family and community.

Nevertheless, after many years of the reform, some weaknesses of the institutional framework were noticed. More specifically, the following was emphasized in the study *Situation Analysis and Assessment of Community-Based Mental Health Services in Bosnia and Herzegovina*[^103^] which was released in 2009: lack of human resources in the mental health centres; financial, technical and infrastructural problems in the centres; insufficient and discontinued training of professional staff; lack of knowledge of the staff about the mental health policy; relatively appropriate mental health legislation; lack of standardised procedures for communication between mental health centres and other institutions; lack of supporting services which provide alternative mental health services, such as safe houses, beneficiary organisations, mental health day care services, SOS telephones, etc.[^104^] All these problems were reiterated during the consultation process organized in connection with the drafting of the *Transitional Justice Strategy*.

**Insufficient involvement of civil society organisations in the system of psycho-social services**

A number of civil society organisations in BIH developed specific and creative multidisciplinary programmes for training of and provision of psycho-social support to traumatised persons and their families. Those are different beneficiary associations, such as the associations which bring together veterans or persons who underwent treatment for PTSD, professional non-governmental organisations, etc. It is important to emphasize that professional NGOs are able to define the problem and carry out adequate therapy and treatment through different phases and special rehabilitation models adapted to individual needs of victims. Traumatised persons seek assistance from such organisations primarily because of social stigma and also because of the professional treatment they receive, which is free from procedural and bureaucratic requirements common to the primary, secondary and tertiary level of mental health care.[^105^] Explicit and formal recognition of expertise of the civil society organisations is noted in the *War Crimes Strategy* which recommends the inclusion of NGOs in the process of provision of psycho-social services to victims and witnesses.[^106^]

[^103^]: The analysis was conducted by the Federation Health Ministry and the Republika Srpska Ministry of Health and Social Welfare.

[^104^]: *Situation analysis and assessment of community-based mental health services in Bosnia and Herzegovina*, Federal Ministry of Health and the Ministry of Health and Social Welfare of Republika Srpska, Sarajevo 2009, page 47

[^105^]: Beneficiaries and experts from NGOs claim that the prevalence of traumatic crises has been significantly reduced through inclusion of traumatised persons (who underwent a mandatory psychiatric treatment in institutions at primary, secondary and tertiary levels of medical care) in the programmes and activities implemented by such beneficiary and professional organisations.

[^106^]: See Part IV – Annexes. Annex 1 – Links between Transitional Justice Strategy and other strategies
A number of medical institutions, primarily mental health care centres, maintain cooperation with NGOs. This is confirmed in the above-mentioned study *Situation Analysis and Assessment of Community-Based Mental Health Services in Bosnia and Herzegovina* which, however, stresses that this cooperation refers primarily to the implementation of joint projects funded by international donors, although there are no formal memorandums of understanding on their cooperation.\(^{107}\) In any case, the organizations that could potentially be institutionalized have not been analysed or selected yet, nor have their programmes been standardized and certified.

### B Employment

There is an institutional legal framework in BIH for the implementation of the policy for employment of persons with disabilities, which is based on the entity laws on professional rehabilitation, training and employment of persons with disabilities and the employment strategies. The relevant parts of these strategies and the laws regulate employment of persons with disabilities, as socially vulnerable categories, regardless of the reasons for disability. Victims of war, i.e. bearers of the right to reparations by reason of past human rights abuses, are not explicitly recognized as the focus of these laws and strategies, although they fall under the scope of these laws if they are in the generic category of persons with disabilities, i.e. persons with special needs.\(^{108}\)

Under the entity employment strategies, of the total number of persons with disabilities, 26.8% persons are employed as of now, and these categories of the population have a limited access to employment, many of them are fit for work but workplaces are not changed to provide a safe and comfortable work environment for persons with disabilities and, moreover, there are prejudices about employment of those people.

The participants of the consultation process on the development of a *Transitional Justice Strategy* confirmed these findings and added that no research had been carried out in BIH to find out which institutions could employ these categories of persons and to which jobs. It was also said that generally a small number of victims of war were employed under the laws on professional rehabilitation, training and employment of persons with disabilities, although they are entitled to reparations.

**Employment of persons with reduced work capacity**

The entity laws on professional rehabilitation, training and employment of persons with disabilities form the basis for organising and implementing the policy for employment of persons with reduced work capability. In Republika Srpska, the *Law...
on Professional Rehabilitation, Training and Employment of Disabled Persons was adopted in 2004, and in the BIH Federation, the Law on Professional Rehabilitation, Training and Employment of Persons with Disabilities was adopted in 2010. A similar law does not exist in the Brcko District. The entity laws regulate this issue in a similar way. ¹⁰⁹ However, primarily the lack of funds, the lack of information and other above-mentioned reasons for a limited employment of persons with disabilities create challenges in the implementation of the entity laws. ¹¹⁰

Over the last years, some professional civil society organisations have developed specific programmes for psychological services to traumatised persons, as well as some specific models which offer, within the occupational therapy, the possibility of economic empowerment. Some of them work also as labour centres. However, the acquired experience and knowledge of these organisations have not been institutionalised yet nor have their programmes been standardised or certified.

The alternative ways of financial support for employment and self-employment of persons with disabilities, outside these laws, have not been developed. In the RS and the Brcko District there are laws on the public-private partnership which could potentially be a mechanism for a more intensive process of employment and self-employment of persons with disabilities. However, these laws do not envisage the opportunity for the public-private partnership in terms of creating a programme for employment and self-employment of persons with disabilities.

C  Inclusion of victims of war and persons with disabilities in different forms of creative and sporting activities

A successful rehabilitation of victims of war and persons with disabilities require conditions which will enable them to have the opportunity to develop and utilize their sporting and creative potential, in order to ensure equal opportunities for all, as it is set forth in the international framework, particularly in the UN Convention of

¹⁰⁹ The laws define the employment of persons with disabilities under general and specific conditions in the entity, cantonal, city and municipal institutions under the quota system; the laws envision the employment of such categories of the population by other employers, such as private entrepreneurs, companies formed to hire and employ people with disabilities, and regulate the principle of self-employment supported by incentives and other benefits; both laws define the formation of specific funds for professional rehabilitation and employment of persons with disabilities; the laws define also the formation of institutions for professional rehabilitation of persons with disabilities and labour centres as specific institutions for employment of persons with disabilities, etc.

¹¹⁰ The funds for professional rehabilitation and employment of persons with disabilities were formed and are operational in both entities, although they are not carrying out all the activities yet; efforts towards implementing the quota system in the entities are evident, although the system has not been implemented fully; the employment of persons with disabilities by employers who are not obliged to employ those categories is limited; the institutions for professional rehabilitation are still in the process of being formed; the labour centres have not been formed yet in either entity, etc.
the Rights of Persons With Disabilities.\textsuperscript{111} These activities result in the psycho-physical empowerment of the personality, in overcoming disorientation and low self-esteem and contribute to the full rehabilitation and social reintegration. However, it was emphasized during the consultations about a Transitional Justice Strategy that social exclusion, primarily that of the persons with disabilities, is noticeable in BIH, while the activities on breaking down common stereotypes and prejudices about this category of the population and promotion of their inclusion in creative and sporting activities are not developed enough.

Unsustainability of activities on inclusion of persons with disabilities in sporting and other creative activities

In BIH, sports are regulated by the legal framework at all levels. The laws define conditions and possibilities for inclusion of persons with disabilities in sporting activities for purposes of their rehabilitation and social reintegration, similarly to those set forth in the laws on professional rehabilitation, training and employment of persons with disabilities: victims of war, i.e. bearers of the right to reparations, are not explicitly recognized as the focus of these laws, although they fall under the scope of law if they are in the relevant category of persons. It is necessary to mention that different sports clubs and associations have been formed at all levels and they bring together persons with disabilities and enable this category of the population to actively engage with sports. BIH is an example of good practice in this regard.\textsuperscript{112}

However, there are problems with the implementation of these laws. More specifically, the sports associations which bring together persons with disabilities are facing numerous challenges, especially financial challenges. The budgets are limited, private capital is not interested enough in supporting these sports clubs and associations, there are no alternative ways of funding, which, as a result, prevents this category of the population from engaging more actively with sports. This also affects the possibility to engage in the recreational sport programmes for the purpose of rehabilitation and social reintegration. The same is true for the inclusion of the persons with disabilities and victims of war in various creative activities. On the other hand, although the sports laws regulate this area, some sports facilities are not adapted to the needs of persons with disabilities in terms of removing structural and architectural barriers to allow them physical access to the facilities, which limits the possibilities of this category of persons to fulfil their affinity for sports and reach their full potential.

\textsuperscript{111} The UN Convention on the Rights of Persons with Disabilities, Preamble and Articles 1, 3, 4 and 30.

\textsuperscript{112} Para Olympic national teams of BiH have won medals, for example, in sitting volleyball.
Insufficient institutional inclusion of civil society organisations in engagement of victims of war and persons with disabilities in different creative activities

Not enough is being done at the institutional level to develop the potential of persons with disabilities and victims of war. However, important activities are being carried out by the civil society organisations which are functioning as beneficiary associations and as labour centres or they are professional NGOs. These organisations are developing, primarily through an occupational therapy and appropriate educational programmes, the possibility of economic independence of their beneficiaries and also their creative and artistic potential with a view to their social reintegration and rehabilitation. However, the acquired experience and knowledge of these organisations have not been institutionalised yet; an analysis and selection of the organisations that could potentially be institutionalised have not been carried out yet nor have standardisation and certification of their programmes been done yet.
Memorials

The activities towards providing symbolic satisfaction to victims are relatively well-developed in BIH\(^{113}\) and they are primarily related to memorialisation. However, it is necessary to stress that a coordinated approach has not been established yet in Bosnia and Herzegovina nor has an adequate legislation been adopted yet to regulate this process. Memorialisation is a complex issue and generates in a public discourse in BIH numerous controversies and unhappiness. Specifically, the consultations organised within the process of developing a *Transitional Justice Strategy* confirmed the complexity of this problem and emphasised in particular that:

- the process of memorialisation is politicised and biased towards past events;
- legislative and institutional disharmony and the lack of coordination in initiating, approving and funding memorials are noticed.

These observations of the participants of the consultations are in agreement with the findings of the 2010 Report of the *UN Working Group on Enforced or Involuntary Disappearances* about the efforts of BIH to shed light on the fate of the missing:

“At present, the issue of memorials has caused much controversy and unhappiness [...] For example, at times, relatives who wish to attend burial ceremonies or visit graves in other parts of the country are often prevented from doing so or harassed when they do. [...] It was also argued that some monuments were ruined in order to humiliate victims from other ethnic groups. In some places memorials were erected by the municipality without any consultation. At the same time, some municipalities reportedly would not fund memorials for the other side and they would not even allow those groups to use their own money to erect a memorial”\(^{114}\).

Most of memorials in BIH are static, physical representations of historic events, often with visibly pronounced sacral and religious characteristics. Their dominant

\(^{113}\) Under the UN General Assembly Resolution *Basic Guidelines and Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, satisfaction is one form of reparations. Accordingly, memorialisation is dealt with in this Strategy under reparations. However, as is emphasized in the Introduction, erecting memorials and the process of preserving historical memory are generally far more complex than putting this issue in the context of any transitional justice mechanism. This belief is based on the fact that memorialisation contributes to other processes outside reparations, such as fact-finding and truth-telling, protection of democratic values and respect for human rights, building confidence in government institutions, keeping peace, building new and rebuilding old social relations, reconciliation, etc.

\(^{114}\) *The UN Working Group on Enforced or Involuntary Disappearances*, Report, November 2010, A/hrc/16/48/Add.1. para 48
http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-48-Add1.pdf
function is to provoke some emotional reactions, primarily from the victims' families, and also of the ethnic community that identifies with the victims or events that the memorials honour. The pedagogical function of memorials, as a public space that actively stimulates the involvement of citizens in an open dialogue about what memorials represent, as well as about contemporary social issues which are directly or indirectly linked to the memorial, is not recognized.

The *Transitional Justice Strategy* aims at making an important step forward, beyond the current situation, in order to achieve the purpose of the process of memorialisation, which is protection of historical memory from relegating to oblivion, protection and improvement of democratic values and human rights, and prevention of the traumatic past from recurring.

**An overview of the current situation**

During the consultation process on the development of a *Transitional Justice Strategy* the participants of the process emphasized the following problems in this area:

**Politicsization of the process of memorialisation through a one-sided view of past events**

Most of memorials in BIH are erected in clearly visible and public places, such as town squares, in front of public institutions, in schoolyards, near busy roads, within the business compounds, at the locations of exhumation and burials, within religious buildings, as well as at other public places. Those monuments were most often erected in memory of killed veterans and civilian victims of war of one ethnic community and of military formations or policies which are dominant in the given local community.

The monuments in memory of events from the war 1992-1995 have continually been erected since the beginning of the armed conflict. Many memorials with those characteristics are erected in returning areas and had a somewhat negative impact on the whole process of returns. In this regard, of particular importance are memorials of one ethnic group erected at the places where members of another ethnic group had been killed or in returning areas where only one ethnic group lives. Also, those memorials, which have the above-mentioned characteristics and were erected in the yards associated with the schools attended also by returning pupils, have a negative impact on the returning communities.
Legislative and institutional disharmony over erection of memorials and insufficient implementation of the present framework for erecting memorials

The legal basis for erecting memorials in BiH is provided primarily by the entity and cantonal laws on physical planning and land use, and the same law in the Brcko District. These laws regulate the organisation, use and purpose of land, and prescribe measures and guidelines for the protection of space of importance to the entity, canton, and the District levels of government, and to the local authorities. The construction of structures to be used for any purpose, thereby also of memorials, requires, under the laws, a zoning permit. The application for a zoning permit is submitted by a developer to the relevant authority that owns a land i.e. the authority that has jurisdiction over the construction of a building of a certain category. Regarding the building of memorials, as the current BiH experience shows, the permits to erect memorials are in most cases issued by the town planning divisions of the local authorities. However, these laws do not define any relevant criteria or standards for erecting memorials in the context of transitional justice.

In addition to the above laws, there are some other laws and policies as well as institutions which regulate memorialisation within the scope of their authority. Those are the BiH Law on Missing Persons, Annex VIII to the Dayton Peace Agreement (more specifically, the Commission to Preserve National Monuments) and the Criteria on School Names and Symbols.

Under Article 20 of the BiH Law on Missing Persons, families of the missing persons may request that “locations of burials and exhumations (individual or joint) be marked, regardless of the number of victims or missing persons”. Also the Book of Regulations on Marking the Places of Exhumation and Burial of Missing Persons (the Book of Regulations) was adopted under this Article. However, the Book of Regulations refers to “memorials and memorial plaques the construction of which shall be funded by the Fund for Support to the Families of Missing Persons of Bosnia and Herzegovina” (hereinafter: the Fund). Since the Fund has never been formed, the erection of monuments and memorial plaques are not funded from that institution but from the budgets of local authorities or of the authorities at other levels of government, and from donations or by the families of victims, who use their own money to fund memorials, authorised by the appropriate certificate issued by the Missing Persons Institute.

The Commission to Preserve National Monuments (hereinafter: the Commission) was established under Annex VIII to the Dayton Peace Agreement. It is mandated to receive and decide on requests to designate an item of property a national

115 Article 1(2) (Scope of Book of Regulations) of the Book of Regulations on Marking the Places of Exhumation and Burial of Missing Persons
monument on the ground of its cultural, historical or ethnic importance. The Commission defined the criteria for designating an item of property a national monument and defined the relevant period as a requirement for their consideration for a national monument status. The relevant period defined by the Commission covers the BiH history until 1960, while the monuments erected after that year will be taken into consideration only if they have a particular artistic value.116 The limitation period narrows the possibility for some monuments erected to remember an event related to the 1992-1995 war to be designated national monuments, unless they meet the artistic criteria.

In the end, there is another regulation at the state level which partly refers to monuments and memorials, but covers solely those erected within school buildings and in schoolyards. Those are the Criteria on School Names and Symbols. The Criteria resulted from the Interim Agreement on Accommodation of Special Needs and Rights of Returnee Children, which was signed by the Minister of Education and Science of the BiH Federation and the RS Education Minister on 5 March, 2002, in order to “create conditions for including returnee children in schools throughout BiH and to ensure solutions, although only temporary, which will ensure legal equality for all constitutional peoples in BiH in the field of education”.117 The criterion on school symbols 1(C) defines acceptable school symbols:

“The wartime memorial plaques featuring the names of the killed, years of birth and years of death, without any interpretation or qualification of the war, as well as the monuments without any offensive and inappropriate written messages.”118

However, this criterion is not fully adapted to the specific characteristics of returns to/within BiH, especially in terms of erecting monuments in honour of only one ethnic community, in multi-ethnic schools or mono-ethnic schools attended only by returnee children.

Uncoordinated approach to the process of initiating, approving and financing erection of memorials

The initiative to erect a memorial most often comes from the victims' families, or the associations of victims, veterans, disabled war veterans, while a significant number of memorials were erected upon the initiative of the religious communities or even more often, of the political elites at the local or another level of authority. The town planning divisions of the local authorities are in most cases responsible

118 Criteria on School Names and Symbols, II Criteria on School Symbols, 1. Appropriate School Symbols (C).
institutions for issuing permits for building memorials. As it was said during the consultation process, the monuments are built either without any prior permits or the necessary permits are obtained after the monument has been built.

In addition to municipal budgets, which are the main source of funding monuments and memorials, there are also funds at the medium level of government for this purpose, such as the funds allocated by the entity and cantonal ministries responsible for the civilian war victims and disabled veterans affairs.

It was emphasized during the consultations that the institutions which issue zoning permits or ensure funding apply different approaches, depending on the category of the population that a monument is erected to. The memorials erected in memory of killed war veterans are, as a rule, funded from the public budgets. On the other hand, although memorials in honour of civilian victims of war are funded also from the public budgets, there are numerous examples showing that the families of victims use their own money to fund memorials.

**Proposed solutions for reparations and memorials**

There is a relatively well-developed legal, institutional and strategic framework in BIH for reparations measures to victims of war, which are included in the UN General Assembly Resolution. However, there are no solutions for a comprehensive approach to reparations throughout BIH.

In accordance with the situation analysis, the Transitional Justice Strategy defines solutions which will help achieve the vision of reparations and memorials, as a transitional justice mechanism.

**VISION OF THE MECHANISM:**
Right to reparations is ensured and collective memory of the events from the period 1992-1995 preserved in order to overcome the consequences of violations of international humanitarian law and international human rights law and to restore dignity to all victims of war and to ensure their social reintegration.

**A Compensation**

The current system of compensations in BIH is burdened with various limitations and there is no comprehensive approach to compensating all victims of war throughout the territory of BIH. This fact results in an unequal treatment of some categories of victims and in the complete absence of compensation to some groups of victims, like victims of torture. In addition to this inequality, the system of compensations in BIH is facing the problem of financial unsustainability.
In order to address the problems identified by the participants of the consultation process and the stakeholders in this area and different international organisations, the following strategic goal is set in the *Transitional Justice Strategy*, in accordance with the vision of this mechanism of transitional justice:

**STRATEGIC GOAL 1**
To ensure full protection of the right to compensation of all victims of violations of international human rights law and international humanitarian law.

In order to make the defined strategic goal measurable and specific, the following strategic objectives are defined in the *Transitional Justice Strategy* to lead the way to the goal achievement:

**STRATEGIC OBJECTIVE 1.1**
To improve the existing system of ensuring the right to compensation to all victims of war in BiH;

**STRATEGIC OBJECTIVE 1.2**
To establish a coherent system of data on all beneficiaries of this right, regardless of benefits or type of compensation.

**STRATEGIC OBJECTIVE 1.1:**
To improve the existing system of ensuring the right to compensation to all victims of war in BiH

Since BiH does not have a comprehensive system of compensations to victims of war, the *Transitional Justice Strategy* recognizes the need for creating such a system free from any limitations, throughout the territory of BiH, which will be in harmony with the constitutional powers of the entities. The adoption of a framework law on victims of torture and civilian victims of war of BiH will ensure the minimum standards for the full protection of civilian victims of war and victims of torture, while the minimum standards will be further elaborated at the entity level and in the Brcko District. Also, in accordance with the recommendations of different UN committees for BiH, it is necessary to solve the issue of different approaches to disability ratings for civilian victims of war and disabled war veterans and, consequentially, different benefits. In this regard, the *Transitional Justice Strategy* foresees an analysis of the existing entity laws on compensations paid to civilian victims of war and disabled war veterans and, based on the analysis, the recommendations to solve the discrepancies in the treatment of civilian victims of war and disabled war veterans. In doing so, it is necessary to bear in mind the need for creating a financially sustainable system. The need for this approach arises from
inequality and also from the fact that the current compensation system is financially unsustainable. The analysis and recommendations should include returnees who returned to their pre-war homes in the RS before 2006 and lost their right to disability benefits which they had received in the BIH Federation prior to their returns.

**STRATEGIC OBJECTIVE 1.2**

To establish a coherent system of data on all beneficiaries of this right, regardless of benefits or type of compensation

Due to the fact that the issue of compensations is regulated by different laws, there are no single data on the number of beneficiaries of the right to compensation or on the grounds for their beneficiary status. This is why the *Transitional Justice Strategy* recognizes the need for establishing a coherent system of data on all beneficiaries of this right, regardless of the benefit or the type of compensation they receive. This system of data will be created by developing a single database to be coordinated by the BIH Ministry for Human Rights and Refugees as the institution responsible for monitoring the implementation of international treaties protecting human rights and humanitarian law. In the end, it is necessary to ensure that a new database contains also gender-segregated data on all beneficiaries.
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B Rehabilitation

Although BIH has a relatively well-developed legal, institutional and strategic framework regulating rehabilitation as a form of reparations, the situation analysis indicates some weaknesses. More specifically, the process of providing psycho-social services lacks more adequate policy and institutional frameworks for provision of services to traumatised persons; in the area of employment, the public and private institutions are not willing enough to employ persons with disabilities and there is lack of self-employment programmes and financial resources to boost self-employment; regarding the possibilities for achieving full individual potential by including victims of war and persons with disabilities in sporting, cultural and other creative activities, the problem is social exclusion of these categories of the population. Victims of war, i.e. those who are entitled to reparations on the ground of past violations of human rights, are not in focus of the legal, institutional and strategic arrangements; rather, they exercise their rights and entitlements within some generic groups, such as “persons with disabilities” and “persons with special needs”. In the end, the following was noticed as well: insufficient involvement of the civil society organisations in rehabilitation processes, the lack of creative ways of financing activities in this area and the insufficiently developed awareness of citizens, institutions, decision-makers and even the relevant categories of persons about their right to equality and protection against discrimination.

With a view to solving the problems identified by the participants of the consultation process and the stakeholders in this area, as well as by different international bodies, the Transitional Justice Strategy defines the following strategic goal, in accordance with the vision of this mechanism.

STRATEGIC GOAL 1
To improve the rehabilitation mechanism with a view to overcoming the consequences of the war 1992 - 1995.

In order to make the defined strategic goal measurable and specific, the following strategic objectives are defined in the Transitional Justice Strategy to lead the way to the goal achievement:
STRATEGIC OBJECTIVE 1.1
To improve institutional standards for providing adequate psycho-social services to victims of war and traumatized persons.

STRATEGIC OBJECTIVE 1.2
To improve mechanism for employment and self-employment of victims of war and persons with disabilities for the purpose of their social reintegration and economic independence.

STRATEGIC OBJECTIVE 1.3
To ensure a systemic approach to inclusion of victims of war and persons with disabilities in various forms of creative and sporting activities, as specific forms of rehabilitation.

STRATEGIC OBJECTIVE 1.1
To improve institutional standards for providing adequate psycho-social services to victims of war and traumatized persons.

In this segment of rehabilitation, the *Transitional Justice Strategy* promotes the creation of a referral system for provision of continuous, more complete and more adequate psycho-social services to victims of war and other traumatised persons, encourages the implementation of arrangements from other policy papers, such as the *National War Crimes Strategy* (chapter on provision psycho-social services to victims and witnesses) and promotes the adoption of a separate policy paper which will focus particularly on victims of torture and sexual violence in time of war. Also, the *Transitional Justice Strategy* recognizes the need for regulating, legally and institutionally, the position of the referral system through amendments to the entity laws regulating health care and mental health, as well as the need for including this system in the relevant policy papers, such as mental health policies at the entity level.

The referral system for the provision of psycho-social services to victims of war and other traumatised persons will be created through networking of the relevant official institutions, such as mental health centres, university psychiatric clinics, psychiatric wards of hospitals, social welfare centres, professional civil society organisations, beneficiary organisations, professional NGOs, etc. The *Transitional Justice Strategy* recommends that the referral system include the creative solution from the *National War Crimes Strategy* suggesting the creation of a network and regional centres for psycho-social services to victims and witnesses in war crimes cases. However, the *Transitional Justice Strategy* emphasizes that it is necessary to regulate within the referral system the status of the network and regional centres (for psycho-social services to victims and witnesses in war crimes cases) because of
their specific and sensitive nature. In the end, the Strategy recognizes the importance of inclusion of professional civil society organisations in the referral system because of their experience in this area, their close relations with the beneficiaries and their programmes which have proven to be creative, successful and applicable in the BIH context. In this regard, it is important to establish standards for their certification and standardisation at the state and entity levels.

The networking of all these institutions into a referral system will be preceded by an analysis and assessment of prevalence of trauma and their professional, technical, policy and financial capacities will be assessed on the basis of the findings in order to take the most appropriate approach to addressing the issue of traumatisation in BIH. Also, in order to support the referral system, the Transitional Justice Strategy recognizes the need for organising continuous training.

The success of the process of providing psycho-social services to traumatised persons depends also on the efforts to fight stigmatisation. In this regard, the Transitional Justice Strategy recommends that public campaigns be organised to inform and educate the public on the problem of traumatisation, on the needs of traumatised persons, the importance of their inclusion in the social processes and in the process of policy making aimed at improving their position, and on non-discrimination. Here, the Strategy envisages a stronger engagement of the civil society organisations in order for the civil society to become fully capable of informing and educating its beneficiaries and the public on these processes, on the one hand, and on the other, in order for the civil society to be able to perform active monitoring of the referral system and the implementation of the recommendations from this Strategy. In regard to this strategic objective, the Transitional Justice Strategy recommends that relevant institutions at different levels of government ensure funds for those activities and transparent procedures of allocation of funds to civil society organisations.

The Transitional Justice Strategy gives a particular attention to sustainability of strategic activities. In this regard, it is recommended that the funds for strategic activities be provided from the budgets and also through the establishment of the public-private partnerships. However, in order to comply with this recommendation, it is necessary to adopt the relevant amendments to the laws on the public-private partnership adopted in the RS and the Brcko District and it is necessary to adopt a similar law also in the BIH Federation.

In the end, although the Transitional Justice Strategy takes a comprehensive approach to the provision of psycho-social services to victims of war and other traumatised persons, it recognizes the need for developing a separate policy paper which will focus on victims of torture and sexual violence. The need for a separate policy paper arises from the specific nature of trauma and the signs and symptoms of trauma, caused by torture and sexual violence, in women, children and men.
STRATEGIC OBJECTIVE 1.2
To improve mechanisms for employment and self-employment of victims of war and persons with disabilities for the purpose of their social reintegration and economic independence

For the purpose of achieving this strategic objective, the Transitional Justice Strategy strongly recommends that victims of war be recognized as rehabilitation right holders on the ground of past human rights violations. In this regard, it is necessary to amend the relevant entity laws on professional rehabilitation, training and employment of persons with disabilities and the entity employment strategies and to initiate the adoption of the law on professional rehabilitation, training and employment of persons with disabilities in the Brcko District.

Generally, in order for all components of this strategic objective to be fully achieved, the Transitional Justice Strategy recommends a comprehensive analysis which will include the labour market needs analysis, an analysis of professional capacities of victims of war and persons with disabilities as well as an analysis of solutions in other countries (comparative analysis) in order to enable employment and self-employment of these categories of persons. All these analyses are important for continuous updating of the rulebook on enumeration of the jobs that persons with disabilities and victims of war can perform and for the development of a database of victims of war and persons with disabilities, their qualifications, work capability, age and gender.

In this segment of rehabilitation as well, the Transitional Justice Strategy recognizes the need for involving the civil society organisations in the relevant activities, because of their experiences and close relations with the beneficiaries. In this regard, it is necessary to establish standards for certification and institutionalisation of such organisations at the state and entity levels and to train civil society organisations in professional monitoring of implementation of the laws and strategies governing employment and self-employment of victims of war and persons with disabilities. Regarding the creation of labour centres, the Transitional Justice Strategy recommends that the RS Law on Professional Rehabilitation, Training and Employment of Disabled Persons be amended in such a way that all institutions, including NGOs, are allowed to create labour centres, in accordance with legally defined standards.

The Transitional Justice Strategy foresees also measures for continuous training of professionals and the appropriate modes of funding in order to ensure implementation and sustainability of the strategic activities. Just like in the segment dealing with psycho-social services to victims of war and persons who were traumatised, the Transitional Justice Strategy foresees the funding of strategic activities from the budgets of the entities and the Brcko District, while additional
funds would be provided through public-private partnerships. In addition to public-private partnerships, the Transitional Justice Strategy allows for the possibility that different levels of government define other systems of funding, like micro-credit funds, in order to provide an important incentive primarily to self-employment of those categories of the population.

The success of the whole process of employment and self-employment of victims of war and persons with disabilities depends on raising awareness of war victims, persons with disabilities, decision-makers, public institutions, private sector and the society as a whole about the right to work and the right to equal opportunities for all, which will result in destigmatisation of these categories of persons and their rehabilitation and social reintegration. In this regard, the Transitional Justice Strategy recognizes the need for organising focused information and educational campaigns. All these activities will be implemented in cooperation with the civil society organisations.

STRATEGIC OBJECTIVE 1.3
To ensure a systemic approach to inclusion of victims of war and persons with disabilities in various forms of creative and sporting activities, as specific forms of rehabilitation

The Transitional Justice Strategy recognizes the need for including victims of war and persons with disabilities in policy making processes and the programme for activities aimed at reaching the sporting, cultural and other creative potential of these categories of the population, which is foreseen in the Preamble and the relevant Articles of the Convention on the Rights of Persons with Disabilities.

In view of the fact that some NGOs have been implementing the programmes over many years through which victims of war and persons with disabilities are included in different activities with a view to releasing their creative potential, the Transitional Justice Strategy here too recognizes the importance of institutionalisation of these organisations, in accordance with the standards for certification and institutionalisation to be defined at the entity and state levels.

The Strategy recognizes the need for amending the existing legal framework for sports, i.e. those legal provisions about conditions for developing and utilizing the sporting potential of persons with disabilities. In this regard, the Transitional Justice Strategy defines recommendations for funding of not only mainstream sporting

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119 See explanation of strategic objective 1.1. (To improve institutional standards for providing adequate psycho-social services to victims of war and traumatised persons) in the field of psycho-social support to victims of war and traumatised persons).
120 ibid.
121 The UN Convention on the Rights of Persons with Disabilities, Preamble and Articles 1,3, 4 and 30
activities but also recreational sporting activities in order to achieve the goals of the *Convention on the Rights of Persons With Disabilities*.\(^\text{122}\) It is also necessary to ensure the implementation of the legal provisions on physical accessibility of sporting venues (to persons with disabilities) as well as their use, through building capacities of inspections which monitor the implementation of the relevant provisions of the sports law.

The *Transitional Justice Strategy* recognizes the need for continuous training of experts who will be working in this field, and recommends creative arrangements for funding all strategic activities. On the one hand, it is foreseen that the funds will be secured from the budgets at all levels of government, while additional funding would be ensured through the public-private partnerships.\(^\text{123}\)

In the end, the success of this component of rehabilitation depends on how much decision-makers, relevant institutions and the society as a whole will be sensitised, as well as on the awareness of persons with disabilities and victims of war about their rights. For this reason, the *Transitional Justice Strategy* recognizes the need for organising focused and broad information and educational campaigns which will raise awareness of all segments of the society about the rights of these categories of the population. All these activities will be implemented in cooperation with the civil society organisations.\(^\text{124}\)

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\(^{122}\) Ibid.

\(^{123}\) See explanation of strategic objective 1.1. (To improve institutional standards for providing adequate psycho-social services to victims of war and traumatised persons) in the field of psycho-social support to victims of war and traumatised persons, as a form of rehabilitation.

\(^{124}\) Ibid.
<table>
<thead>
<tr>
<th>Strategic objectives</th>
<th>Time frame (months)</th>
<th>Responsible institution/s</th>
<th>Performance indicators measuring whether the objective is achieved</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>STRATEGIC GOAL 1:</strong> Improve rehabilitation mechanisms with a view to overcoming the consequences of the war 1992-1995</td>
<td></td>
<td><strong>1.1 To improve institutional standards for providing adequate psycho-social services to victims of war and traumatised persons</strong></td>
<td>BIH Ministry of Civil Affairs, FBIH Ministry of Health, RS Ministry of Health and Social Welfare, Department of Health and Other Services of the Brcko District</td>
</tr>
<tr>
<td></td>
<td>12 24 36 48 60</td>
<td></td>
<td>Improved system of provision of psycho-social services to war victims and traumatised persons</td>
</tr>
<tr>
<td><strong>1.2 To improve mechanisms for employment and self-employment of victims of war and persons with disabilities for the purpose of their social reintegration and economic independence</strong></td>
<td></td>
<td>BIH Ministry of Civil Affairs, FBIH Ministry of Labour and Social Policy, RS Ministry of Labour, War Veterans and Disabled Persons’ Protection, FBIH Ministry for Issues of Veterans and Disabled Veterans of the Defensive-Liberation War, Brcko District Government, FBIH Government, RS Government, BIH Agency for Labour and Employment, FBIH Employment Institute, RS Employment Institute, Brcko District Employment Institute</td>
<td>Increased number of employed and self-employed victims of war and persons with disabilities</td>
</tr>
<tr>
<td><strong>1.3 To ensure systemic approach to inclusion of victims of war and persons with disabilities in various forms of creative and sporting activities, as a specific form of rehabilitation</strong></td>
<td></td>
<td>BIH Council of Ministers, BIH Ministry of Civil Affairs, BIH Ministry for Human Rights and Refugees, FBIH Ministry of Culture and Sports, RS Ministry of Families, Youth and Sports, Department for Economic Development, Sports and Culture of the Brcko District, relevant cantonal ministries, FBIH Government, RS Government, cantonal governments, Brcko District Government</td>
<td>Established system for rehabilitation of war victims and persons with disabilities through creative and sporting activities</td>
</tr>
</tbody>
</table>
C Memorials

In almost all municipalities across BIH monuments were erected, and continue to be erected, in memory of the events from the past war. Those memorials are in most cases built to honour war veterans and civilian victims of war from one ethnic group, and military formations or policies that dominate in the given local community. However, as stated above, Bosnia and Herzegovina does not have the appropriate legislation in place which would adequately regulate the process of memorialisation. There are no appropriate standards and criteria for erecting memorials nor is there the adequate understanding of the process of memorialisation in the context of transitional justice. Also, as stated above, the building of memorials is a complex issue which generates many controversies and unhappiness in the public discourse in BIH.

In order to solve the problems identified by the participants of the consultation process and the relevant international bodies, and in accordance with the vision of the area of reparations and memorials, the Transitional Justice Strategy defines the following strategic goal for memorialisation.

**STRATEGIC GOAL 1**
To build and preserve collective memory through erecting memorials and launching a dialogue on the past, with a view to preventing recurrence of crimes

In order to make the defined strategic goal measurable and specific, the following strategic objectives are defined in the Transitional Justice Strategy to lead the way to the goal achievement:

**STRATEGIC OBJECTIVE 1.1**
To establish standards and criteria for erecting memorials and holding commemorative activities.

**STRATEGIC OBJECTIVE 1.2**
To launch a dialogue about the past through adequate processes of memorialisation and commemoration, with a view to building a culture of memory.

**STRATEGIC OBJECTIVE 1.1.**
To establish standards and criteria for erecting memorials and holding commemorative activities

The purpose of this strategic objective is to define standards and criteria for erecting memorials and organising commemorative events and to adopt the appropriate legislation and policies which will incorporate those standards and criteria. It is important to emphasize that under the above-mentioned survey,
75.1% of all respondents in BIH believe that a law should be adopted at the level of BIH which would regulate the building of monuments and memorials and organising commemorative events.\textsuperscript{125} Also the UN Working Group on Enforced or Involuntary Disappearances agrees with those findings. It says in its report that, “A national law on the issue of memorials should be enacted. Such a law should set the criteria and the process for establishing memorials in memory of all victims across the country, as families complained that memorials they wished to erect were disallowed by local authorities controlled by those from other ethnic groups.”\textsuperscript{126}

The Transitional Justice Strategy recognizes the need for organising an open and inclusive consultation process with professional and general public as well as with the representatives of institutions at all levels of government. The consultations would have consultative, and informative and educational functions. The consultative function should result in defining a process of memorialisation adequate for the BIH context, i.e. in defining standards and criteria for erecting memorials and organising commemorative activities and in reaching a consensus over a joint remembrance day. The informative and educational function of the consultation process should result in education about the process of memorialisation in the context of transitional justice, explanation of the characteristics of the process i.e. its private-emotional and public-pedagogical and other functions with a special emphasis on the emotional need for and importance of organising commemorative activities in terms of protection of memory of important past events, respect for victims and acknowledgement and acceptance of their being victims, building “a site of conscience” in BIH, the possibility of building a joint memorial in memory of all victims of the war in BIH, and the possibility of building a single, uniform memorial in all local communities in memory of all the victims from those local communities. The conclusions of the consultation process will be included in the relevant legal and policy framework at the state level. Its development and adoption are foreseen in the Transitional Justice Strategy. Accordingly, there is a need to harmonise all existing laws and policies dealing with this issue at the entity, cantonal and municipal levels of government and at the level of the Brcko District with the state-level law and policy.

In the end, the Transitional Justice Strategy recommends that an analysis be made of the current process of memorialisation and that memorialisation should be harmonised with the set standards and criteria and an enacted framework law and policy at the state level, which will fully regulate this issue.

\textsuperscript{125} According to ethnic background of respondents, this view is supported by 84.1% of Bosniak respondents, 70.8% of Serb and 52.6% of Croat respondents and 85.6% of respondents from the group of others. Facing the Past and Access to Justice From a Public Perspective, UNDP, 2010, p. 28 (www.undp.ba)

\textsuperscript{126} The UN Working Group on Enforced or Involuntary Disappearances, Report, November 2010, A/hrc/16/48/Add.1, A/HRC/16/48/Add.1, para 48
STRATEGIC OBJECTIVE 1.2.
To launch a dialogue about the past through adequate processes of memorialisation and commemoration, with a view to building a culture of memory

The purpose of this strategic objective is to launch a dialogue about the past and important contemporary social issues related to the past. This will draw on the implementation of strategic objective 1.1 and on establishing “a site of conscience” in BIH.

Within this strategic objective, the Transitional Justice Strategy foresees the organisation of the appropriate information and educational campaigns on the importance of the process of memorialisation and commemoration, their goals in the context of transitional justice and on defined standards and criteria for erecting memorials. Dissemination of information to and education of citizens on the need for building a “site of conscience” in BIH, as a specific form of public space and monument, will be given a special place in the public campaigns. The Transitional Justice Strategy also recognizes the need for including the civil society in the process of informing and educating the public on the process of memorialisation and commemoration. In this regard, the Strategy recommends building capacities of the civil society organisations in order for the civil society, on the one hand, to be fully capable of informing and educating its beneficiaries and the public at large on these processes and, on the other, to be able to perform active monitoring of respect for the set of standards and criteria and implementation of the framework law and policy. The goal of including the civil society in these processes is to keep a dialogue about the past and contemporary social issues related to the past continually “live”, in order to fully achieve the goals of transitional justice in the context of memorials. In regard to this strategic objective, the Transitional Justice Strategy proposes that the relevant institutions at all levels of government provide funds necessary for the activities related to memorialisation and commemoration and ensure transparent procedures for allocation of funds to the civil society organisations. In allocating funds, a particular attention should be given to those associations which are dealing with women-victims of war in order to ensure the inclusion of their experiences in the process and to present their experiences through memorialisation in the way which is adequate for them.

For the purpose of ensuring a continuous social dialogue, the Transitional Justice Strategy recognizes the need for building a “site of conscience” as a specific form the aim of which is to develop a pedagogical function and a dialogue function of memorials i.e. public monuments, with a view to building and protecting democratic values, culture of remembering and human rights, in order to prevent traumatic past from recurring. This purpose of a “site of conscience” can be
achieved through stimulating an active engagement of citizens in a dialogue on the legacies of the past and contemporary social processes related to some events or phenomena that are marked through the “sites of conscience”. Building a “site of conscience” will be based on a consultation process and the framework laws and policies. The Transitional Justice Strategy recognizes the need for a dialogue on human rights violations and war crimes that happened in BIH between 1992 and 1995 and on some important contemporary social issues related to BIH’s traumatic past through building and organizing a “site of conscience” to spread outside BIH. More specifically, the Transitional Justice Strategy recommends that the “sites of conscience” in BIH become an important resource and the world heritage for the purpose of preventing human rights violations and war crimes in other countries. In this regard, the Transitional Justice Strategy recommends that the “sites of conscience” in BIH be promoted in order to attract visitors from abroad, in addition to those from BIH, who would thereby be included in a broader dialogue. In any case, every promotion, visit or use of the “sites of conscience” in BIH have to be in full compliance with the UN Global Code of Ethics for Tourism\(^{127}\), in order to prevent vulgarisation of the “sites of conscience”, humiliation of the private-emotional function of the memorials and hurting of victims.

In the end, the Transitional Justice Strategy envisages the possibility of building a single memorial in memory of all victims of war in BIH and of building a single, uniform memorial in the local communities, in memory of all victims in those local communities. Erection of such memorials will also be based on the consultation process and the framework laws and policies. The goal of this approach is to mark with uniform memorials at the central and local levels the killings of all victims, to recognize pain and suffering of their families and to make a contribution to overcoming the divide in the BIH society. This strategic objective is particularly important for the local communities because of the conviction that monuments are erected in the communities to honour only the members of the majority while minority ethnic groups in those communities are not allowed to build monuments in memory of their victims. The Transitional Justice Strategy believes that a single memorial in memory of all victims from a given local community would solve that problem.

\(^{127}\) UN’s Global Code of Ethics for Tourism
### STRATEGIC GOAL 1:
To build and preserve collective memory through erecting memorials and launching a dialogue on the past, with a view to preventing recurrence of crimes

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<td>1. To establish standards and criteria for erecting memorials and organising commemorative activities</td>
<td>12 24 36 48 60</td>
<td>BIH Ministry for Human Rights and Refugees, BIH Council of Ministers</td>
<td>Standardised erection of memorials and organisation of commemoration activities</td>
</tr>
<tr>
<td>1. To launch a dialogue on the past through adequate processes of memorialisation and commemoration, with a view to building a culture of memory</td>
<td>12 24 36 48 60</td>
<td>BIH Council of Ministers, BIH Ministry for Human Rights and Refugees, RS Ministry of Trade and Tourism, FBIH Ministry of Environment and Tourism, Brcko District Government</td>
<td>Erected memorials and commemoration activities organised which are in harmony with adopted criteria and standards, and serve the purpose of launching a dialogue on the past</td>
</tr>
</tbody>
</table>
Institutional reforms

A number of initiatives implemented in BIH after the war resulted in structural reforms at all levels of government. As said above, most of those activities were required under the Dayton Peace Agreement or were initiated by the international community, while the domestic political elites were the agents implementing those activities. More specifically, new institutions were formed in BIH, such as the Court and the Office of the Prosecutor of BIH, the High Judicial and Prosecutorial Council, the BIH Missing Persons Institute, the SIPA (State Investigative and Protection Agency), OSA (Intelligence and Security Agency) and others; a single defence policy of the country was developed, and the entity armies were integrated into the Armed Forces of BIH; new laws were enacted, such as the criminal law legislation (BIH Criminal Procedure Code and BIH Criminal Code), in the area of psycho-physical protection of witnesses (Law on the Protection of Witnesses Under Threat and Vulnerable Witnesses and Law on Witness Protection Programme) and in the area of defence (BIH Law on Defence); the process of certification was implemented in the police and the process of reappointment in the judiciary, as examples of vetting, i.e. background checks to assess professional capacity and moral integrity of the persons holding positions in law enforcement, judicial or prosecutorial office etc.

However, there is still lack of confidence on the part of citizens of BIH in government institutions. The participants of consultations, organized within the process of developing a Transitional Justice Strategy, focusing on institutional reforms as a transitional justice mechanism, concentrated primarily on the vetting process and emphasized also other problems related to this issue:

- The public in BIH is not sufficiently informed about the vetting process;
- Inadequate legal framework for the vetting process;
- The weaknesses of the past vetting processes;
- Reservations towards the will of institutions to take responsibility for inadequate actions;
- Level of interaction and communication between citizens, the civil society and institutions is not satisfactory;
- Insufficient representativeness of institutions, especially in returning communities;
- Political influence on some institutions.

It was emphasized during the consultations that the reason for the lack of confidence in institutions is a strong belief that the persons who are believed to be responsible for human rights violations and war crimes committed during the armed conflict between 1992 and 1995 still work in those institutions.
The *Transitional Justice Strategy* defines solutions which are compatible with the activities which are currently taking place in BIH. But this makes a huge contribution to achieving a more coherent and a more comprehensive approach to solving the problems within institutional reforms as a transitional justice mechanism, which will contribute to establishing legitimacy and integrity of institutions, protecting the democratic values and rights of BIH citizens and preventing repetition of traumatic past.

**An overview of the current situation**

The following problems in this area were emphasized during the consultation process organized within the process of developing a *Transitional Justice Strategy*:

**Vetting**

*Lack of sufficient knowledge about the vetting process in the BIH public*

The public in BIH lacks the necessary general knowledge about the meaning and goals of the vetting process. The public lacks information about the results of certification of police officers and judicial reappointments, as examples of vetting and about the ongoing vetting process. Generally, there is a prevailing view in BIH that the institutions which carried out and continue to carry out vetting were not successful enough and that some of the persons responsible for past human rights violations still work in the government institutions. One of the reasons for this belief is that some certified police officers were later indicted and eventually found guilty of war crimes, but also because of the fact that the certification and reappointment processes were taking place “behind closed doors” and that public and broad consultations were not organised to identify the institutions and positions which should be vetted, the way in which the vetting process should be organised, the requisite checking period and other similar issues. Still, the public shows great interest in the vetting process, which was proved within the consultation process and the survey conducted by the UNDP. The survey shows that nearly 90% of all respondents believe that those who violated human rights in the past should be banned from public office.¹²⁸

*Lack of valid legal framework for vetting process*

Currently, different institutions of BIH are mandated to carry out vetting within their respective areas of responsibility. These are: the *BiH Civil Service Agency*, entity *Civil Service Agencies*, and the *Employment Board of the Brcko District; the BiH Central Electoral Commission; the SIPA; the OSA; and the HJPC via the Office of Disciplinary Counsel*. The work of these institutions is regulated by the relevant

legislation (the BIH Electoral Law; the appropriate laws on civil service at the levels of BIH, entities and the Brcko District; the Law on HJPC; the Data Protection Law, etc.).

A single basis for vetting is contained in Article IX (1) of the BIH Constitution which defines who may not hold a public office. That provision of the Constitution reads as follows: No person who is serving a sentence imposed by the International Tribunal for the former Yugoslavia, and no person who is under indictment by the Tribunal and who has failed to comply with an order to appear before the Tribunal, may stand as a candidate or hold any appointive, elective, or other public office in the territory of Bosnia and Herzegovina.129

This legal basis is not quite appropriate for the vetting process in the context of transitional justice nor does it satisfy the identified needs of the BIH society, since it refers only to those persons who are under indictment for war crimes, i.e. those persons who are serving a sentence. However, Annex VII to the Dayton Agreement for Peace (CHAPTER ONE: PROTECTION, Article 1: Rights of Refugees and Displaced Persons, paragraph 3) contains a broader basis for vetting, which directly recognizes the need for such a process in order to ensure, specifically, returns: The Parties shall take all necessary steps to prevent activities within their territories which would hinder or impede the safe and voluntary return of refugees and displaced persons. To demonstrate their commitment to securing full respect for the human rights and fundamental freedoms of all persons within their jurisdiction and creating without delay conditions suitable for return of refugees and displaced persons, the Parties shall take immediately the following confidence building measures [...] dismissal or transfer, as appropriate, of persons in military, paramilitary, and police forces, and other public servants, responsible for serious violations of the basic rights of persons belonging to ethnic or minority groups.130

So, in the context of implementation of the above provision of Annex VII to the Dayton Peace Agreement, as well as of the Revised Strategy of BIH for the Implementation of Annex VII of the Dayton Peace Agreement, the vetting process is one of the crucial activities. A successful vetting process results in the belief that institutions function in the best interest of citizens and ensures protection of the rights and equality. For this reason, there is a need for the vetting process to expand to include the institutions that have remained outside the process, as it was emphasized during the consultation process.

129 The BIH Electoral Law expands the application of this provision to exclude from electoral process those persons who are evading justice or are serving a sentence imposed by a court in BIH, the courts in the region or in a third country.

130 Dayton Peace Agreement
www.oscebih.org/dejtonsiki_mirovni_sporazum/BS/annex7.htm
Certification and reappointment

In BIH, a comprehensive vetting process was carried out in the police structures (certification) and in the judiciary (reappointment). The structural reform of these institutions was implemented simultaneously with those processes. The certification process\(^{131}\) in the police was carried out in the period 1999-2002. It was led by the IPTF (International Police Task Force), while the reappointment process\(^{132}\) in the judiciary was carried out between 2002 and 2004. The reappointment process was implemented from the beginning to an end by the Independent Judicial Commission (IJC) and the three High Judicial and Prosecutorial Councils (HJPC BIH, HJPC RS and HJPC FBIH). There were some major methodological differences between the vetting processes in the police and judiciary: certification in the police was based on performance appraisal, while the IPTF had the responsibility of proving that the police officers were (not) suitable for office; within the reappointment process, all offices in the judiciary were declared vacant and both the incumbents and new candidates, who did not hold a judicial office, were given equal opportunities and could apply under the same conditions. Within that process, the burden of proof rested solely on the applicants for judicial and prosecutorial offices (who had the responsibility of proving that they were suitable for judicial or prosecutorial office).

Results of the process

Of around 24,000 registered police officers, around 17,000 were certified to work in the police. In parallel, structural police reforms were implemented: in order to ensure independence of the police from political influence, the institutions of police directors were formed in the entities, and those of police commissioners in the cantons; in order to build capacities of the police, training was organised and two police academies were formed; police uniforms and insignia were changed, as a symbolic measure to restore citizen confidence in the police, etc.

\(^{131}\) The process was launched out of conviction that the individuals who violated human rights during the war, those who were under the influence of political/ethnic elites or the individuals who for other reasons deepened citizen mistrust in the police were still working for the police. For more information see Alexander Mayer-Rieckh, Vetting to Prevent Future Abuses: Reforming the Police, Courts, and Prosecutor’s Offices in Bosnia and Herzegovina from Alexander Maxer-Rieckh and Pablo de Greiff, ed. Justice as Prevention, Vetting Public Officials in Transitional Societies, ICTJ, 2007, Vetting Public Employees in Post-conflict Settings, Operational Guidelines, UNDP, 2006 and Dragan Popović, Transitional Justice Guidebook for Bosnia and Herzegovina, UNDP, 2009

\(^{132}\) The IJC had three tasks to do: a) to streamline the network of courts and offices of the prosecutor; b) to lay foundations for joint teams to appoint all judges and prosecutor in the country; and the most adequate ones - c) to conduct a procedure for re-appointment of all judges and prosecutors and to check their professional and ethic suitability. The reasons for launching this process were: politicised and mono-ethnic judiciary, property rights were not protected, a very small number of war crimes cases, attacks against returnees in most cases remained unpunished, etc. Alexander Maxer-Rieckh and Pablo de Greiff, ed. Justice as Prevention, Vetting Public Officials in Transitional Societies, ICTJ, 2007, Vetting Public Employees in Post-conflict Settings, Operational Guidelines, UNDP, 2006 and Dragan Popović, Transitional Justice Guidebook for Bosnia and Herzegovina, UNDP, 2009.
As a result of the judicial reform, around 30% of the courts and around 1% of the prosecutor's offices were closed down; a (relatively) multiethnic judicial structure was created; and a single HJPC was formed to ensure a single procedure of judicial and prosecutorial appointments in BiH; the grievance redress and performance appraisal mechanisms were introduced through the Office of Disciplinary Counsel.

However, the BIH public is still dissatisfied with those processes, because of the identified weaknesses, primarily in the police vetting process. For example, some political officers were granted a vetting clearance and kept their certification even in the face of criminal charges: some of them were later accused and found guilty of war crimes. On the other hand, during the consultations on a Transitional Justice Strategy, some participants emphasized that the alleged bias on the part of some judges and prosecutors was the reason for a slow pace of prosecution of war crimes cases. Citizens are dissatisfied with the certification and reappointment processes also because those processes took place “behind closed doors”, which gives room for different interpretations.

Lack of other reform activities towards achieving legitimacy and integrity of institutions

As said above, vetting, as an individual activity within the institutional reform, is not sufficient for achieving the full legitimacy and integrity of institutions, i.e. for protecting democratic values and human rights and ensuring non-repetition of traumatic past. For this reason it is important to launch activities to ensure accountability of institutions for their actions (primarily through internal and external control mechanisms and a census and identification), independence, representativeness so as responsiveness of institutions toward citizens needs including various symbolic activities such as apology, building memorials, organising commemorations, naming streets, institutions, schools, etc. after victims, human rights activists, and other symbolic activities, which should all result in integrity and legitimacy of institutions.

As stated above, the participants of the consultation process for the Transitional Justice Strategy expressed some reservations over the will on the part of institutions to be responsible for their actions. They emphasized that: institutions do not have the possibility of recognizing the needs of citizens because communication with citizens and the civil society is not at the satisfactory level; institutions are not representative enough, particularly in returning communities; institutions are liable to political pressure and there is a widespread belief that they promote primarily the interests of only some categories of citizens. The integrity and legitimacy of institutions are undermined by their insufficient engagement in the activities that would have symbolic effects in terms of providing satisfaction to victims, devictimisation and social reintegration. This problem is directly linked to what has been said in the context of fact-finding and truth-telling and memorials,
that the facts about the armed conflict in BiH have not been established yet, that
the activities of the judicial institutions are not enough for achieving the complete
feeling of justice, meeting victims’ and society needs in terms of finding the truth
about the armed conflict, recognizing and acknowledging atrocities, or for
launching a comprehensive and open dialogue about the past.133

**Proposed solutions**

After the end of the armed conflict in BiH some important institutional reform
activities were carried out and still continue to be implemented in the form of the
legislative and institutional reforms and the vetting of the staff holding professional
or elective positions in various institutions. However, it was emphasized during the
consultation process that there was still a lack of confidence in the government
institutions and that the institutions, as such, were not able to achieve the goals of
this mechanism of transitional justice: building institutions of integrity and
legitimacy, effective protection of democratic values and human rights and
prevention of crimes from recurring.

In accordance with the situation analysis, the *Transitional Justice Strategy* defines
solutions to overcome those problems and to achieve the vision of institutional
reforms, as a separate transitional justice mechanism.

**VISION OF THE MECHANISM**

To improve professionalism, representativeness and credibility of public institutions
in the context of their development into guarantors of respect for the highest human
rights standards.

With a view to solving the problems identified by the participants of the
consultation process as well as by the stakeholders in this field, the *Transitional
Justice Strategy* defines the following strategic goals, in accordance with the vision
of this transitional justice mechanism.

**STRATEGIC GOAL 1**

To establish a modern legal framework for continuous vetting of employees in public
institutions at all levels of government and to ensure that public institutions act in
compliance with the principles of professionalism, transparency and full
accountability to citizens

**STRATEGIC GOAL 2**

To raise awareness and understanding of citizens and institutions about the
importance of the transitional justice process and institutional reforms in post-
conflict societies and activities of institutions.

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133 See chapters on fact-finding and truth-telling, and memorials.
**STRATEGIC GOAL 1**
To establish a modern legal framework for continuous vetting of employees in public institutions at all levels of government and to ensure that public institutions act in compliance with the principles of professionalism, transparency and full accountability to citizens

In order to make the defined strategic goal measurable and specific, the following strategic objectives are defined in the *Transitional Justice Strategy* to lead the way to the goal achievement:

<table>
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<tr>
<th>STRATEGIC OBJECTIVE 1.1</th>
<th>To enact a law on vetting in public institutions and to improve present laws governing this issue</th>
</tr>
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<tbody>
<tr>
<td>STRATEGIC OBJECTIVE 1.2</td>
<td>To improve internal and external monitoring mechanisms of functioning of public institutions and of vetting process, and to organize symbolic activities of institutions to ensure their legitimacy and accountability to citizens</td>
</tr>
</tbody>
</table>

**STRATEGIC OBJECTIVE 1.1**
To adopt a law on vetting in public institutions and to improve existing laws governing the issue of vetting

Since the vetting process in BiH is not coordinated or comprehensive enough and since there is a lack of coordination among the institutions responsible for vetting, the *Transitional Justice Strategy* recommends that a law on vetting be adopted and that the existing laws relevant for vetting be harmonized with the new law (*BiH Election Law, Law on Civil Service in the Institutions of BiH, Law on Civil Service of FBiH, Law on Public Administration of the RS, Law on Civil Service in Administration Bodies of the Brcko District of BiH, Law on the HIPC, the Secret Data Protection Law, etc.*). The law on vetting will be based on citizen needs and the consultation process involving the professional community and the public at large, and the representatives of institutions at all levels of government. The process will have informative and educational and consultative functions. Regarding the informative and education function, the consultations will clarify what the vetting process means, its purpose and goals. On the other hand, the consultative function of the consultations will result in learning about the citizen needs in regard to the vetting process, recommendations for the vetting standards and criteria, a design of the process, proposals which institutions, from which government levels and which positions in them will be screened, and in the end, the requisite period for vetting. Prior to the consultation process, a proposal for the vetting concept and criteria will be drafted, to serve as a policy basis for the consultations.
It is important to emphasize that the following criteria and standards will be incorporated in the future law on vetting: 1) to ensure the highest human rights standards\textsuperscript{134} in the vetting process, which are defined in various binding international agreements and treaties and interpretative documents; 2) to develop programmes for employment after the vetting process is completed, which will be based on gender equality, representativeness and an increased representation of minorities in public institutions; 3) to ensure rehabilitation and social reintegration programmes for the persons going through the vetting process, which will include training on human rights, particularly on those which were violated in the past, community service, retraining, etc.; 4) fully transparent information on the institutions whose staff must undergo vetting, and on the vetting results.

In the end, the following analyses will be conducted prior to developing a new law: 1) a comparative analysis of the vetting processes and similar activities in other states, including the experiences in the implementation of the programmes for rehabilitation and social reintegration of those who did not gain a certificate for work; 2) the analysis of the previous vetting process in BIH, including experiences in the implementation of the rehabilitation and social reintegration; 3) the analysis of potential weaknesses of the present laws in BIH governing vetting.

The BIH Ministry of Justice formed in 2010 a working group in charge of drafting a lustration law.\textsuperscript{135} The Transitional Justice Strategy supports through this strategic objective the working group's activities and will share the results of the consultation process and analyses with the group.

**STRATEGIC OBJECTIVE 1.2**

To improve internal and external monitoring mechanisms of functioning of public institutions and of vetting process, and to organize symbolic activities of institutions to ensure their legitimacy and accountability to citizens

As stated above, the vetting process is not sufficient for achieving the goals of this transitional justice mechanism; rather, some other reforms are necessary. Within this strategic objective, the *Transitional Justice Strategy* defines solutions to

\textsuperscript{134} Right to work in public service, right to protection against unlawful attacks on honour and reputation; right to an effective remedy; right to presumption of innocence; right to a fair and public trial before a competent, independent and impartial tribunal; right to equality before the courts and equal protection of the law; right to work, etc. see footnotes 39 – 45.

\textsuperscript{135} Although lustration and vetting by methodology and goals are different processes, “lustration” in the context of forming a working group for developing a *law on lustration* and its activities is used interchangeably with vetting. The *Transitional Justice Strategy recommends undergoing vetting process* and does not use the term “lustration” interchangeably with “vetting”, but rather **makes a strict difference** between these two processes. For the difference between vetting and lustration, see the Glossary in Annex 5 to the *Transitional Justice Strategy*. 
introduce accountability of institutions for their actions through internal and external control mechanisms and census and identification of employees, and also through the recognition, by institutions, of the importance of symbolic activities\textsuperscript{136} to provide satisfaction first to victims and then to the society as a whole, in order to ensure integrity and legitimacy of institutions. In regard to this strategic objective, the \textit{Transitional Justice Strategy} reaffirms the need for such activities primarily in those institutions which will be required to go through the vetting process.

Regarding this strategic objective, the \textit{Transitional Justice Strategy} recommends an analysis of internal control mechanisms in institutions, focusing primarily on the complaints systems. The Strategy recommends conducting analysis of citizens’ complaints against public officials and officers (including the analysis against which departments and officers citizens submitted their complaints most), as well as of information on efficiency, transparency and impartiality/partiality of the complaints systems, and the reforms undertaken to improve the organisations. On the other hand, the \textit{Transitional Justice Strategy} recommends that the same analysis be conducted among the beneficiaries of the public services (to find out whether the institutions provide mandated services to citizens), in order to define recommendations for changing the complaints handling mechanisms, codes of professional conduct and ethics of institutions, etc.

Regarding the external monitoring of institutions and of the vetting process, the \textit{Transitional Justice Strategy} recommends two concepts: the monitoring by the civil society and the monitoring by official institutions. Regarding the former concept, the \textit{Transitional Justice Strategy} recommends that a network of the civil society organisations be formed to monitor the work of institutions and of the vetting process. In order for the network to be fully functioning, it is necessary to ensure continuous training on the vetting process and the functioning of institutions, the legal and institutional framework and all necessary aspects of the work of institutions.

Regarding an external monitoring by official institutions, the \textit{Transitional Justice Strategy} relies on the legal authority of the \textit{Institution of Human Rights Ombudsmen of BIH} to launch ex officio investigations into human rights violations\textsuperscript{137} and recommends that the \textit{Institution of Human Rights Ombudsmen of BIH} perform continuous monitoring of those institutions which will be required to go through the vetting process. On the other hand, the \textit{Transitional Justice Strategy} thinks it is important to raise awareness of citizens about their possibility to file complaints to the \textit{Institution of Human Rights Ombudsmen of BIH} about actions of

\textsuperscript{136} Apologies, erecting memorials, organising commemorations, naming streets, institutions, schools after victims, human rights activists, etc.

\textsuperscript{137} \textit{Law on the Human Rights Ombudsmen of BiH}, Article 2.
the public officers, particularly those working in the institutions that will be required to undergo vetting.

As a special form of activity aimed at introducing accountability of institutions for their actions, the *Transitional Justice Strategy* recommends that the institutions should make the lists of their employees, their qualifications and CVs available to the public. In this way, on the one hand, citizens would get full insight into the persons who are instrumental in allowing them to exercise their rights, while, on the other hand, citizens could make suggestions regarding the employees and their actions. This activity is crucial for performance appraisal of public officers and for organising adequate capacity building programmes in public institutions. The release of lists of employees will be directly linked to the vetting process, since the full picture of the public service employees will be made upon completion of this process.

In the end, the *Transitional Justice Strategy* reaffirms the need for institutions, primarily those that will be in the focus of the vetting process, i.e. those institutions which employ individuals found to have violated human rights, to initiate some symbolic activities aimed at devictimisation, social reintegration and satisfaction to war victims and the society as a whole. Symbolic activities in this context mean erecting or funding the erection of memorials, apologies, organising commemorations, naming streets, institutions, schools after victims, human rights activists, etc. These activities will make an important contribution to building legitimacy and integrity of institutions i.e. to restoring citizen confidence in the public institutions.
<table>
<thead>
<tr>
<th>Strategic objectives</th>
<th>Time frame (months)</th>
<th>Responsible institution/s</th>
<th>Performance indicators measuring whether the objective is achieved</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1. To adopt a law on vetting in public institutions and to improve existing laws</td>
<td>12 24 36 48 60</td>
<td>BIH Ministry of Justice</td>
<td>Improved system of vetting in public institutions</td>
</tr>
<tr>
<td>governing the issue of vetting</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.2. To improve internal and external monitoring mechanisms of functioning of</td>
<td>12 24 36 48 60</td>
<td>BIH Council of Ministers, BIH Ministry of Justice,</td>
<td>Improved systems of external and internal control of public</td>
</tr>
<tr>
<td>public institutions and of vetting process, and to organize symbolic activities</td>
<td></td>
<td>BIH Institution of Human Rights Ombudsmen</td>
<td>institutions covered by vetting process</td>
</tr>
<tr>
<td>of institutions to ensure their legitimacy and accountability to citizens</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
STRATEGIC GOAL 2
To raise awareness and understanding of citizens and institutions about the importance of the transitional justice process and institutional reforms in post-conflict societies and of activities of institutions

In order to make the defined strategic goal measurable and specific, the following strategic objectives are defined in the Transitional Justice Strategy to lead the way to the goal achievement:

STRATEGIC OBJECTIVE 2.1
To develop a mechanism for informing and educating citizens and institutions on transitional justice, vetting process and institutional reforms in a broader sense

STRATEGIC OBJECTIVE 2.2
To improve existing training programmes for the staff of institutions which will be covered by the vetting process with a view to building their capacities, sensitising them about particularly vulnerable groups and ensuring respect for the highest human rights standards in performing their duties.

STRATEGIC OBJECTIVE 2.1
To develop a mechanism for informing and educating citizens and institutions on transitional justice, the vetting process and institutional reforms in a broader sense

The Transitional Justice Strategy recommends that capacities of citizens and institutions should be built so that they understand the issue of facing the past generally, and the institutional reforms as a mechanism of transitional justice. In this regard, the Strategy recommends specific solutions such as focused informative and educational campaigns, activities of the network of the civil society organisations focusing on institutional reforms, and eventually, activities of institutions which will result in their better responsiveness to citizen needs. It is important to emphasize that all activities on raising citizen awareness and educating citizens on the vetting process and institutional reforms will be directly linked to the consultation process on the vetting process and its results. In the end, the Transitional Justice Strategy recognizes a particular need for introducing transitional justice in the curricula for primary and secondary schools and the universities in order to contribute further to creating the social climate in BIH which will be characterised by respect for victims, acknowledgement and recognition of their sufferings, condemnation of the crimes, building and fostering a culture of dialogue, democratic values and human rights, which will lead to prevention of conflict in the future.

Public campaign will have two specific focuses: the public in general and institutions at all levels. Also, the campaign will have two goals. The first goal is to educate the
public on the vetting process. In this regard, the campaign should make a public distinction between the notion of vetting and that of lustration; differentiate clearly between the vetting process, as an administrative process and a criminal proceeding, and inform the public on the existing vetting mechanisms in BIH, how they are implemented, and on the relevant legislation; inform the public and government institutions about the need for a new vetting process to be based on amended legislation, etc. The other goal is to inform the public and government institutions about the need for broader reforms which will result in an increased responsibility of institutions for their actions, an increased independence and representativeness, as well as an increased transparency, responsiveness and legitimacy.

The process of informing and educating the public and institutions will include also the network of the civil society organisations formed under the strategic objective 2.1, as well as the media. More specifically, the network of the civil society organisations and the media would play multiple roles. The first role would be informing the public about the work of government institutions in general or some of their departments, through the relevant information on their activities. In this way, the communication of BIH citizens with government institutions will be easier and citizens will understand better their mandates, i.e. they will understand better their own rights and how they can exercise them, they will learn about complaints mechanisms, how complaints are handled, mechanisms for protection against abuse, etc. The other role would be to inform institutions about citizen needs in general, i.e. about the needs of some categories of the population, in order for institutions to be focused on dealing with clearly defined needs. However, in order to ensure that the newly formed network of the civil society organisations and the media successfully inform and educate the public about the work of institutions and their mandates, the *Transitional Justice Strategy* recommends solutions for building capacities of the network and the media.¹³⁸

The *Transitional Justice Strategy* also recommends that institutions themselves make an effort toward informing and educating the public on their mandates and activities. The institutions can organise the so-called “open doors” or some other activities (such as issuing brochures, etc.) so that citizens get informed through direct contacts with the staff on all aspects of the work of institutions, procedures, etc. This would create a new possibility of recognizing citizen needs and would help design specific programmes within the institutions for a more adequate response to citizen needs.

In the end, within this strategic objective, the *Transitional Justice Strategy* recognizes the need for continuous activities of the public broadcasting services

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¹³⁸ See Strategic Objective 1.2 Institutional Reforms, in regard to education of the network of civil society organisations.
towards promoting the transitional justice process during the implementation of the Strategy. The public broadcasting services should provide space and capacities for their coverage of the process and organise special programmes devoted to issues covered by the Transitional Justice Strategy.

**STRATEGIC OBJECTIVE 2.2.**
To improve existing training programmes for the staff of institutions which will be covered by the vetting process with a view to building their capacities, sensitising them about particularly vulnerable groups and ensuring respect for the highest human rights standards in performing their duties

The *Transitional Justice Strategy* defines solutions for improving the programme for continuous training of public officers, with a focus on those institutions that will undergo a vetting process. The goal of the continuous training is to develop continually public officers, on the one hand, and on the other, to inform them about the highest human rights standards. This will make a contribution to ensuring integrity and legitimacy of institutions. In order to inform the public about the work of institutions, and to recognize and satisfy specific needs of citizens, the *Transitional Justice Strategy* recommends that specialist training be organised with a focus on solving specific problems and needs of citizens. In this regard, a special emphasis is put on the needs of war victims. In order for those needs to be recognised, the relevant institutions will carry out research in the areas they are responsible for in order to develop adequate action plans with a view to meeting and satisfying the needs of war victims and of other categories of citizens. In the end, due to the fact that some institutions, and especially those which will undergo the vetting process, maintain daily communication with extremely vulnerable categories of citizens (such as, for example, war victims), the *Transitional Justice Strategy* recognizes the need for organizing focused training, the aim of which would be to ensure an adequate and sensitive approach to those categories, in order to avoid re-victimisation.
<table>
<thead>
<tr>
<th>Strategic goal 2</th>
<th>To raise awareness and understanding of citizens and institutions about the importance of the transitional justice process and institutional reforms in post-conflict societies and of activities of institutions.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Strategic objectives</strong></td>
<td><strong>Time frame (months)</strong></td>
</tr>
<tr>
<td>2.1</td>
<td>To develop a mechanism for informing and educating citizens and institutions on transitional justice, the vetting process and institutional reforms in a broader sense</td>
</tr>
<tr>
<td>2.2</td>
<td>To improve existing training programmes for the staff of institutions which will be covered by the vetting process with a view to building their capacities, sensitising them about particularly vulnerable groups and ensuring respect for the highest human rights standards in performing their duties</td>
</tr>
</tbody>
</table>
PART III – Principles of Strategy Implementation Monitoring

STRATEGY IMPLEMENTATION MONITORING MECHANISM CHART

BIH COUNCIL OF MINISTERS

- Appoints Commission
- Appoints and funds Technical Secretariat
- Provides administrative, technical, logistic and advisory support to Commission

TRANSITIONAL JUSTICE STRATEGY IMPLEMENTATION MONITORING COMMISSION

- meets at least 4 times a year -

Executive branch:
1 rep BIH CoM
1 rep, FBiH Gvt
1 rep, RS Gvt
1 rep, BD Gvt

Professional community
Necessary to determine number of representatives

Civil Society Organisations
Necessary to determine number of representatives

BIH Parliamentary Assembly
Necessary to determine number of representatives *

* Since PA BiH does not adopt Strategy, opinion should be sought from PA whether it wants to participate in monitoring

External strategy implementation monitoring

May submit recommendations to Commission to improve implementation

Communicates with Civil Society Organisations

Civil Society Organisations

Commission submits progress report to CoM at least 2 times a year

External strategy implementation monitoring
The Transitional Justice Strategy of Bosnia and Herzegovina defines strategic goals and objectives for each of the three pillars of transitional justice, the aim of which is to solve the key issues of transitional justice. The Action Plan to Implement the BIH Transitional Justice Strategy, as a separate document, elaborates on the strategic objectives through a series of concrete activities on improving the existing legislation, institutions and system in BIH, and on defining a need for new solutions.

The responsibility for the implementation of strategic objectives and activities within the set deadlines rests primarily with the relevant institutions identified in both the Strategy and the Action Plan. However, knowing the complexity and number of issues covered by the Strategy, it is necessary to ensure a permanent monitoring mechanism which will have a coordinating role in the implementation process and will provide professional and policy guidance to the relevant institutions. Also, one of the main roles of this mechanism should be early warning of the relevant institutions, and primarily of the BIH Council of Ministers, the entity governments and the government of the Brcko District, in case of a deadlock or other problems hampering the implementation of this Strategy.

Because of these needs, the Strategy foresees the formation of a BIH Transitional Justice Strategy Implementation Monitoring Commission (hereinafter: the Commission) as a permanent and professional body which will monitor the implementation of this Strategy and its Action Plan. The Commission should be formed no later than 30 days from the date of adoption of the Strategy.

**Transitional Justice Strategy Implementation Monitoring Commission**

The Commission will comprise the representatives of the four sectors: the executive authorities, professional community, the civil society and the BIH Parliamentary Assembly. The executive authorities - the Council of Ministers, the RS Government, the FBIH Government and the Brcko District Government - will have one representative each. Many of the proposed activities refer to the passage of new legislation or amending the existing legislation. This is why the representatives of the legislative authorities on the Commission would contribute a lot to the quality of the implementation monitoring. The process of drafting this strategy insisted since the very beginning on the involvement of the civil society in the drafting process, which was why, in addition to the consultations and other forms of a public dialogue, the expert working group responsible for drafting the strategy comprised the representatives of the government institutions and the civil society. Believing that it is a successful and necessary approach to transitional justice, the Strategy envisions, in addition to the executive authorities, the involvement of the professional community and the civil society in the Commission. The Commission
may hire other experts, as may be needed, to support monitoring of the implementation of some chapters of the Strategy.

Selection of representatives of professional community to the Commission
Within 10 days from the date of adoption of the Strategy, the BiH Council of Ministers will advertise a public call for expression of interest for those who wish to be considered for membership in the Commission. An independent expert and representatives of the civil society organisations, to be selected to the Commission, must have long experience working in at least one pillar of transitional justice.

Commission's work
The Commission will meet at least four times a year to review progress made in the implementation of the activities over the previous quarter, using the strategic goals, objectives, activities and deadlines as benchmarks, and to consider whether it would be necessary to amend the defined objectives and activities and their deadlines. The Commission will carry out monitoring and assessment of the strategy implementation under the system defined in this Strategy (see below).

The Commission will submit semi-annual reports to the Council of Ministers, every six months, on the implementation of the strategic goals, objectives and activities, which may contain proposals for measures to improve the strategy implementation if the changes are not in contravention of the Strategy goals. If necessary, the Commission may submit special reports, outside the set deadlines, to the Council of Ministers.

After it is formed, the Commission will adopt its rules of procedure and the work plan with a detailed definition of methodology and time lines for the Commission.

Technical Secretariat
The Technical Secretariat (hereinafter: TS), to be appointed and funded by the BiH Council of Ministers, will provide technical, logistical, administrative and advisory support to the Commission. The TS will be responsible for, among other things: scheduling meetings, preparation of agendas, analyses and drafting progress reports, preparation of materials for meetings, provision of professional advice, collection of data for the purpose of monitoring and assessing the implementation process, communication with the civil society organisations, etc. The TS should include at least one transitional justice expert. The role and responsibilities of the TS will be defined in detail in the Rules of Procedure of the Commission.

Civil society organisations – external strategy implementation monitoring
The involvement of the civil society organizations in all pillars of transitional justice covered by this Strategy is planned through: a) activities aimed at building capacity and strengthening the role of the civil society in individual segments, and b)
identification of the needs for some activities to be carried out in cooperation with the civil society organizations. Bearing this in mind, as well as the fact that some civil society organizations were involved in the drafting of the Strategy, it is crucial that in addition to their being full members of the Commission, the civil society organizations should also be given the possibility of submitting reports or recommendations, either individually or in cooperation with one another, to the Commission on the progress in the implementation or its manner, its impact on the local communities and the success of the implementation of the set objectives and activities. Since the Commission’s primary task is to monitor the Strategy implementation from the perspective of institutions responsible for the implementation of the objectives and activities, these types of reports and recommendations can contribute to the efforts to collect the information on the effectiveness of the strategy from a perspective of citizens of Bosnia and Herzegovina.

**The Strategy implementation monitoring and assessment system**

The implementation of this Strategy will be monitored through indicators defined in the Strategy and its Action Plan. Indicators are defined at two different levels of the strategic planning: at the level of strategic objectives, and at the level of activities. Indicators at the level of strategic objectives indicate success of implementing a strategic objective, while indicators at the level of activities indicate the results of the activity.

With support from the TS, the Commission will continually be collecting the data and information from the relevant institutions and other relevant organisations, which will be used for:

- analysing the situation in the field prior to and after the activities are implemented;
- determining the level of achieving defined strategic goals and objectives;
- ensuring that all activities defined in the Action Plan are carried out in as defined, by those who are defined as responsible for the implementation;
- identifying the problems in the implementation and their solutions;
- deciding on whether the funds used for the purpose of implementation of the Strategy and its Action Plan have been used for earmarked purposes;
- collecting lessons learned and using them in other strategies and initiatives with a similar goal and content.

On the basis of the collected information, the assessment of progress made in the implementation of the strategic objectives and activities will be divided into three groups in the Commission’s reports, for simplicity and reader-friendly purposes:
• **GREEN**
  - implementation of the strategic objective and its activities is underway;
  - progress is stable and no delays or other problems in the implementation are expected;
  - additional activities or special conclusions of the Commission or the Council of Ministers, entity governments or the government of the Brcko District not required.

• **YELLOW**
  - implementation of the strategic objective and its activities underway, although it does not follow the set timelines or some problems have been noticed during the implementation;
  - some kind of corrective action by the Commission or the Council of Ministers, the entity governments or the Brcko District government required.

• **RED**
  - the implementation of the strategic objective and its activities has not begun yet;
  - action by the Commission and the Council of Ministers, the entity governments and the government of the Brcko District required.
PART IV – Financing of Activities Defined in the Strategy

Financial aspects of the implementation of the Transitional Justice Strategy and estimates

Cost estimation
Ensuring the funds necessary for the Strategy implementation is an important prerequisite for achieving the strategic goals. However, in addition to estimating the implementation costs, it is necessary to consider and understand the Strategy’s value for the society and sustainable development.

The Strategy represents an innovative holistic strategic approach to the areas important for respect for the rights and needs of victims and the society as a whole, while there is no experience in Bosnia and Herzegovina which could be used as a basis or a benchmark for cost estimating purposes. Also, some activities require that the relevant authorities define the specific entitlement benefits during the implementation phase in the next period, e.g. those in the areas of reparations and memorials etc. which is why the Strategy implementation cost estimating in the initial phase cannot include the financial aspect of the implementation of reparations, memorials and vetting programmes.

The starting point for cost estimating is the information contained in the Strategy and the Action Plan to Implement the Strategy, as follows: strategic goals, strategic objectives and activities. The cost estimate takes into consideration the empirical and legally defined data, the data provided by the Expert Working Group that drafted the Strategy and the Action Plan, the data collected in the field, and other information. The type and quantity of the necessary sources, quantity and qualification of the staff and the time frames for implementation are defined for each activity separately. The costs required are defined as accurately as possible for each task separately, as well as the cumulative costs at each higher level – activity, strategic objective, strategic goal, area, and eventually, the grand total cost of the Strategy implementation, apart from the above-mentioned costs, which are legitimately excluded from the estimation.

Every cost related to an individual task or a segment thereof is determined under the existing regulations, if applicable, or under the existing market trends in the initial year. For every next year of the Strategy implementation, the applicable financial indicators of the local and global economies were taken into consideration.
This budgeting method should provide the opportunity for explaining, with valid arguments, each presented cumulative cost at one of the higher levels, up to the cost of the Strategy itself.

**The Strategy budget estimate:**
According to available data, the estimated budget of the Strategy is as follows (Table in Excel attached):

**Total estimated costs of the Strategy implementation**  
(costs do not include costs of the reparations programme, building memorials or the vetting process):

**16,477,500.00 BAM**

Cost estimate per area:

1. **Area 1 – Fact-finding and truth-telling – 5,555,100.00 BAM**
   
a) Strategic goal 1 – To improve and strengthen institutional non-judicial fact-finding and truth-telling mechanisms and initiatives of the civil society with the aim to ensure their effective functioning and quality contribution to this process – 4,377,000.00 BAM
   
b) Strategic goal 2 - To establish an institutional fact-finding and truth-telling mechanism to investigate human rights violations between 1992 and 1995, which is complementary to the already existing judicial and non-judicial mechanisms– 1,178,100.00 BAM

2. **Area 2 – Reparations and memorials 9,686,400.00 BAM**

   Sub-area 1 – Compensation 366,900.00 BAM
   Sub-area 2 – Rehabilitation 3,582,000.00 BAM
   Sub-area 3 – Memorials 5,737,500.00 BAM

3. **Area 3 – Institutional reforms: 1,236,000.00 BAM**

Total Transitional Justice Strategy: **16,477,500.00 BAM**
Annual average of required funds:  
3,295,500.00 BAM

Since this is a working draft of the Strategy, the causal link between the activities is not clearly defined in terms of time frame, i.e. how the commencement and implementation of an activity depends on the successful completion of the previous activity, which would help us define more realistically the annual amounts of funds necessary for financing the Strategy, which is why, for the time being, there is only an average value of annual needs for funding (3,295,500.00 BAM).

An overview of implementing institutions
It is foreseen that 36 implementing institutions, i.e. public institutions, will be involved in the implementation of the Strategy. They are:

Ministries at the level of Bosnia and Herzegovina:
1. BIH Ministry for Human Rights and Refugees
2. BIH Ministry of Justice
3. BIH Ministry of Civil Affairs
4. BIH Ministry of Security
5. BIH Ministry of Foreign affairs

Ministries at the level of Entities and the Brcko District:
1. FBIH Ministry of Culture and Sports
2. FBIH Ministry of Labour and Social Welfare
3. FBIH Ministry for Issues of Veterans and Disabled Veterans of the Defensive-Liberation War
4. FBIH Ministry of Health
5. FBIH Ministry of Environment and Tourism
6. FBIH Ministry of Interior
7. RS Ministry of Families, Youth and Sports
8. RS Ministry of Labour, War Veterans and Disabled Persons’ Protection
9. RS Ministry of Trade and Tourism
10. RS Ministry of Internal Affairs
11. RS Ministry of Health and Social Welfare
12. Department of Labour of the Brcko District
13. Police of the Brcko District
Agencies:
1. BIH Labour and Employment Agency
2. Communications Regulatory Agency

Institutions:
1. BIH Institution of Human Rights Ombudsmen

Departments:
1. Witness Support Office, Court of BIH
2. Department for Economic Development, Sports and Culture of the Brcko District
3. Department for Health and Other Services of the Brcko District

Working groups:
1. Various working groups of the BIH Council of Ministers which will be established to implement certain strategic activities
2. Various working groups of the Brcko District Government which will be established to implement certain strategic activities
3. Various working groups of the FBiH government which will be established to implement certain strategic activities
4. BiH Council of Ministers’ Working Group responsible for drafting a Lustration Law
5. BiH Council of Ministers’ Working Group responsible for drafting a law on an non-judicial mechanism

Institutes:
1. Institute for Employment of the Brcko District
2. FBIH Institute for Employment
3. Institute for Employment of RS

Executive and legislative authorities:
1. BIH Council of Ministers
2. Government of the Brcko District
3. FBIH Government
4. RS Government

Among the above-listed implementing institutions, the BIH Ministry of Justice and BIH Ministry for Human Rights and Refugees are the two leading institutions in the Strategy implementation process.
**Financing the Strategy implementation - proposal**

The Strategy implementation will have important financial implications for all implementing institutions. There are two ways of financing:

1. The financing of the Strategy implementation, within the proposed timeframe, is possible in such a way that all implementing institutions, i.e. those institutions responsible for the implementation of specific tasks within an activity, plan the necessary funds within their respective annual budgets. The planning of funds would be done under the adopted system of programme budgeting where the activities would be grouped into a certain number of programmes.

2. Financing through a new institution which would coordinate the Strategy implementation process.

All budget users carry out their financial transactions through the treasury system, i.e. all revenues, regardless of their sources (fiscal, private business, donations, etc.), go first into a single treasury account from where they are allocated to the budget users. Taking this into account, we can say that the ministries of finance already have the key legal role in collecting and allocating the funds, along with additional monitoring of justifiability and efficiency of costs. It is precisely for this reason that these Ministries should be involved in future steps in the Strategy implementation. The forming of a new institution, for the above reasons, would mean an additional cost in the Strategy implementation, ranging from its registration, employment of new staff or redeployment of the existing staff, to all other costs related to its operations. This is why the former option of financing the Strategy would be clearly acceptable, more effective and cheaper.

In case this option is accepted, it will be necessary to form a working group for monitoring the Strategy implementation, which could monitor the efficiency of the implementation and make the necessary changes through short-term reports and oversight over the implementation process.

However, it is necessary to mention that the budgeting by any user is done in the first half of a year, requests for funds are submitted by October of the same year, and the approval of funds and the entire process of budget planning for the next year are completed in November. Before that, each government has an approved Framework Budget Document which includes primarily the revenue forecast, general fiscal strategy and budget restrictions for each budget user for the next three years. Since the year 2012 is the starting year for the implementation of this Strategy, the above facts have to be taken into consideration for the purpose of making the necessary changes.
Annex 1 – Links between Transitional Justice Strategy and other strategies

Some strategy papers of BIH contain chapters that are directly related to the concept of transitional justice. For this reason, it is important to ensure that all solutions from the Transitional Justice Strategy are in harmony with the relevant recommendations from other strategy papers in order to support the implementation of other strategies, on the one hand, and, on the other, in order for the Transitional Justice Strategy to concentrate on the transitional justice issues which are not covered by other strategy papers.

The Transitional Justice Strategy pays a particular attention to the following strategy papers:

- Justice Sector Reform Strategy in BiH
- Revised Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Agreement
- National War Crimes Strategy
- Public Administration Reform Strategy
- Gender Action Plan
- Action Plan for the Implementation of UNSCR 1325 in Bosnia and Herzegovina, 2010-2013

Justice Sector Reform Strategy in BiH

The Justice Sector Reform Strategy in BiH was adopted in June 2008, with a view to creating a joint framework for the reform of judicial institutions. Also, the Transitional Justice Strategy is a sub-strategy of the Strategy for Judicial Reform in BiH, together with the National War Crimes Strategy and the Strategy Against Juvenile Delinquency.

The Strategy for the Judicial Reform in BiH contains four main strategic areas: judicial system, execution of criminal sanctions, access to justice and support to economic sector growth. The access to justice area directly draws on the
transitional justice concept. The strategic issue of “free legal aid and access to justice” is defined within that area. Within this area, the strategic goal: “free legal aid and access to justice” is defined together with an objective to create a legal and institutional framework for a pro bono legal aid system in BIH in civil and criminal matters; legal and institutional framework is defined for continuous implementation of the training programme for pro bono legal aid providers; an analysis of the formed system of pro bono legal assistance in civil and criminal matters is planned in order to review the efficiency and effectiveness of the pro bono legal aid system.

The section of the Transitional Justice Strategy dealing with compensations, as a form of reparations, builds on that part of the Justice Sector Reform Strategy in BIH. During the consultation process on the development of a Transitional Justice Strategy the lack of pro bono legal aid for victims of war when they are trying to exercise their right to compensation is identified as one of the key problems. For this reason, the implementation of the Justice Sector Reform Strategy in BIH is important for BIH to fulfil its obligations towards victims in terms of providing them pro bono legal aid services in support of their efforts to exercise their rights.

**Revised Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Agreement**

The Revised Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Agreement was adopted in 2008. It was preceded by the Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Agreement, from 2002. The results achieved through the implementation of the 2002 Strategy were extremely important: almost all property was repossessed by pre-war owners, thousands of destroyed houses were reconstructed, representation of minorities in the public sector increased, freedom of movement is enjoyed by all persons, and safety of returnees has been significantly improved.

However, since Annex VII had not been fully implemented yet, a Revised Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Agreement was developed. The Revised Strategy contains the following strategic goals: completion of returns of refugees and displaced persons to their pre-war homes; repossession of property and restoration of tenancy rights; completion of the reconstruction of housing units for the purpose of returns and ensuring conditions for sustainable returns and the process of reintegration in BIH. This Strategy contains some transitional justice elements which refer to restitution, as a form of reparations. Under the Resolution of the UN Security Council: The United
Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, restitution, as a form of reparations, should restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred, and thus it is believed that the full implementation of this strategy represents also the fulfilment of restitution as a form of reparations in the context of transitional justice. For this reason, the Transitional Justice Strategy does not deal separately with restitution as a form of reparations, since restitution is sufficiently covered by the Revised Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Agreement. The Revised Strategy includes also compensation, as a form of reparations. The “compensation” chapter of this Strategy contains a whole range of measures for compensation to persons who suffered material damages, while they cannot repossess their property. There is also a mechanism for refugees and displaced persons to exercise their right to compensation “instead of property repossession”. As it is stated in the Revised Strategy, those are the persons who cannot return “for objective reasons”, such as completely devastated property, lack of the basic infrastructure necessary for the minimum living conditions to be met, no access to the basic rights to health and social care, necessary for the people with special needs, etc. Some people are in a specific situation (e.g. persons who were exposed to severe trauma during the war, ex-camp inmates and prisoners-of-war, witnesses in war crimes cases), which poses an obstacle to their returns even when conditions for their returns seem to exist. In such cases, the focus on reconstruction and repossession of homes does not solve problems that those displaced people are facing\textsuperscript{139}, and the Revised Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Agreement foresees compensation instead. Those sections of the Revised Strategy, together with the strategic objectives for reparations in the Transitional Justice Strategy, make a comprehensive approach to reparations to victims in BIH.

\textit{National War Crimes Strategy}

The National War Crimes Strategy was adopted in December 2008. As stated above, this strategy, just like the Transitional Justice Strategy, is a sub-strategy of the Justice Sector Reform Strategy in Bosnia and Herzegovina. The National War Crimes Strategy, which deals with criminal prosecution of those responsible for human rights violations and war crimes during the armed conflict, and the Transitional Justice Strategy, which deals with non-judicial mechanisms of transitional justice, are complementary and make a whole approach to both judicial and non-judicial

\textsuperscript{139} Revised Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Agreement, p. 26 - 27
mechanisms of transitional justice. This sets a strategic framework for the implementation of the process of facing the past in BIH in a comprehensive way.

The *National War Crimes Strategy* sets the following strategic objectives: development of a centralised register of cases, case management, harmonisation of case law, building capacities of the judicial and police institutions, regional cooperation, and protection of and support to victims and witnesses. The full implementation of these strategic objectives will fulfil the goal of the strategy, which is that all war crimes cases are solved within the next 15 years, while the most complicated cases will be solved within 7 years.

In addition to complementarity of the *National War Crimes Strategy* and the *Transitional Justice Strategy*, the sections of the *National War Crimes Strategy* dealing with the provision of psycho-physical care to victims and witnesses and to building capacities of the judicial and police institutions links directly the *War Crimes Strategy* to the *Transitional Justice Strategy*.

Psycho-physical care of the victims of war (among them are also witnesses in the war crimes cases) refers to rehabilitation, as a form of reparation, which is dealt with in the *Transitional Justice Strategy* and which provides the appropriate solutions in regard to rehabilitation. Also, in order for the war crimes prosecution to be more effective, the *War Crimes Strategy* recognizes the need for building capacities of the judicial and police institutions. This strategic objective affects most directly also the improvement of the process of tracing missing persons, which is directly covered by the *Transitional Justice Strategy*, in its section dealing with fact-finding and truth-telling.

**Strengthening of support to victims and witnesses in war crimes cases**

The *National War Crimes Strategy* suggests that a victim and witness support network be formed for the purpose of strengthening support to victims and witnesses in the war crimes cases. The network would include the social welfare centres, centres for mental health and NGOs. The *Transitional Justice Strategy* covers rehabilitation, as a form of reparations, completely, and its strategic objective is to form a sustainable referral system for the continuous and effective psycho-social services to victims of war and other persons in need of such support. This system implies the networking of institutions which provide psycho-social services, such as university clinics, psychiatric wards of hospitals, centres for mental health, social welfare centres, and also NGOs. It is possible to combine this arrangement from the *Transitional Justice Strategy* with the arrangement offered in the *National War Crimes Strategy* under psycho-physical care for victims and witnesses, which establishes direct compatibility and link between the two strategies.
Building capacities of judiciary and police necessary for their work on war crimes cases

One of the goals and expected results of the National War Crimes Strategy is to build capacities of the judiciary and police agencies throughout BiH for investigations, prosecution and trials of the war crimes cases. The Transitional Justice Strategy is directly interested in the implementation of this strategic goal of the National War Crimes Strategy as it seeks ways, under the fact-finding and truth-telling chapter, to strengthen and enhance tracing missing persons. More specifically, the prosecution and police in BiH play a crucial role in the process of tracing missing persons: exhumations and identification fall within the investigative powers of the judiciary and the police, as they are led by prosecutors, while the police structures obtain the information on the possible locations of individual and mass graves. The National War Crimes Strategy says that only the BiH Office of the Prosecutor and the SIPA have sufficient staff, in comparison to the number of cases under investigation, for criminal prosecution of war crimes, while the district and cantonal prosecutor’s offices and the police structures in the entities are understaffed. In accordance with the situation analysis, the War Crimes Strategy defines strategic measures for investing in material and human resources in the judicial and police institutions, developing the existing organisational structures in the courts, prosecutor’s offices and relevant police bodies, and in procuring the necessary equipment. While the scope of the National War Crimes Strategy includes a broad category of the staff working on war crimes issues, the Transitional Justice Strategy complements these measures through its activity 1.1.4 (fact-finding and truth-telling) by focusing on building capacities of persons/departments within the relevant police agencies which directly provide support to the process of searching for missing persons.

Public Administration Reform Strategy of BiH

The Public Administration Reform Strategy was adopted in 2006. The goal of the strategy is to create an effective, efficient and responsible public administration which would function on the basis of transparent and open procedures, and would serve citizens and be crucial for continuous social development. The Public Administration Reform Strategy attempts to provide a response to one of the most comprehensive requirements for BiH’s integration into EU – set in the criteria for accession to EU adopted at the European Council meeting in Copenhagen in 1993 – the requirement for building administrative capacities capable of adopting the huge size of EU law (acquis communautaire) and applying it fully. In this regard, the Public Administration Reform Strategy defines two general strategic goals: 1) to improve general administrative capacities, and 2) to create coherent administrative structures and to ensure the appropriate management of organisational changes.
The *Transitional Justice Strategy*, in its section dealing with institutional reforms, builds directly on the *Public Administration Reform Strategy*, primarily on its section dealing with promotion of reform activities towards achieving institutional coherence, integrity and legitimacy of institutions. As stated above, in order to achieve the purpose of the institutional reform mechanism, in addition to vetting\(^{140}\), it is necessary to implement the activities which will result in institutional responsibility\(^{141}\), operational independence\(^{142}\), representativeness\(^{143}\), legitimacy\(^{144}\), accountability\(^{145}\) and inclusion of citizens in the decision-making process. The goals and priorities of the *Public Administration Reform Strategy* include most of these activities and they are covered by the priority areas within the first goal of the *Public Administration Reform Strategy*, such as human resources, administrative procedure or institutional communication.

Specifically, these priority areas most directly fulfil the requirements for representativeness and independence of public institutions (human resources), and partly also the requirements for institutional responsibility (human resources, administrative procedure, institutional communication) and accountability (institutional communication). However, it is important to stress that one of the priority areas within the first goal of the *Public Administration Reform Strategy* is also administrative procedure where the objective is to *strengthen the decision-making system in administrative procedure, as a key component in interaction between the public administration and citizens, which will make the public administration functional, reliable, efficient, responsible, transparent and beneficiary-oriented public service*. This area is particularly important because of the fact that the vetting process is, in fact, an administrative procedure. As stated

\(^{140}\) For more information on the links between vetting and other activities within the field of institutional reforms, see Introduction.

\(^{141}\) In order to prevent violations of human rights committed by employees of institutions, it is necessary to develop adequate internal monitoring mechanisms (clear, managerial structure, internal discipline, code of ethics, clear complaints handling procedure, etc.). A precise database (registration and identification) of employees contributes to building accountability of institutions, for the purpose of drawing up a list of employees and preventing informal links between public employees and different social groups.

\(^{142}\) It is necessary to ensure operational independence of institutions. In this regard, it is necessary to define clear procedures for employment, terms of reference for every position, etc.

\(^{143}\) The structure of employees in institutions should be in harmony with ethnic, religious, geographic and gender structure of the population.

\(^{144}\) Responsible institutions should initiate appropriate symbolic activities, such as apology, erecting memorials, organising commemorations, etc., in order to ensure acknowledgement of human rights violations. It is also necessary to ensure renaming streets or changing official symbols, insignia, uniforms etc., which may hurt victims or parts of the communities.

\(^{145}\) Responsible institutions should recognize the needs of citizens, inform them about their rights, ways in which they can exercise their rights and about mandates and activities of institutions. It is also important that institutions find ways for active involvement of citizens in the decision-making process. Lastly, in order to ensure professional conduct and actions, institutions should train and educate the civil society in monitoring of their actions.
above, vetting is one of the central activities within the institutional reforms area and it is elaborated in detail within the Transitional Justice Strategy, through the development of a framework law on vetting, on the one hand, and the amendments to the present law, on the other. Capacity building in institutions in terms of administrative procedure is crucial for the vetting process, and the Transitional Justice Strategy, in this area as well, most directly draws on the results of the implementation of the Public Administration Reform Strategy.

**Gender Action Plan**

The BIH Council of Ministers adopted in 2006 a Gender Action Plan. This strategy paper is harmonised with the relevant international standards and its goal is to establish equality between men and women in BIH. The Gender Action Plan can be directly related to the Transitional Justice Strategy in many respects. Chapter 7 (Social Inclusion) with activities 2-5 deals with harmonisation of the existing entity laws and adoption of new laws in order to ensure to all civilian victims of war equal access to care and protection, which is emphasized in the strategic goal 1 of the chapter on reparations and memorials of the Transitional Justice Strategy. Furthermore, the Gender Action Plan deals in Chapter 7 (activity 7) and Chapter 12 (activity 3) with the development of adequate programmes for psycho-social services to civilian victims of war, which also the Transitional Justice Strategy is dealing with in detail under the chapter on rehabilitation, as a form of reparations. In this way, the target groups that the Gender Action Plan refers to are covered also by this Strategy, as it is the case with the solutions offered in regard to psycho-social services to victims of war and other traumatised persons.

**Action Plan for the Implementation of UNSCR 1325 in Bosnia and Herzegovina 2010 – 2013**

The Action Plan for the Implementation of UNSCR 1325 in Bosnia and Herzegovina 2010-2013 (Action Plan) was adopted in 2010, as a step forward in the implementation of the Gender Action Plan. The Action Plan refers to the implementation of the UN Security Council Resolution 1325 which deals with the impact of a war on women and girls and women’s contribution to conflict resolution and sustainable peace. The Resolution calls for an increased participation of women in decision-making processes, prevention of conflict, post-conflict processes, peace talks and in all of the implementation mechanisms of the peace

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146 Gender Action Plan, Chapter V – Political Life and Decision Making – defines implementation of UNSCR 1325.
agreements. The Action Plan defines eight goals of which goal 6 – *Improving support and assistance networks to women and girls victims during the war conflict* – is most directly related to the *Transitional Justice Strategy*. With this goal, the Action Plan defines the activities on empowering women civilian victims of war through psycho-social services, public debates and conferences for the purpose of defining their needs and problems. The Action Plan further defines the activities towards providing support to economic empowerment of these groups through the programmes for training, retraining and employment. In the end, the Action Plan recognizes the need for training of experts in the field of psycho-social and medical services in order for the goal to be implemented fully. The *Transitional Justice Strategy* defines the activities towards improving institutional standards for the provision of adequate psycho-social services to victims of war and traumatised persons, and for improvement of employment and self-employment mechanisms for victims of war and persons with disabilities for the purpose of their social reintegration and economic independence. Although the *Transitional Justice Strategy*’s approach to improvement of these mechanisms is based on a broader aspect of victims of war, women and girls, as part of the category of civilian victims of war, will certainly benefit from the implementation of these programmes and activities, which, in turn, will make a contribution to achieving the goal 6 of the *Action Plan*.

**Programme for Improvement of Status of Survivors of Conflict Related Sexual Violence and Other Form of Torture in BIH**

The *Programme for Improvement of Status of Women Victims of War Rape and Sexual Harassment and Torture in BIH, 2012-2016* is in the process of being drafted. Solutions to be offered through this programme will hopefully be complementary to the solutions from the *Transitional Justice Strategy*, while the programme is directly focused on women victims of war, while this category of victims within the *Transitional Justice Strategy* is covered under the generic category of civilian victims of war. Taking into consideration the specific characteristics of the problems facing women victims of war, the *Transitional Justice Strategy* provides unqualified support to the development of such a strategy paper which will deal directly with this problem and will offer adequate solutions towards improving the status of this category of victims.

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147 Strategic Objectives 1.1 and 1.2, section on Reparations and Memorials, sub-section on Rehabilitation.
Annex 2 – European Union, Transitional Justice and Obligations of BiH

Many European Union member states experienced legacies of serious conflicts that reached well into their social development and remained a heavy burden over many years. The awareness about the importance of an efficient solution to past traumatic issues is deeply rooted in the fundamental principles of the European Union. It could even be said that the EU itself was formed as a project to prevent the recurrence of the same patterns of crimes on the European soil.\(^{148}\) Prevention of recurrence of the past is one of the basic ideas of the transitional justice concept.

EU does not have a policy, strategy or another agreed approach to transitional justice. Mechanisms of this concept are rarely explicitly mentioned in the EU fundamental documents or in the documents defining the requirements and standards for EU candidate countries. A subtle undertone to nearly all fundamental documents suggests that transitional justice mechanisms are, nevertheless, the basic EU principles.

*The Treaty on European Union* defines, for example, the EU's firm commitment to “to consolidate and support democracy, the rule of law, human rights and the principles of international law.”\(^{149}\) The Conclusions of the Presidency of the European Council in Copenhagen of 1993 states the principles for the EU membership, which include, “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities”.\(^{150}\) These notions contained in the EU fundamental documents – although they are not synonyms – are closely related to transitional justice mechanisms.\(^{151}\) The full integration of the principle of transitional justice and the basic principles of EU is perhaps best expressed in the European Commission's document of 2008, which highlights that, “transitional justice and ad hoc tribunals have emerged as a critical issue for peace building and post-conflict resolution and have been integrated into


\(^{149}\) Treaty on European Union, Article 21.2 (b).

\(^{150}\) European Council in Copenhagen, 21 – 22 June, 1993, Conclusions of the Presidency SN 180/1/93.

\(^{151}\) Another EU document highlights that link. For example, *The Stockholm Programme* of the EU Council puts an emphasis on the EU's role in combating impunity for the most serious crimes by: promoting cooperation with the *International Criminal Court* and other international tribunals; developing an exchange of judicial information and best practices in relation to the prosecution of perpetrators of genocide and other serious crimes; and finally, accepting the role of facilitator in the programmes for addressing past crimes in the EU member states. Council of the European Union, *The Stockholm Programme – an Open and Secure Europe Serving and Protecting Citizens*, December 2009, document No. 17024/09.
broader EU crisis management approaches, reflecting the importance of addressing the question of past human rights abuse in transitional and post-conflict situations for sustainable peace and stability”.\footnote{152}

Regarding individual mechanisms of transitional justice, the impression is that the EU has extensive commitments to the criminal justice mechanism. The European Union provides strong political support to and is a major funder of the International Criminal Court (ICC), ad hoc tribunals, such as the ICTY, and other judicial institutions, such as the Court and the Office of the Prosecutor of BiH. The EU’s commitment to fighting impunity is demonstrated also through its requirement for the full cooperation with the ICTY, as another requirement for the Western Balkan countries to achieve candidate status.\footnote{153} In BiH, this has been reinforced through an instruction to the EU Special Representative in BiH to “engage with relevant BiH authorities on their full cooperation with the International Criminal Tribunal for the Former Yugoslavia”.\footnote{154}

The European Union is committed also to other mechanisms of transitional justice through its various instruments and programmes. Through the \emph{European Instrument for Democracy and Human Rights} (EIDHR), the EU ensures long-term assistance to organisations which promote criminal justice and “the processes of transitional justice and truth and reconciliation mechanisms: and supporting reforms to achieve effective and transparent democratic accountability and oversight, including that of the security and justice sectors”.\footnote{155} In the field of the security sector reforms, the EU policy papers highlight that the future EU missions around the world could deal with “the development of emergency rule of law mechanism and transitional justice institutions, such as special tribunals and truth/reconciliation commissions”.\footnote{156} Support to the vetting processes which would result in removals of human rights violators from public service (courts, police and army) is highlighted in the policy paper on support to disarmament, demobilization and reintegration, instructing the EU missions around the world to encourage

\footnote{153} “The EU urges all concerned countries and parties to co-operate fully with the International Criminal Tribunal for the former Yugoslavia. Recalling that respect for international law is an essential element of the Stabilisation and Association Process (SAP), the EU reiterates that full cooperation with ICTY, in particular with regard to the transfer to the Hague of all indictees and full access to documents and witnesses, is vital for further movement towards the EU”. Thessaloniki Declaration, Council of the European Union, 16 June, 2003
\footnote{156} The Council of European Union, EU Concept for Support to Security Sector Reform, December 2006, Doc. 12566/4/05.
processes that will mark “the ending of the culture of impunity, such as granting a role to war criminals in a national army or political bodies”. ¹⁵⁷

Although the EU continues to highlight the concept of transitional justice in the context of broader European efforts to promote democracy, it is noticeable that the EU is expressing an increasing interest in this concept. The EU recognizes that the mechanisms of transitional justice contribute to achieving the goals of the EU foreign policy towards candidate countries in terms of reforms and strengthening of public institutions (primarily in the area of security and in a broader context), accountability and transparency, and the rule of law. Reconciliation, good neighbourly relations and regional cooperation are already the central elements of the stabilisation and association process (SAP) encompassing all Western Balkan countries. In this context, it can be expected that the EU will continue to encourage and support the processes of transitional justice in the whole region, and in BIH in particular.

¹⁵⁷ The Council of the European Union, EU Concept for Support to Disarmament, Demobilisation and Reintegration, December 2006, Doc. 16387/06.
Annex 3 – Expert Working Group

Members of the Expert Working Group

1. Admir Operta, Brcko District Government
2. Aleksandra Letić, NGO Helsinki Committee for Human Rights, Republika Srpska;
3. Amir Kulaglić, Srebrenica survivor;
4. Branka Antić Štauber, NGO “Snaga žene”;
5. Edin Ramulić, Association of Women of Prijedor “Izvor”;
6. Elijas Tauber, independent expert
7. Enes Džubur, Ministry of Labor and Social Policy, FBiH
8. Enisa Teskeredžić, Ministry for issues of Veterans and Disabled War Veterans of the Defensive-Liberation War, FBiH;
9. Goran Šimić, FBiH Ministry of Justice
10. Marko Jurišić, BIH Missing Persons Institute
11. Milorad Kojić, RS Ministry of Justice
12. Nikola Dvizac, Ministry of Health and Social Welfare
13. Radojka Kela-Trninić, Ministry of Labor, War Veterans and Disabled Persons’ Protection;
14. Saliha Duderija, BIH Ministry for Human Rights and Refugees
15. Selma Džihanović Gratz /Eddi Gratz, BIH Ministry of Justice

Expert Working Group meetings

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Members of EWG thematic sub-groups

Fact-finding and truth-telling sub-group

1. Andelko Kvesić, Croat Association of ex-Camp Inmates of BIH Homeland War
2. Bakira Hasečić, Association “Women-Victims of War”
3. Nedeljko Mitrović, RS Organisation of Families, PoWs, Killed Veterans and Missing Civilians of RS
4. Pantelija Ćurguz, RS Veterans Organisation
5. Zumreta Džaferović, Association of Families of the Missing, Forcibly Captured and Killed Bosniaks, Brcko District

**Reparations and memorials sub-group**

1. Ahmet Grahić, Union of Bosniak Associations of Families of Prisoners-of-War and Missing Persons in BiH
2. Ivan Jurčević, Association of Demobilised HVO Veterans of FBiH
3. Murat Tahirović, Union of ex-Camp Inmates of BiH
4. Senida Karović, Union of Civilian Victims of War, FBiH
5. Stanojka Tešić, Women's Forum, Bratunac

**Institutional reforms sub-group**

1. Milan Miletić, Union of ex-Camp Inmates of RS
2. Zvonimir Kubinek, Organisation of Families of Croat Veterans, the Killed and the Missing, Soli – Tuzla
3. Lejla Kadrić, Union of Disabled War Veterans of BiH
4. Dušan Babić, Union of Associations of Civilian Victims of War, RS
5. Hatidža Mehmedović, Civic Association Srebrenica Mothers - Srebrenica
## Annex 4 – List of participants of consultations and other forms of a dialogue

### Consultations – Fact-Finding and Truth-Telling

<table>
<thead>
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<td>10-11 Jun 2010</td>
<td>46</td>
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</table>

- Ahmet Grahić, Union of Bosniak Associations of Families of Captured and Missing Persons, BiH
- Aleksandra Letić, Expert Working Group, Helsinki Committee for Human Rights, RS
- Amir Kulaglić, Expert Working Group, independent expert
- Amira Krehić, Office of the Ombudsmen of BiH
- Andelko Kvesić, Croat Organisation of ex-Camp Inmates
- Borka Rudić, BH Journalists
- Boro Peulić, Municipal Committee of Families of Captured and Missing Persons of Prnjavor (RS Board of Missing Persons)
- Boro Medić, Union of ex-Camp Inmates of RS
- Bosa Milletić, Association of Women Most
- Božanja Puljić, Women to Women Association
- Branka Antić Štauber, Expert Working Group „Snaga žene”
- Edin Ramulić, Expert Working Group, Association of Women of Prijedor „Izvor”
- Eldar Jahić, Centre for Investigations and Documentation
- Enes Džubur, Expert Working Group, Ministry of Work and Social Welfare, FBiH
- Fadila Sabljaković, Association of Families of the Killed and Missing People of West Bosnia
- Goran Śimić, Expert Working Group, Justice Ministry, FBiH
- Hazim Mujčinović, Association of Families of War Victims "Vlasenica 92-95"
- Irena Antić, Radio FBiH
- Jadranka Leovac, Women’s Association “Most”
- Jakob Finci, BiH Ambassador to Switzerland
- Janko Velimirović, RS Centre for Investigation of War Crimes
- Kada Hotić, Association "Mothers of Srebrenica and Zepa Enclaves" Movement
- Lejla Kadrić, Union of Disabled War Veterans of BiH
- Lidija Škaro, ICMP
- Ljubinka Petrović Ziemer, Berghof Conflict Research
- Maida Pečenković, Association “Žene s Une”
- Marko Jurišić, Expert Working Group, BiH Missing Persons Institute
- Merima Mešanović, Justice Ministry, Una-Sana Canton, Judiciary and Administration Division
- Milorad Kojić, Expert Working Group, RS Justice Ministry
- Murat Tahirović, Union of ex-Camp Inmates of BiH
- Muzaffer Teskeredžić, Union of Civilian Victims of War, FBiH
- Narcis Mišanović, Association of Demobilised Veterans, Municipality of Novo Sarajevo
- Nikola Dvizac, Expert Working Group, Health and Social Welfare Ministry, RS
- Obad Bubić, Union of ex-Camp Inmates, RS
- Radojka Kela Trninić, Expert Working Group, Ministry of Work and Disabled Veterans Welfare, RS
- Ruzmira Gaco, Ministry of Human Rights and Refugees of BiH
- Selma Gaši, GARIWO
- Senida Karović, Union of Civilian Victims of War, FBiH
- Sinan Alić, Truth-Justice-Reconciliation Foundation
- Stanojka Tešić, Women’s Forum Bratunac
- Sulejman Behrić, Association of ex-Camp Inmates-National Defence Veterans
- Velko Lazić, RS Families of Captured/Killed Veterans and Missing Civilians of RS
- Zdenko Šupurković, Croat Union of ex-Camp Inmates, Žepče
- Zdravka Karlica, Municipal Committee of Families of Captured and Missing Persons of Prijedor (RS Committee of the Missing)
- Zlatko Prkić, Croat Association of ex-Camp Inmates, Vareš
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- Admir Operta, Expert Working Group, Brcko District Government
- Aleksandra Letić, Expert Working Group, Helsinki Committee for Human Rights, RS
- Amela Međuseljac, Association “Woman Victim of War”
- Amir Kulagljić, Expert Working Group, independent expert
- Andelko Kvesić, Croat Organisation of ex-Camp Inmates
- Bećir Macić, Institute for Investigation of Crimes and Humanity
- Boro Medić, RS Union of ex-Camp Inmates
- Branka Antić Štauber, Expert Working Group, Association „Snaga žene”
- Branko Todorović, Helsinki Committee for Human Rights of RS
- Denis Đidić, BIRN
- Dušan Babić, RS Union of Associations of Civilian Victims of War
- Edin Ramulić, Expert Working Group, Association of Women of Prijedor „Izvor”
- Enis Omerović, Institute for Investigation of Crimes and Humanity
- Fadila Sabljaković, Association of Families of the Killed and Missing of West Bosnia
- Goran Krčmar, Operational Team for Searching for the Missing, RS
- Goran Simić, Expert Working Group, Justice Ministry, FBiH
- Ilijana Radanović Knežević, Veterans Organisation, RS
- Ivo Pranjčić, HVIDRA HVO HB
- Janko Velimirović, RS Centre for War Crimes Investigation
- Ljiljana Jokić
- Marin Brkić, Organisation of Missing, Forcibly Taken and Killed Croats of Brcko District
- Meliha Merdić, Association “Woman-Victim of War”
- Memnuna Zividić, Association “Women to Women”
- Merima Mešanović, Justice Ministry, Una-Sana Canton, Judiciary/Administration
- Milan Mandić, Association of the Missing from the Sarajevo-Romanija Region
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- Milorad Zimonić, Serb Association of Families of the Missing, Brcko Municipality
- Mirjana Simanić, RS Organisation of Families of Captured and Killed Veterans and Missing Civilians
- Mirsad Duratović, Association of ex-Camp Inmates „Prijedor ’92”
- Munevara Avdić, Organisation of Families of Killed and Missing Persons “Vrbanja”, Kotor Varoš
- Murat Tahirotić, Union of ex-Camp Inmates of BiH
- Nedeljko Mitrović, RS Organisation of Families of Captured and Killed Veterans and Missing Civilians
- Nina Šeremet, Office of the Ombudsmen of BiH
- Pantelija Ćurguz, Veterans organisation of RS
- Refika Ališković, Union of Bosniak Associations of Families of PoWs and Missing Persons, BiH
- Salem Čorbo, Association ”Returns and Sustainable Lives” Bijeljina
- Sanja Tomić, Archive of BiH
- Sarafina Kolovrat, Organisation of Families of Killed and Missing Veterans, Bugojno
- Sead Golić, Association of Families of Missing and Forcibly Taken People, Brcko District
- Sudbin Musić, Association of ex-Camp Inmates “Prijedor ’92”
- Sulejman Behrić, Association of ex-Camp Inmates of West Bosnia
- Suzana Božić, CARITAS Bishops’ Conference
- Vehid Šehić, Citizens Forum Tuzla
- Veljko Lazić, RS Organisation of Families of Captured and Killed Veterans and Missing Civilians, Municipal Organisation of Srbac
- Violeta Burić, ICMP
- Zdenko Šupurković, Croat Association of ex-Camp Inmates, Žepče
- Zdravka Karlica, RS Organisation of Families of Captured and Killed Veterans and Missing Civilians, Municipal Organisation of Prijedor
- Željka Košarac
## Consultations – Reparations and Memorials

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<td>Jahorina</td>
<td>24-25 May 2010</td>
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- Adis Mahmutović, Centre for Investigations and Documentation
- Ahmet Grahić, Union of Bosniak Groups of Families of Captured/Missing People, BiH
- Aleksandra Letić, Expert Working Group, Helsinki Committee for Human Rights, RS
- Alija Muratović, Fenix Tuzla
- Amer Homorac, Local Democracy Foundation
- Amir Kulagić, Expert Working Group, independent expert
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- Bakira Hasečić, Association “Woman-Victim of War”
- Boro Peulić, Municipal Board of Families of Captured and Missing Persons, Prnjavor (RS Board of the Missing)
- Božana Puljić, Association “Women to Women”
- Branislav Dukić, RS Union of ex-Camp Inmates
- Dragan Maksić, Refugee Service for Returns Drvar
- Dušan Babić, RS Union of Associations of Civilian Victims of War
- Duška Andrić-Ružićić, Infoteka
- Duško Tomic, lawyer
- Edin Ramulić, Expert Working Group, Association of Women of Prijedor „Izvor”
- Esma Drkenda, Association SEKA Goražde
- Emir Prcanović, Vaša prava, Sarajevo
- Enisa Teskeredžić, Expert Working Group, Ministry for Veterans and Disabled War Veterans Affairs, F BiH
- Ernesa Mešić, Social Affairs Department, Tuzla Municipality
- Goran Bubalo, Catholic Relief Service
- Hazim Mujčinović, Association of Families of War Victims „Vlasenica ‘92-’95”
- Ifet Mustašić, Office of raisu-l-ulama
- Lejla Kadrić, Union of Disabled War Veterans of BiH
- Lidiija Škaro, ICMP (observer)
- Meliha Sendić, Centre for Legal Aid to Women, Zenica
- Mevlida Rovčanin, Centre for Investigations and Documentation
- Milan Mandić, Association of Families of the Missing of East Sarajevo
- Milena Savić, Centre for Information and Legal Assistance, Zvornik
- Milica Jaković, Refugee Service for Returns Drvar
-米尔拉德·科吉奇，专家工作小组，RS司法部
- Mirsad Duratović, Association of ex-Camp Inmates Prijedor ‘92
- Mirsad Tokača, Centre for Investigations and Documentation
- Munira Hodžić, Association “Woman-Victim of War”
- Nedim Ademović, BiH Constitutional Court
- Nemanja Babić, RS Union of Associations of Civilian Victims of War
- Nikola Dvizac, Expert Working Group, RS Health and Social Welfare Ministry
- Obrad Bubić, RS Union of ex-Camp Inmates
- Pantelija Ćurguz, RS Veterans Organisation
- Rado Pejić, Fiducija, Tuzla
- Rumija Gac, Ministry of Human Rights and Refugees
- Sanja Salčić, Council of Europe, Office in BiH (observer)
- Senida Karović, Union of Civilian Victims of War, FBiH
- Sonja Šibarević, RS Union of ex-Camp Inmates
- Stanojka Tesić, Women’s Forum of Tuzla
- Stephanie Barbour, OSCE BiH (observer)
- Sudbin Muisić, Association of ex-Camp Inmates Prijedor ‘92
- Teufika Ibrahimefendić, Association "Viva žene“ Tuzla
- Vahid Dulović, Association Fenix Tuzla
- Veljko Lazić, RS Organisation of Families of Captured and Killed Veterans and Missing Civilians
- Jeren Džamčić, Association “Stećak” Tuzla
- Zvonimir Kubinek, Union of Families and Croat Veterans and the Missing, HVO SOLJ Tuzla
- Zoren Srebrenik, OSCE BiH (observer)
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<td>- Branišlav Crnčević, BIH Gender Equality Agency</td>
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<td>- Edin Ramulić Expert Working Group, Association of Women of Prijedor „Izvor”</td>
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<td>- Edita Pršić, Local Democracy Foundation</td>
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<td>- Elija Tauber, Expert Working Group, independent expert</td>
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<td>- Ernesa Mešić, Social Affairs Department, Tuzla Municipality</td>
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<td>- Mišo Draganović, Association of ex-Camp Inmates</td>
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<td>- Mirza Čorbo, Union for Sustainable Returns and Reintegration in BiH</td>
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<td>- Nedeljko Mitrović, RS Organisation of Families of Captured and Killed Veterans and Missing Civilians</td>
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<td>- Nikola Dvizac, Expert Working Group, RS Health and Social Welfare Ministry</td>
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<td>- Rajko Kličković, RS Ministry of Labour and Disabled Veterans Welfare, department for labour, employment, appeals-level labour inspection and European integration</td>
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<td>- Radojka Kela-Trinić, Expert Working Group, RS Ministry of Labour and Disabled Veterans Welfare</td>
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<td>- Saleh Čorba, Association “Returns and Sustainable Lives” Bijeljina</td>
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<td>- Saliha Duderija, Expert Working Group, BiH Ministry of Human Rights and Refugees</td>
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<td>- Sanela Fočo, BIH Ministry of Civil Affairs, Department for Labour, Employment, Social Welfare and Pensions</td>
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<td>- Senida Karović, Union of Civilian Victims of War, FBiH</td>
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<td>- Stanojka Tešić, Women’s Forum Bratunac</td>
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<td>- Sudbin Mušić, Association of ex-Prisoners of War ’92</td>
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<td>- Veljko Lazić, RS Organisation of Families of Captured and Killed Veterans and Missing Civilians</td>
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<td>- Zorica Garača, RS Ministry of Education and Culture</td>
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<td>- Žerica Džambić, Association „Stečak” Tuzla</td>
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### Consultations – Institutional Reforms

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<td>I</td>
<td>Zenica</td>
<td>23-24 Jun 2010</td>
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- Amer Homarac, Local Democracy Foundation
- Aleksandra Letić, Expert Working Group, RS Helsinki Committee on Human Rights
- Amir Kulaglić, Expert Working Group, independent expert
- Aldijana Omeragić, Office of Public Administration Coordinator
- Andelko Kvesić, Croat Association of ex-Camp Inmates
- Branko Todorović, RS Helsinki Committee on Human Rights
- Duško Babić, Union of Associations of Civilian Victims of War of RS
- Obrad Bubić, RS Union of ex-Camp Inmates
- Denis Džidić, BIRN
- Dario Janjetović, RS Interior Ministry
- Dijana Hren, Association “Snaga žene” Tuzla
- Edin Ramulić, Expert Working Group, Association of Women of Prijedor “izvor”
- Elijas Tauber, Expert Working Group, independent expert
- Enisa Teskeredžić, Expert Working Group, Ministry of Veterans Affairs, FBiH
- Enis Omerović, Institute for Investigation of Crimes against Humanity and International Law, Sarajevo University
- Brane Šuka, SIPA
- Goran Simić, Expert Working Group, Justice Ministry, FBiH
- Hazim Mujičnović, Association of Families of War Victims „Vlasenica 92-95”
- Alja Kazić, Federation Police Administration
- Edin Ramić, Member of RS House of Peoples
- Dževdana Brajčić, Zenica Municipality
- Dalibor Tanić, Magazine Journal
- Kada Hotić, Association “Mothers of Srebrenica and Žepa Enclaves” Movement
- Branka Rajner, Human Rights Bureau
- Lidija Škaro, ICMP,
- Milan Mandić, RS Union of Associations of the Missing
- Mile Marčeta, returnee to Drvar
- Marko Jurišić, Expert Working Group, BIH Missing Persons Institute
- Goran Bubalo, Catholic Relief Service, observer
- Aner Hadžimahmutović, SIPA
- Murat Tahorivić, Union of ex-Camp Inmates of BiH
- Milena Savić, Centre for Information and Legal Assistance, Zvornik
- Bećir Macić, Institute for Investigation of Crimes against Humanity and International Law, Sarajevo University
- Nikola Dvizac, Expert Working Group, RS Ministry of Health and Social Welfare
- Mersija Krzić, Association “Woman-Victim of War”
- Vehid Šehić, Association “Citizen Forum of Tuzla”
- Zinka Salihagić, Agency for Civil Service, FBiH
- Rado Pejić, Association “Fiducia”
- Ramo Sulić, Association of Decertified Police Officers
- Sead Alić, legal representative of Srebrenica Municipality
- Selma Džihanović-Gratzi, Expert Working Group, Justice Ministry of BiH
- Salem Čorbo, Civic Association Returns Bijeljina
- Samir Husić, Office of Disciplinary Counsel, HUPC
- Tihomir Lukeš, Court of BiH
- Zdravko Knežević, Office of the Prosecutor, FBiH
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FOCUS GROUP 1 – Sarajevo
- Aleksandar Radeta, RS Agency for Civil Service
- Milan Miletić, RS Union of ex-Camp Inmates
- Alija Kazić, FBIH Police Administration
- Goran Blagojević, RS Interior Ministry
- Admir Operta, Brcko District Government
- Zinka Salihagić, FBIH Agency for Civil Service
- Neven Akšamija, BIH Agency for Civil Service
- Eli Tauber, independent expert (member of EWG)
- Fatima Bašić, BIH Justice Ministry
- Selma Džihanović-Grat, BIH Justice Ministry
- Milana Popadić, BIH Justice Ministry
- Fazila Musić, BIH Justice Ministry
- Brano Jovičić, Brcko District
- Jasminka Džumhur, Office of the Ombudsmen of BiH
- Hajrija Adžamija, Office of the Ombudsmen of BiH
- Nina Šeremet, Office of the Ombudsmen of BiH
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- Mirjana Čučković, Constitutional Court of FBiH
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- Zlatko Sarić, moderator

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- Danko Polovina-Mandić, BIH Central Electoral Commission
- Goran Šimić, FBIH Justice Ministry
- Nina Šeremet, Office of the Ombudsmen of BiH
- Drino Galičić, European Academy Bolzano
- Cvijeta Kovačević, Employment Board, Brcko District
- Vehid Šehić, Forum of Citizens of Tuzla
- Indira Huskić, FBIH Agency for Civil Service
- Admir Operta, Brcko District
- Amir Kulagić, independent expert (member of EWG)
- Nikola Dvizac, RS Health Ministry
- Milan Miletić, RS Union of ex-Camp Inmates
- Zlatko Sarić, moderator
Annex 5 – Glossary

Non-judicial mechanisms of transitional justice
The Transitional Justice Strategy covers the following non-judicial mechanisms: fact-finding and truth-telling, reparations and memorials, and institutional reforms. These mechanisms are called “non-judicial” because their relevant activities are implemented outside the judicial system, through various legal, policy and institutional arrangements.\(^{158}\) The non-judicial activities do not have the same mandates nor do they have the same impact as judicial mechanisms. The non-judicial activities have, in a broader sense, a moral impact on individuals and the society as a whole, while the judicial activities result in final and binding rulings i.e. imposing sanctions in civil and criminal matters.

Unofficial and official transitional justice initiatives
In technical literature, the notion of “unofficial initiatives” implies the activities initiated and implemented by the civil society (at the national and international levels), while the notion of “official initiatives” implies the activities initiated and implemented by government and other public institutions (at the national and international levels). The Transitional Justice Strategy does not use the terms “unofficial and official initiatives”; rather, for the sake of precision, it uses the appropriate descriptive forms, such as “initiatives implemented by the civil society” or “initiatives of the civil society”, to refer to the so-called “unofficial initiatives” and “initiatives implemented by government and other public institutions” to refer to the so-called “official initiatives”, focusing solely on national initiatives.

Institutional non-judicial fact-finding and truth-telling mechanism
The institutional non-judicial fact-finding and truth-telling mechanisms are independent and ad hoc investigative bodies formed to investigate issues defined in their mandates and to inform the public on their findings. They are called “non-judicial” because, unlike courts of law, they do not reach final and binding decisions nor do they impose criminal and civil sanctions. In case of false statements, prevention of efficiency of the institutional non-judicial mechanism, destruction of documents etc., the institutional non-judicial mechanism cannot punish these acts. Rather, this is done by a court of law. Unlike the judicial mechanism, there are no parties in the institutional non-judicial mechanism. The judicial mechanism is focused on individual human rights violators in criminal and civil proceedings, while the institutional non-judicial mechanism is focused

\(^{158}\) The line between judicial and non-judicial mechanisms is not so strict. One of the examples is compensation, as a form of reparation. Generally, reparations are primarily treated as a non-judicial mechanism. However, compensation can be delivered through administrative measures and also through the judiciary, by filing physical injury and/or mental anguish damage claims. Also, criminal prosecution and punishment of those bearing responsibility for the war crimes – as a judicial mechanism - can have the function of delivering satisfaction to victims, as a form of reparation, which is, sui generis, a non-judicial form.
on fact-finding, truth-telling and victims' accounts and on improvement of the socio-economic status of victims etc..

**Truth-telling/truth-seeking/fact-finding**

The *Transitional Justice Strategy* uses the terms “truth-telling”, “truth-seeking” and “fact-finding”. One of the transitional justice mechanisms covered by this *Strategy* is fact-finding and truth-telling. In theory and practice of transitional justice, the terms “truth-telling” and “fact-finding” are usually used interchangeably, although there are some subtle differences between them. Specifically, “fact-finding” implies a permanent need for information i.e. for knowledge and inquiry and for the facts about the past that need to be examined. The term “truth-telling” refers to the processes through which states and societies are telling stories about the past traumatic periods, such as armed conflicts, and implies the need for different voices to be heard and for sharing past experiences, which gives those most affected (victims) a feeling of empowerment and recognition. The term “fact-finding” indicates the need for the so-called “forensic truth”, the truth which is based on evidence i.e. on establishing such truth. This truth is best established by the most objective and impartial methods that exist, which are borrowed from the social sciences, journalism, law, etc.

**Vetting**

For the purpose of the *Transitional Justice Strategy*, vetting is defined as a non-judicial activity which represents a procedure for background checks on public servants through screening their professional capacity and moral integrity in order to determine their suitability for public office. Professional capacity includes checking the qualifications required for a job, professional experience, continuous professional development through specialized training, etc. Moral integrity means respect for international human rights standards, (non) corrupt conduct, (im)partiality and (non) discrimination, etc. The result of vetting is not a criminal sentence. Vetting in most cases results in demotion, referral to additional education, removal from office, either temporarily or permanently, usually allowing public servants to apply for the same office again in the future, and in the most radical cases it results in removal from office without the possibility of re-applying, etc. The vetting process implies that there is a special independent body which will determine suitability of a public official/civil servant for public office and the basic standards for the protection of human rights of the public official/civil servant, which are compatible with the democratic principles and the rule of law (the right to work in public service; the right to be protected against unlawful attacks on honour and reputation; the right to an effective legal remedy; the right to presumption of innocence; the right to a fair trial before a competent, independent and impartial tribunal; the right to equality before court and equal protection of the law; the right to work, etc.).

**Reappointment**

Reappointment is a special form of vetting which implies substantial reforms within an institution in terms of both structure and human resources. In structural terms,
reappointment means abolition, reconstruction or reorganisation of an institution or even formation of a new one. In terms of human resources, all positions within an institution are declared vacant and vacancies are announced publicly in order to select and recruit the most suitable persons for jobs. All persons who satisfy the job criteria can apply, including those already working in those institutions, if they want to continue to work. The reappointment procedure means that applicants should prove their suitability for the jobs they have applied for, as is the case with regular applications for other jobs. In case of reappointment, the burden of proof rests on applicants.

**Lustration**

Lustration is a specific form of vetting. It does not examine individual performance through checking professional capacity and moral integrity; rather, it establishes the link (affiliation), or the absence of the link, between an individual and a political organisation, a military or police unit or institution or a group in general, believed to be responsible for human rights abuse. Based on the finding whether or not such a link exists, a decision is made declaring whether or not somebody is suitable for public office. Just like vetting, lustration does not imply any criminal punishment. The consequences of establishing suitability for public administration are similar to those of the vetting process, however, they are based primarily on removal from public office. Lustration requires a special body which will determine whether or not there is a linkage (affiliation) between a public official and some institutions or groups. In the human rights literature, lustration gives rise to some serious reservations over violations of human rights of the individuals that undergo lustration.

**Definition of the term “victim”**

The *Transitional Justice Strategy* uses the definition of “victim” from paragraph 8 of the Resolution 60/147 of the UN Security Council: *The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.*

_Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also_
includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

Definition of the term “persons with disabilities”
The Transitional Justice Strategy used the definition of “a person with a disability” from Article 1 of the UN Convention on the Rights of Persons with Disabilities.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

A civilian victim of war
For the purpose of the Transitional Justice Strategy, the following definition of a “civilian victim of war” is used:

A civilian victim of war is the person who in time of war or immediate danger of war sustained injury/injuries that caused a bodily or mental harm or a serious damage to health, or death, in the period between 30 April, 1991 and 14 February, 1996.

Victim of torture
For the purpose of the Transitional Justice Strategy, the following definition of a “victim of torture” is used:

A victim of torture is the person who suffered a bodily harm or a serious deterioration of health due to torture, inhumane or degrading treatment, sexual violence, rape, unlawful punishment, unlawful deprivation of liberty at places of confinement and forced labour during the war or immediate danger of war in the period between 30 April, 1991 and 14 February, 1996.

A missing person is also considered a victim of torture and is included in this definition.

Missing person
The Transitional Justice Strategy uses the definition of a “missing person” from Article 2(1) of the Law on Missing Persons of Bosnia and Herzegovina.

A missing person is a person about whom his or her family has no information and/or is reported missing on the basis of reliable information as a consequence of the armed conflict on the territory of the former Yugoslavia. This Law applies to persons who disappeared in the period from 30 April, 1991 to 14 February, 1996.

Places of confinement
The relevant international documents, such as the Geneva Convention III (about prisoners of war) and the Geneva Convention (IV) (protection of civilians in an armed conflict) do not contain definitions of such notions as concentration camp, places of
confinement, collection centres, etc. The *Transitional Justice Strategy* uses the term “places of confinement” in generic and descriptive sense. This notion covers individual and large-scale unlawful acts of confinement or lawful confinement of persons throughout BIH during the armed conflict between 1992 and 1995 and at which criminal activities, such as inhumane treatment, torture and other cruel, inhuman or humiliating treatment, were conducted.

**Armed conflict and war**
The *Transitional Justice Strategy* uses the terms “armed conflict” and “war” interchangeably. The need to include and explain these notions lies in the conviction of some participants of the consultation process on the development of a *Transitional Justice Strategy* that they have different meanings and that they indicate an “internal conflict” (an armed conflict) i.e. an “international conflict” (war). This reasoning has no basis in international law.\(^{160}\) Also, the term “armed conflict” is used in a broader sense in some international instruments, such as Additional Protocols to the Geneva Conventions.\(^{161}\)

**Post-traumatic stress disorder (PTSD)**
Post-traumatic stress disorder is a psychological harm caused by a strong traumatic experience, an event that is beyond any human experience and which causes a feeling of shock. PTSD appears as a delayed or prolonged response to a stressful event, and can show first signs a number of years later. This type of stress can be caused by the events during a war and its consequences are such that they go beyond the ability of most people to cope with them. The development of this disease is determined by intensity and duration of trauma, and by a psycho-social condition of a person prior to the trauma experienced. Treatment consists of psychotherapy, pharmacotherapy and sociotherapy which can be combined with physical therapy.

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\(^{160}\) International humanitarian law uses the term “armed conflict” in a broader sense and it covers both internal and international conflict. Specifically, in the Tadic case, ICTY, in the decision on the defence motion for interlocutory appeal – an appeal of a ruling by one party made before the trial itself has concluded) on jurisdiction of the Tribunal, of 2 October, 1995, gives, in paragraph 70, the following definition of an armed conflict: *an armed conflict exists wherever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State*. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.


\(^{161}\) See paragraph 87 of the same decision.
War crime
The *Transitional Justice Strategy* uses the term “war crime” in generic terms and it covers the criminal offences punishable under international law and which amount to war crimes (in narrow legal terms), crimes against humanity and genocide.\(^{162}\)

Perpetrator
For the purposes of the *Transitional Justice Strategy*, the term “perpetrator” covers the following categories: direct perpetrators of crimes, accomplices (instigators, aiders and abettors, etc.) as well as the masterminds behind those crimes.

International human rights law
International human rights law defines the obligations of the states to take, or refrain from, certain actions to promote and protect human rights and fundamental freedoms of individuals. A series of international agreements and other instruments related to human rights, adopted by the *United Nations*, create a legal norm for the protection of individual human rights. At regional level (Europe, America, etc.), human rights instruments highlight specific problems regarding human rights protection in a given region. Just like any other field of international law, these agreements apply equally both in peace and during an armed conflict, regardless of its character (internal or international armed conflict).

International humanitarian law
International humanitarian law is a body of laws aimed at restricting the effects of an armed conflict for humanitarian reasons. International humanitarian law protects non-combatants (such as civilians, medical staff, the wounded, the sick, shipwreck survivors and prisoners of war) and restricts means and methods of warfare. It includes the Geneva and The Hague Conventions and Additional Protocols, the case law and international customary law. The biggest part of humanitarian law instruments is contained in the Geneva Conventions from 1949 and Additional Protocols from 1977. International humanitarian law applies only during an armed conflict, regardless of the character of the conflict (an international or internal conflict).

Sites of conscience
Sites of conscience are public spaces and monuments the purpose of which is to protect memory and interpretation of history through encouragement of active involvement of citizens in an open, broad dialogue on legacies of the past and contemporary social

\(^{162}\) This generic term “war crimes” lacks legal precision, among other things, because crime against humanity and genocide can be committed also in the absence of an armed conflict, in which case they would not be “war crimes”. *The Transitional Justice Strategy* finds an argument in favour of this approach in BiH practice, specifically, in naming the relevant department of the *Court of BiH, War Crimes Department of the Court of BiH*, which tries not only the war crimes cases in a narrow sense of the word but also crime against humanity and genocide cases.
processes related to some events or phenomena, marked by the sites of conscience. The goal of sites of conscience is to promote and protect democratic values and human rights and to ensure prevention of recurrence of human rights abuses in the future.
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