



**L'OSSERVATORIO**  
RESEARCH CENTRE ON CIVILIAN VICTIMS OF CONFLICTS



**ANVCG**  
Associazione Nazionale  
Vittime Civili di Guerra  
ONLUS

03/12/2020

# KOSOVO CIVILIAN WAR CRIME VICTIMS: CHALLENGES TO LEGAL REPARATIONS

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## INTRODUCTION

On 16 June 2020, the Balkan Investigative Reporting Network (BIRN) released an article titled “Kosovo War Crime Victims Losing Hope of Compensation,” finding that even in cases when Kosovo trials concluded with a conviction, war crimes victims were almost never awarded reparations.<sup>1</sup>

The Kosovo war has been characterised as a war of ethnic cleansing against civilians, as well as an armed insurgency.<sup>2</sup> War crimes identified by Human Rights Watch (HRW) committed by both Serbian and Albanian armed forces involve coordinated and systematic attacks of torture, rape, mass killings, and forced expulsions. The Kosovo Memory Book (KMB) has confirmed that as of September 2016, there has been a total 13, 549 deaths or disappearances in connection with the war in Kosovo from January 1998 to December 2000.<sup>3</sup> 10, 334 of these casualties were civilians consisting of 8693 Albanians, 1196 Serbs, and 445 Roma and others.<sup>4</sup>

Since the end of the conflict, over 25 persons in 11 indictments have been charged through international and domestic legal bodies for war crimes committed against civilians in Kosovo. The International Criminal Tribunal for the Former Yugoslavia (ICTY) is recognised as the most prominent legal body that investigated and prosecuted alleged war crimes committed during the Kosovo war. The Tribunal’s mandate covers serious violations of international humanitarian law committed in the former Yugoslavia since 1991. In 1998, the ICTY asserted that events in Kosovo would fall under its jurisdiction, over half a year before violence escalated in the region. Thus, Kosovo “is one of the few cases where an international criminal tribunal was already established and working by the time the conflict escalated and atrocities accumulated.”<sup>5</sup> Indictments against Kosovo war criminals are still occurring today through other legal bodies such as the Kosovo Specialist Chambers and Specialist Prosecutor’s Office (KSC and SPO).

The purpose of this research paper is to outline the rights of Kosovo civilian victims of war crimes under laws on reparations, and subsequently demonstrate the challenges to receiving reparations in practice. The paper will first describe the main legal reparation bodies in Kosovo. It will state their mandates and current standing in regard to granting reparations to civilian survivors of the war. The paper will then define who is classified as a “victim” according to certain legal bodies and their governing law. Subsequently, the paper will identify the challenges to legal reparations. This will include an analysis of the issue from both from the perspective of the legal bodies providing reparations, and of the civilian applicants aiming to receive reparations. Recommendations will finally be provided based on these challenges and considering certain practical and contextual elements.

This paper will follow a desk research method using a variety of both primary and secondary sources. It will primarily be based on Kosovo domestic law and other legal sources, as well as interviews, testimonies, reports, and other secondary data compiled by international non-governmental organisations (INGOs) working with survivors of the Kosovo war. Using this research method, it is possible to demonstrate the reality of how the law on reparations is truly applied and experienced in practice, thus identifying any inconsistencies where recommendations can be subsequently derived.

<sup>1</sup> Serbeze Haxhiaj, Balkan Investigative Reporting Network, *Kosovo War Crime Victims Losing Hope of Compensation* (16 June 2020), <https://balkaninsight.com/2020/06/16/kosovo-war-crime-victims-losing-hope-of-compensation/>, accessed 16 June 2020.

<sup>2</sup> The Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (2000), accessed 1 July 2020, pg. 2.

<sup>3</sup> The Kosovo Memory Book [http://www.kosovskaknjigapamcenja.org/?page\\_id=29&lang=de](http://www.kosovskaknjigapamcenja.org/?page_id=29&lang=de), accessed 30 June 2020.

<sup>4</sup> *ibid.*

<sup>5</sup> European Council on Foreign Relations, *International Justice and the Prevention of Atrocities Case Study: Kosovo* (2013), [https://www.ecfr.eu/page/-/IJP\\_Kosovo.pdf](https://www.ecfr.eu/page/-/IJP_Kosovo.pdf), accessed 25 September 2020, pg.1.

## 1. KOSOVO LEGAL REPATRIATION BODIES

### 1.1 United Nations Mission in Kosovo (UNMIK) and European Union Rule of Law Mission in Kosovo (EULEX)

The United Nations Interim Administration Mission in Kosovo (UNMIK) is an officially mandated mission of the United Nations (UN) in Kosovo, established pursuant to UN Security Council Resolution 1244 passed on 10 June 1999.<sup>6</sup> Under the Resolution, its mandate is to “help to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo and advance regional stability in the Western Balkans.”<sup>7</sup> Regarding reparations, the UNMIK Justice Section, *inter alia*, performs the primary task of monitoring and reporting on rule of law developments, especially “prosecutions, investigations and trials such as high-profile cases involving war crimes and other serious crimes.”<sup>8</sup>

In 1999, UNMIK supported the establishment of the Department of Judicial Affairs, which in 2001, was renamed “Department of Justice” (DOJ). Its core mandate was to create an independent, impartial, and competent judiciary to ensure that inter-ethnic and organised crimes were prosecuted and adjudicated. It served as the focal point for supporting access to justice and providing legal assistance to civilian victims of crimes. Investigations of war crimes and inter-ethnic crimes investigated through the Office of the International Prosecutors/Criminal Division and Office of Missing Persons and Forensics were also supported by UNMIK.<sup>9</sup>

In 2008, UNMIK was restructured and its rule of law executive tasks were transferred to the European Union Rule of Law Mission in Kosovo (EULEX).<sup>10</sup> EULEX was thus delivered and given access to active criminal case files, with the executive mandate to investigate and prosecute crimes previously brought under the UNMIK administration. According to Bernd Borchardt, EULEX’s Head of Mission from 2012–2014, EULEX inherited 1200 war crime cases from UNMIK, and closed or dismissed 500 of them due to lack of evidence.<sup>11</sup> However, EULEX has been significantly downsized and now works largely as a monitoring mission. According to an exclusive interview with , Lars-Gunnar Wigemark, EULEX’s current Head of Mission, EULEX has maintained “some of the tasks (...) we want to be here as long as we can be useful and things that can be handled by the Kosovo authorities should be handled by Kosovo.”<sup>12</sup>

### 1.2 The Crime Victims Compensation Program

The Crime Victims Compensation Program was established in 2015 as part of the Kosovo Ministry of Justice and financed by the budget of the Republic of Kosovo. However, it only became effective in 2016. Its mandate is to “enable victims of violent crimes to apply for financial compensation for damages suffered as a result of the criminal offence,”; and the compensation may be “requested when the victim is unable to get restitution from the defendant or compensation from other sources.”<sup>13</sup> According to a 2019 Report by the European

<sup>6</sup> United Nations Security Council, Resolution 1244 (10 June 1999), [https://unmik.unmissions.org/sites/default/files/old\\_dnn/Res1244ENG.pdf](https://unmik.unmissions.org/sites/default/files/old_dnn/Res1244ENG.pdf), accessed 3 July 2020.

<sup>7</sup> United Nations Mission in Kosovo, Mandate, <https://unmik.unmissions.org/mandate>, accessed 3 July 2020.

<sup>8</sup> United Nations Mission in Kosovo, The Work of the Justice Section, <https://unmik.unmissions.org/work-justice-section>, accessed 3 July 2020.

<sup>9</sup> United Nations Mission in Kosovo, Rule of Law in Kosovo and the Mandate of UNMIK, <https://unmik.unmissions.org/rule-law-kosovo-and-mandate-unmik>, accessed 3 July 2020.

<sup>10</sup> United Nations Security Council, Statement by the President of the Security Council (26 November 2008), [https://unmik.unmissions.org/sites/default/files/old\\_dnn/SPRST200844.pdf](https://unmik.unmissions.org/sites/default/files/old_dnn/SPRST200844.pdf), accessed 3 July 2020.

<sup>11</sup> European Union External Action, *EULEX and War Crimes*, <https://www.eulex-kosovo.eu/en/news/000427.php>, accessed 25 September 2020.

<sup>12</sup> European Union Rule of Mission Kosovo, *Kosovo 2.0 interview with EULEX Head of Mission, Lars-Gunnar Wigemark* (20 August 2020), <https://www.eulex-kosovo.eu/?page=2,11,1240>, accessed 25 September 2020.

<sup>13</sup> Republic of Kosovo, *Justice, Dignity and Respect for Victims of Crime: Crime Victims Compensation Program*, <https://md.rks.gov.net/desk/inc/media/D42B1893-B42D-4BF4-B6D7-B1675BD7BAEB.pdf>, accessed 29 June 2020.

Commission, the Commission responsible for compensation approved 7 requests and dismissed 14 in 2018. However, none of those requests involve victims of crimes committed during the war.<sup>14</sup>

### 1.3 The Kosovo Specialist Chambers and Specialist Prosecutor's Office (KSC and SPO)

The KSC and SPO were established on the basis of a Constitutional Amendment and a Special Law adopted by the Kosovo Assembly on 3 August 2015. They are located in The Hague, The Netherlands, and are attached to each level of the court system in Kosovo. The Specialist Chambers comprise two organs, the Chambers and the Registry. The SPO, on the other hand, is an independent office within the Court: it was set up in September 2016 and inherited the staff and mandate of the Special Investigative Task force (SITF).

The KSC and SPO have jurisdiction over the alleged crimes described in the 2011 Report, which were commenced or committed in Kosovo between 1 January 1998 and 31 December 2000 by or against citizens of Kosovo or the Federal Republic of Yugoslavia. This is until it is notified by the Council of the European Union that investigations have concluded, and proceedings are complete.<sup>15</sup> A notable aspect of the KSC and SPO is that they allow victims to participate in the proceedings. Once an indictment is confirmed, a KSC Judge may decide that “a person who has suffered physical, mental or material harm as a direct result of a crime listed in the indictment can become a participating victim.”<sup>16</sup> At the end of the trial, Judges may issue a decision on the damage, loss and injury to victims that may form the basis for a finding on reparations. Reparations may be collective or individual.<sup>17</sup>

On 24 June 2020, the SPO publicly disclosed the details of a ten-count indictment which was filed on 24 April 2020 against Hashim Thaçi, Kadri Veseli, and others, charging them with a range of crimes against humanity and war crimes.<sup>18</sup> This is a notable turning point in the history of the Court, especially for the (alleged) victims. Indeed, subject to confirmation of the submitted indictment by the Pre-Trial judge, persons who claim to have suffered physical, mental, or material harm as a direct result of the alleged crimes will be able to apply to participate in the proceedings.

In the meantime, on 12 June 2020, the indictment against Salih Mustafa was confirmed in a second case. Mr. Mustafa is charged with war crimes under Articles 14 and 16(1) of Law No. 05/L 053, namely arbitrary detention, cruel treatment, torture, and murder.<sup>19</sup> Following the arrest and transfer of the Accused, which marked the official opening of the pre-trial phase, victims are now able to apply for participation in the proceedings for this case. For the sake of completeness, mention should also be made of ongoing investigations against Nasim Haradinaj and Hysni Gucati, who were arrested on 25 September 2020 and are in custody for offences against the administration of justice, including intimidation of witnesses, retaliation

<sup>14</sup> European Commission, Kosovo Report (2019), <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>, accessed 3 July 2020, pg. 30.

<sup>15</sup> Kosovo Specialist Chambers and Specialist Prosecutor's Office, Background, <https://www.scp-ks.org/en/background>, accessed 3 July 2020.

<sup>16</sup> Kosovo Specialist Chambers and Specialist Prosecutor's Office, Victim's Participation, [https://www.scp-ks.org/sites/default/files/public/content/vp\\_leaflet\\_en\\_online.pdf](https://www.scp-ks.org/sites/default/files/public/content/vp_leaflet_en_online.pdf), accessed 3 July 2020.

<sup>17</sup> *ibid.*

<sup>18</sup> Kosovo Specialist Chambers and Specialist Prosecutor's Office, Press Statement (24 June 2020), <https://www.scp-ks.org/en/press-statement>, accessed 24 June 2020.

<sup>19</sup> Submission of further redacted version of confirmed indictment for Salih Mustafa (19 June 2020), <https://www.scp-ks.org/en/documents/annex-1-submission-further-redacted-version-confirmed-indictment>, accessed 2 October 2020.

and violation of secrecy of proceedings according to the Kosovo Criminal Code, by virtue of Article 15(2) of Law No. 05/L 053.<sup>20 21</sup>

## 2. THE DAMAGE OF CONFLICT: WHO ARE THE CIVILIAN VICTIMS OF THE KOSOVO WAR?

The current number of Kosovo civilian war crime victims is unknown, as defining who is a “victim” and their entitled reparations depends on the kind of legal body and its governing law.

Under the Law No. 05/L-036 on Victim Compensation which governs the Kosovo Crime Victims Compensation Program, a victim is simply defined as “a person whose personal or property rights are violated or endangered by a criminal offence.”<sup>22</sup> For the purposes of compensation, a victim can also be a family member of someone who has disappeared or died due to a criminal offence.<sup>23</sup> Criminal offences compensable under this law include murder, trafficking of persons, rape, and sexual abuse of children.<sup>24</sup> However, according to the Kosovo Institute for Justice, the Ministry of Justice of Kosovo has declined to confirm whether or not the Programme covers victims of war crime cases.<sup>25</sup> Nevertheless, damages that can be compensated under the law such as serious physical injuries, serious disturbance to mental health, and loss of capacity to work are well-proven effects of the Kosovo war on civilian survivors.<sup>26</sup> For example, civilian survivors of the Kosovo war who have lost first-degree family members due to war related violence are reported to have significantly more depressive episodes than nonbereaved civilian war survivors.<sup>27</sup> In addition, according to the BIRN, it has been established that there are over 20, 000 victims of rape as a result of conflict-related sexual violence (CRSV) committed during the war.<sup>28</sup> It has been widely confirmed that sexual violence against civilians was a prominent tactic used by Serbian forces in Kosovo during the war.<sup>29</sup> According to Women Association *Medica Gjakova* (MG), a NGO providing, *inter alia*, psychosocial counselling, gynaecological care and legal advice to female survivors of CRSV of the Kosovo war, over 80% of its patients have both serious chronic physical and mental health conditions. Many have gynaecological problems or injuries and scars from violence suffered.<sup>30</sup> Post-traumatic stress disorder, insomnia, anxiety, high blood pressure, and suicidal ideation are the most common chronic mental health symptoms experienced by their patients.<sup>31</sup> Testimonies provided by the Kosovo Women’s Network reveal the prevalence of female suicide as a result of CRSV suffered during the war. Social stigmas attached to female survivors of CRSV can significantly exacerbate mental health conditions and create further pressures. One testimony describes, “It was in 2004, she was 32, and under social pressure to get married, so her parents arranged a marriage. The night she got married, her parents-

<sup>20</sup> Public Redacted Version of Corrected Version of Arrest Warrant for Nasim Haradinaj (24 September 2020), <https://www.scp-ks.org/en/documents/public-redacted-version-arrest-warrant-hysni-gucati>, accessed 2 October 2020.

<sup>21</sup> Public Redacted Version of Arrest Warrant for Hysni Gucati (24 September 2020), <https://www.scp-ks.org/en/documents/public-redacted-version-arrest-warrant-hysni-gucati>, accessed 2 October 2020.

<sup>22</sup> Kosovo Law on Crime Victim Compensation, Law No. 05/L-036 (2015), [http://www.mjekesialigjore-ks.com/wp-content/uploads/2015/11/LAW\\_NO\\_05\\_L-036\\_ON\\_CRIME\\_VICTIM\\_COMPENSATION.pdf](http://www.mjekesialigjore-ks.com/wp-content/uploads/2015/11/LAW_NO_05_L-036_ON_CRIME_VICTIM_COMPENSATION.pdf), accessed 22 June 2020.

<sup>23</sup> *ibid.*

<sup>24</sup> *ibid.*

<sup>25</sup> Serbeze Haxhijaj, Balkan Investigative Reporting Network, *Kosovo War Crime Victims Losing Hope of Compensation* (16 June 2020), <https://balkaninsight.com/2020/06/16/kosovo-war-crime-victims-losing-hope-of-compensation/>, accessed 16 June 2020.

<sup>26</sup> Above n. 22.

<sup>27</sup> Morina, N., Reschke, K., Hofmann, S. G., *Long-term outcomes of war-related death of family members in Kosovar civilian war survivors*. *Death Studies*, Volume 35, <https://doi.org/10.1080/07481187.2011.553340>, accessed 16 June 2020, pg. 365-372.

<sup>28</sup> Arber Kadriu and Die Morina, Balkan Investigative Reporting Network, *Pioneering Kosovo Rape Victim Relives Battle for Justice* (18 October 2018), <https://balkaninsight.com/2018/10/18/pioneering-kosovo-rape-victim-relives-battle-for-justice-10-18-2018/>, accessed 17 June 2020.

<sup>29</sup> Amnesty International, *“Wounds that Burn Our Soul”: Compensation for Kosovo’s Wartime Rape Survivors, But Still No Justice* (2017), <https://www.amnesty.org/download/Documents/EUR7075582017ENGLISH.PDF>, accessed 17 June 2020.

<sup>30</sup> *ibid.*

<sup>31</sup> Wang, S, Rushiti, F., Sejdiu, X., Pacolli, S., Gashi, B., Salihi, F., Modvig, J., *Survivors of war in northern Kosovo (III): The role of anger and hatred in pain and PTSD and their interactive effects on career outcome, quality of sleep and suicide ideation* (2012) *Conflict and Health*, Volume 6, <https://doi.org/10.1186/1752-1505-6-4>, accessed 17 June 2020, pg. 4.

in-law somehow got information that she had been raped, and sent her back to her family. The pressure was so much that she jumped into the well and killed herself.”<sup>32</sup>

Under Law No.05/L-053 establishing the KSC and SPO, a victim is “a natural person who has personally suffered harm, including physical, mental or material harm, as a direct result of a crime within the jurisdiction of the Court.”<sup>33</sup> Crimes within KSC jurisdiction include crimes against humanity, such as murder, torture, extermination, and enforced disappearances, as well as war crimes, including wilful killing, torture, inhuman treatment, biological experiments, and unlawful deportation. According to Besnik Ramosaj, the Director of the Statistics Department at the Kosovo Judicial Council, there has been no compiling of statistics about cases in which victims have ordered compensation. Nor are there any statistics on how many victims may have been compensated.<sup>34</sup> However, it is important to note that the KSC only filed its first indictments this year. Thus, alleged victims are able to apply for victim status and potentially receive reparations for these cases.

### 3. CHALLENGES TO LEGAL REPARATIONS

#### 3.1 Failure to Investigate

##### i. Administrative Issues and Hindrances

Many administrative shortcomings are currently obstructing the proper implementation of the reparations regime for civilian victims of war crimes in Kosovo. In 2011, the Ministry of Labour and Social Welfare of Kosovo (MLSW) made the political decision to stop receiving applications for reparations.<sup>35</sup> A report published by the Humanitarian Law Centre (HLC) provides confirmation of this decision, as well as numerous testimonies of persons denied to receiving documents required to compile and submit their applications for reparations on this basis. One testimony reveals:

*“I prepared all the requested documents and I approached the municipal department for social welfare in Klinë/Klina municipality at the beginning of the year 2014. The municipal officials told me that the process for receiving the documentation regarding reparations applications had been stopped and that they did not know when the process would restart again. My husband has been missing since 10/06/1999.”<sup>36</sup>*

It has been observed in the field research that when reparations have been requested, the process of the administrative procedure would take an unacceptably long time, often with no explanation. Furthermore, it has been found that there is often an unwillingness of public clerks to assist beneficiaries with their requests. For example, the HLC found that most of their interviewees, especially those of minority groups in Kosovo, were refused assistance and could not access the relevant documents in their own languages. One testimony describes:

<sup>32</sup> Kosova Women’s Network, *National Council Completes Secondary Legislation for Sexual Violence Survivors*, (30 March 2015) <http://www.womensnetwork.org/?message=true&FaqID=1&n=309>, accessed 16 June 2020.

<sup>33</sup> Kosovo Law on Specialist Chambers and Specialist Prosecutors Office, Law No.05/L-053 (2015) <https://www.scp-ks.org/en/documents/law-specialist-chambers-and-specialist-prosecutors-office>, accessed 16 June 2020.

<sup>34</sup> Above n. 25.

<sup>35</sup> Humanitarian Law Centre Kosovo, *War Reparation for Civilian Victims: What Access for Communities?* (2016), [https://www.hlc-kosovo.org/wp-content/uploads/2018/07/HLC\\_Report\\_final-REPARACIJE-eng.pdf](https://www.hlc-kosovo.org/wp-content/uploads/2018/07/HLC_Report_final-REPARACIJE-eng.pdf), accessed 16 June 2020, pg. 105.

<sup>36</sup> *ibid*, pg. 96.



*“My husband has been missing since 18/06/1999. I approached the municipality for issuing the certificate for missing persons. In the beginning, they refused to issue this document, though after 3 months I got the certificate, but written in the Albanian language.”<sup>37</sup>*

The HLC found that these common occurrences often discouraged or impeded potential applicants from seeking reparations. Moreover, human rights and humanitarian organisations have criticised these administrative flaws as breaching international principles of equality of access to documents and of transparency of procedures.

## ii. UNMIK: Victims of War Crimes not a Priority

The Human Rights Advisory Panel (HRAP) found that after its reconstruction in 2008, UNMIK had an immense disregard for the rights of civilian victims of war crimes in Kosovo, especially for victims of CRSV, abductions and enforced disappearances. It was found that UNMIK often failed to register and pass on cases to EULEX, failed to promptly secure evidence, and failed to inform victims of the progress of their case.<sup>38</sup> Extensive research by Amnesty International has found that most statements provided to UNMIK, especially those concerning CRSV, were never brought to an indictment. Even before its reconstruction, in 1999, it was found that UNMIK received a file of over 50 statements of women testifying that they had experienced CRSV to the NATO-led Kosovo Force (KFOR).<sup>39</sup>

A notable case in 2016 was brought to the HRAP by a complainant named S.M who stated that on 26 June 1999, his mother and sister were assaulted in their family home in Bellopole/Belo Polje village, Pejë/Peć municipality by numerous Albanian men wearing KLA insignia. They allegedly “blindfolded her and tied her to a chair, and then within earshot, three of them raped her daughter, who had mental and physical disabilities. They then killed her daughter by slitting her throat with a razor”.<sup>40</sup> HRAP found “no evidence in the [police] file that UNMIK made any investigation whatsoever into the rape and killing”; and concluded that “[the mother] was subject to gender-based violence that was not investigated with due diligence by UNMIK, in violation of the relevant provisions of the CEDAW Convention,” fundamentally contrary to UNMIK’s mandate.<sup>41</sup>

A Hearing before the Committee on Foreign Affairs House of Representatives conducted in April 2019 discussed the issues of effective reparation mechanisms for Kosovo’s wartime victims. Lack of proper evidence was often cited as a reason for cases not being passed on or initiated in the past. However, in reply, Atifete Jahjaga, former president of Kosovo stressed that lack of evidence is not an excuse, especially for victims of CRSV stating:

*“And so, many times when I have been arguing with many of the lawyers, with many of the prosecutors in the country (..) you do not need more evidence than the survivors of the sexual violence. In most of those cases,*

<sup>37</sup> Humanitarian Law Centre Kosovo, *War Reparation for Civilian Victims: What Access for Communities?* (2016), [https://www.hlc-kosovo.org/wp-content/uploads/2018/07/HLC\\_Report\\_final-REPARACIJE-eng.pdf](https://www.hlc-kosovo.org/wp-content/uploads/2018/07/HLC_Report_final-REPARACIJE-eng.pdf), P. 97.

<sup>38</sup> Amnesty International, *Serbia (Kosovo): UNMIK Legacy: The Failure to Deliver Justice and Reparations to the Relatives of the Abducted*, (2013), <https://www.amnesty.org/download/Documents/16000/eur700092013en.pdf>, accessed 18 June 2020, pg.69-72.

<sup>39</sup> Amnesty International interview with the head of UNMIK’s Victims Advocacy and Assistance Unit in (April 2007) in Amnesty International, *“Wounds that Burn Our Soul”: Compensation for Kosovo’s Wartime Rape Survivors, But Still No Justice* (2017), <https://www.amnesty.org/download/Documents/EUR7075582017ENGLISH.PDF>, accessed 17 June 2020, pg. 18.

<sup>40</sup> Human Rights Advisory Panel, *Opinion on Case No. 342/09, S.M. against UNMIK* (18 March 2016), [http://www.unmikonline.org/hrap/Eng/Cases%20Eng/342\\_09%20S.M.%20FINAL%20opinion.pdf](http://www.unmikonline.org/hrap/Eng/Cases%20Eng/342_09%20S.M.%20FINAL%20opinion.pdf), accessed 17 June 2020.

<sup>41</sup> *ibid.*



*they were not done, or they were not conducted alone. They were conducted in the presence of the family. They were conducted in the presence of the entire village. So, evidence is there.*<sup>42</sup>

### 3.2 Lack of Awareness of Victims to the Availability of Reparations

It is common to find that most civilian victims of war crimes in Kosovo are not aware that they are able to claim reparations, or the legal mechanisms that are available to them. According to extensive interviews conducted by the BIRN with Ehat Miftaraj, Director of the Pristina-based Kosovo Institute for Justice, “During our monitoring of war crime trials, we have seen that even in cases where verdicts include jail sentences, restitution for victims remains an unknown area.”<sup>43</sup>

BIRN tells the story of Imer Imeri, who fled to Albania after the war in 1999 as a refugee but was imprisoned by KLA guerrillas and sent to a secret detention centre in the village of Cahan. Imer says “(...) they put me in an improvised jail. They beat us and kept us in very bad conditions.”<sup>44</sup> After his escape in June 1999, later that year in November, his brother Haki was killed after being taken away by uniformed KLA members, despite the KLA being officially disbanded by that point. Imer is now 72 and lives near Skenderaj/Srbica, Kosovo. He suffers from various medical problems and psychological trauma as a result of the treatment he suffered by the KLA. In August 2010, the District Court of Mitrovicë/Mitrovica found Sabit Geci and Riza Alija, two officers of the detention centre where Imeri was imprisoned, guilty of having committed war crimes against the civilian population.<sup>45</sup> However, the court verdict did not include any restitution for the victims, despite, by law, Kosovo courts are required to instruct victims in war crime trials to claim compensation in civil proceedings.

Imeri admitted that “When the verdict was delivered, I expected to hear about compensation because there were people also who died there, but nothing happened.”<sup>46</sup> When BIRN noted to Imer about the Crime Victims Compensation Programme as a possible option, he stated that he did not even know that the programme exists, and argued that “personally I would like to ask for restitution and I believe others want to. But I think this should be included in court verdicts.”<sup>47</sup>

The HLC has also identified this issue in its research. For example, it has found that many victims and their family members, albeit entitled to reparations, fall short of enjoying their right simply because they are misinformed about its features and availability. One interviewee describes:

*“My son was kidnapped on 22/06/1999. Since then, he has remained missing. I just recently heard from a friend about your research and about the right to reparations. I got the phone number of your organization and decided to contact you to hear more in detail about this law.”<sup>48</sup>*

<sup>42</sup> US Government Committee on Foreign Affairs House of Representatives, *Kosovo’s Wartime Victims: The Quest for Justice*, Hearing Serial No. 116-28, (30 April 2019), <https://docs.house.gov/meetings/FA/FA00/20190430/109398/HHRG-116-FA00-Transcript-20190430.pdf>, accessed 17 June 2020, pg. 81.

<sup>43</sup> Above. n. 25.

<sup>44</sup> *ibid.*

<sup>45</sup> Special Prosecution Office of the Republic of Kosovo to the District Court of Mitrovicë/Mitrovica (Kosovo), Indictment, [http://www.hlc-kosovo.org/wp-content/uploads/2018/07/Sabit-Geci-anf-Riza-Alija-Indictment-05.08.2010\\_Redacted.pdf](http://www.hlc-kosovo.org/wp-content/uploads/2018/07/Sabit-Geci-anf-Riza-Alija-Indictment-05.08.2010_Redacted.pdf), accessed 17 June 2020.

<sup>46</sup> Above. n. 25.

<sup>47</sup> *ibid.*

<sup>48</sup> Above. n.35, pg. 94.

### 3.3 Lack of Effective Victim-Witness Protection and Anonymity in Proceedings

Victims and witnesses fear intimidation or reprisals due to being involved in investigations and legal cases. The International Centre for Transitional Justice (ICTJ), in reference to studies conducted by the Organisation for Security and Co-operation in Europe (OSCE), has reported that UNMIK devoted considerable resources to protecting victims and witnesses. For example, the UNMIK Regulation on victims and witness protection in criminal proceedings allows in “exceptional circumstances” for the identity of the witness to remain undisclosed to the Defence.<sup>49</sup> Various measures designed to conceal the identity of the witness include the use of image or voice-altering devices, closed sessions to the public and closed circuit television, and the use of pseudonyms.<sup>50</sup> However despite these protective measures, between 2003 and early 2004, numerous cases of injury and even deaths were reported of those involved in criminal proceedings.<sup>51</sup> A follow-up report published in 2008 by the OSCE, found that most witnesses and injured parties who had testified in court previously, failed to appear before the court, or had changed their statements provided during the investigation due to fear of reprisals.<sup>52</sup> Today, BIRN found that victims who have purposely concealed their identities during criminal proceedings are reluctant to claim compensation in civil proceedings as there are no legal mechanisms or protections in civil cases that allows them to stay anonymous, unlike through UNMIK. One victim who testified in the trial of five former KLA members as a protected witness describes to BIRN how he hired a lawyer but could not file a lawsuit for compensation without disclosing his full identity to the courts.<sup>53</sup>

In addition to the lack of victim-witness protection, testifying and claiming reparations through the courts can create re-traumatising effects for the victims. Victims of CRSV are particularly vulnerable in this regard. It has been identified in numerous studies and through the initiatives of international organisations that victims of CRSV live in a tremendous stigma from their societies. Often, the blame of CRSV is placed on the victim and not on the perpetrator. During a workshop by the Kosovo Rehabilitation Centre for Torture Victims (KRCT) in October 2017, testimonies were revealed of how stigma has completely changed the livelihoods of victims of CRSV after the war, most of them now experiencing loss of job opportunities, and have negative family and community relationships.<sup>54</sup> The Law on Witness Protection of 2011 grants certain protective measures to witnesses and victims during and after criminal proceedings if “there is a serious threat to that person and his close persons,” and “that person accepts to cooperate closely with the courts or investigatory authorities.”<sup>55</sup> Protection mechanisms include temporary relocation of the protected person to a secure place and change of identity of the protected person.<sup>56</sup> However, Amnesty International has found through an interview with EULEX prosecutors and Gender Advisors in September 2017 that no witnesses have entered

<sup>49</sup> United Nations Mission in Kosovo, Regulation No. 2001/20 On the Protection of Injured Parties and Witnesses in Criminal Proceedings (2001) amended by Reg. No. 2002/1 (2002), [https://unmik.unmissions.org/sites/default/files/regulations/02english/E2002regs/RE2002\\_01.pdf](https://unmik.unmissions.org/sites/default/files/regulations/02english/E2002regs/RE2002_01.pdf), accessed 20 June 2020.

<sup>50</sup> International Centre for Transitional Justice, Lessons from the Deployment of International Judges and Prosecutors in Kosovo (March 2006), [https://www.ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Courts-Study-2006-English\\_0.pdf](https://www.ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Courts-Study-2006-English_0.pdf), accessed 20 June 2020, pg. 26.

<sup>51</sup> *ibid.*

<sup>52</sup> Organisation for Security and Cooperation in Europe Mission in Kosovo, *Four Years Later: Follow-up of March 2004 Riots Cases before the Kosovo Criminal Justice System* (July 2008), <https://www.osce.org/files/f/documents/e/1/32700.pdf>, accessed 20 June 2020.

<sup>53</sup> Above. n. 25.

<sup>54</sup> Kosova Women’s Network, *KRCT aims at addressing the stigma surrounding the survivors of sexual violence during the war in Kosovo* (October 2017) <https://womensnetwork.org/kRCT-aims-at-addressing-the-stigma-surrounding-the-survivors-of-sexual-violence-during-the-war-in-kosovo/>, accessed 20 June 2020.

<sup>55</sup> Kosovo Law on Witness Protection, Law No. 04/L-015 (2011), [http://jcls.de/dokumente/law\\_on\\_witness\\_protection.pdf](http://jcls.de/dokumente/law_on_witness_protection.pdf), accessed 20 June 2020.

<sup>56</sup> *ibid.*

the witness protection scheme since 2004, reportedly due to the lack of trust in the justice system and continuous fear of reprisals due to the social stigma around CRSV.

#### 4. RECOMMENDATIONS

1. **The 2011 Ministry of Labour and Social Welfare of Kosovo (MLSW) decision to stop receiving applications for reparations must be reversed.** Despite its unknown status in relation to the current functioning of other reparation bodies, it is clear that administrative bodies are functioning based on this decision, ultimately refusing to assist in victims' reparation applications. This is in addition to the inconsistencies of administrative assistance received in the past which has created confusion for persons willing to apply. Thus, the public and the administrative bodies must be made fully aware of the reversal.
2. **Any misbehaviour of administrative clerks or any unwillingness assisting applicants must be monitored and subject to criteria of professional accountability.** Documents must be provided in the language of the applicants, in accordance with the principle of equal treatment set out by in the Law No. 02/L-37 'On the Use of Languages' currently in force in Kosovo.<sup>57</sup>
3. **Proper victim-witness protection and anonymity where possible must be provided in civil proceedings like in criminal proceedings.** It is clear that the experiences and reprisals experienced by individuals in the past are known to the society and is deterring future survivors from coming forward. This is especially a concern of survivors of CRSV due to social stigmas.
4. **Efforts to increase public awareness of reparations must be initiated.** The availability for reparations must be included in every court verdict concerning war crime indictments, and the government of Kosovo should initiate a nation-wide campaign to raise awareness about the currently functioning reparation bodies, and survivors' rights under Kosovo law.<sup>58</sup>
5. **Other initiatives that provide reparation-like services that do not involve the legal system should continue to be supported and established.** Survivors may find current reparation/compensation processes to be re-traumatising, too lengthy and complicated to undergo. Amnesty International have discovered that, for some survivors, simply being employed in local organisations that aid women who have experienced CRSV, is considered as more of a fulfilling form of reparation, as the survivors feel that they have a sense of purpose and empowerment. It also allows them to process the stress and trauma of their past.<sup>59</sup> The Kosovo government must support and fund these current organisations, as well as work on the establishment of new efforts that are practical and survivor friendly. This would take pressure off the legal system and give those survivors a sense of justice and reparation in their everyday lives.

<sup>57</sup> United Nations Interim Administration Mission in Kosovo, Law 02/L-37 On The Use Of Languages (2006), [http://www.komisioneri-ks.org/repository/docs/2006\\_02-L37\\_en-.pdf](http://www.komisioneri-ks.org/repository/docs/2006_02-L37_en-.pdf), accessed 6 July 2020.

<sup>58</sup> Above. n. 25.

<sup>59</sup> Above. n. 29, pg. 9.

6. **A Non-Amnesty Truth based Commission to document crimes and codification of historical records must be established.** As recommended by the Committee on Foreign Affairs House of Representatives, this Commission would help in the healing and reconciliation process “by providing a degree of closure and assuaging some of the lasting trauma of the atrocity crimes.”<sup>60</sup> Furthermore, the historical records of the Commission would be very beneficial in applications for reparations, as such applications rely heavily on accurate information in order to be approved.<sup>61</sup>

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<sup>60</sup> Above. n. 42, pg. 21.

<sup>61</sup> *ibid.*

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