

***‘The Law Comes First?’: The Dynamics of Victims’ Redress in Bosnia and Herzegovina<sup>1</sup>***

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## **Abstract**

What explains the variety in victim-centric state policies of redress in postwar Bosnia and Herzegovina (BiH)? Rather than analyzing BiH as a special case of a divided ethno-national state, this article studies domestic victimhood politics as a phenomenon with wider comparative applications for post-conflict contexts. Redress, a set of policies that legally recognize victims/survivors of wartime atrocities and provide them with in-kind and financial support, has increasingly entered the demands of victims/survivors. Many have sought to expand their rights through new legal frameworks at the state and subnational levels. However, in the Bosnian case only some have succeeded (or partially succeeded) with their demands. Why? Using fieldwork data and relying on literature in transitional justice, identity and peacebuilding, I argue that the differences go beyond ethno-national divisions and identity politics and are explained by how victims/survivors utilize their victim capital that combines mobilization resources, moral authority and international salience.

**Keywords:** Bosnia and Herzegovina; Redress; Activism; Victimhood politics; Transitional justice

## Introduction

In 2004, the Bosnian state recognized bereaved families of people who had gone missing in the 1992-5 Bosnian war as a distinct legal victim category and granted them various socio-economic rights. The adoption of the Law on Missing Persons<sup>2</sup> marked a milestone and remains the first and only state-level victim law in Bosnia and Herzegovina (BiH) to this day. Some headway was made over the last two decades in caring for individuals disproportionately affected by the wartime atrocities and providing them with official support at the subnational (entity) level too. In 2006, the subnational Bosniak-Croat entity (Federation of BiH or FBiH) recognized survivors of wartime sexual violence as war victims (locally referred to as *žrtve rata*) with the right to monthly compensation, an unprecedented change in the post-Yugoslav context at the time. In 2018, the Serb-dominated Republika Srpska (RS) legally defined former camp detainees as ‘victims of torture’ and stipulated their rights to regular payments. At the time of writing, in June 2022, a new legislation is debated in the Federation to streamline care for civilian victims of war (Kurtic 2022). These developments exemplify the complex, drawn-out and multi-level policy approach to victims/survivors<sup>3</sup> in BiH that human-rights organizations have widely criticised (cf. De Vlaming and Clark 2014). While some Bosnian victims/survivors have been granted redress through state legislation, others remain unrecognized. Forming a very heterogeneous group, Bosnian victims/survivors have struggled to navigate the labyrinthine domestic medley of redress mechanisms (cf. Hronešová 2016), often drawing on other state legislation, such as veteran policies (cf. Klepal 2018).

How can we explain these varieties in victim-centric state policies of redress in postwar Bosnia and Herzegovina? None of the existing conceptual explanations provides complete answers. Given the diversity of the regulations in BiH and the time-lapse since the 1992-5 war,

scholarship highlighting peacebuilding objectives, justice priorities, and developmental considerations fail to capture the variety of redress scenarios in Bosnia. Divisions between and within the two subnational (entity) governments (RS and FBiH) and the District of Brčko<sup>4</sup> and their particularistic political concerns that have dominated the literature on BiH do not account for the adoption of the 2004 law at the state level. Similarly, proximity to influential international advocates comes short of explaining how a group with limited international networks gained recognition in RS. Instead, as I argue in this article, the full range of redress policies adopted in BiH can be explained by a political analysis of the quality and leveraging of what I call ‘victim capital’ that includes three inter-related facets of victims’ agency, participation and resonance: ‘moral authority,’ ‘international salience’ and ‘mobilization resources’. Situated within the growing literature of ‘victimhood politics’ (Druliolle and Brett 2018) that has special relevance in the former Yugoslavia due to the number of conflict legacies, this article traces how Bosnian victims/survivors leveraged and utilized victim capital to achieve what I call redress, that is a victim-centric state-sponsored policy of socio-economic support and legal recognition.

Using empirical data collected in BiH and relying on the literature on transitional justice and peacebuilding, I present a framework that explains the complex redress adoptions.<sup>5</sup> I argue that, in order to understand redress outcomes in BiH, we must analyze how and when victims/survivors leverage and augment their moral authority, mobilization resources and international salience. Those who align their victim capital to the priorities and preferences of key decision-makers (both domestic and international) are more successful with their demands. First, those who leverage their moral authority to be seen as ‘deserving’ have higher chances of entering policy agendas. Second, when they also leverage the salience of their plight with international actors, which are important peace stakeholders, domestic authorities have more incentives to take their demands seriously. Third, domestic decision-makers can hardly ignore the

demands of groups that effectively mobilize through campaigns or protests. When local politics is directly answerable to external actors, as has been the case in BiH with varied intensity, leveraging the salience of victims' demands with peacebuilders may yield positive results. Conversely, when victims' issues enter domestic political agendas, victims/survivors can adjust their actions and strategies to exert pressure on local authorities to shame and propel them into action.

This article makes two main contributions to our understanding of postwar BiH. First, by analyzing victims/survivors as both social and political actors, it adds an important political aspect to the transitional justice literature on the country, speaking to and building on an impressive body of existing works (Helms 2013; Nettelfield and Wagner 2013; Delpla 2014; Clark 2017; Lai 2020). Second, by providing empirical data on the complex redress field in BiH, it maps out the key state-offered victim-centric provisions in the country outside of courts. Moreover, the article also presents a new conceptual framework to encourage comparative work on the politics of victims' agency. It must be noted that I am unable to discuss the full empirical variation of the victimhood field in BiH. However, my aim here is to illustrate my arguments by analyzing some of the most prominent victim groups.

In order to do so, I first provide a brief background about the research conducted in BiH and the methodology. Second, I reflect on existing conceptualizations of redress and its adoption. I show how redress was prioritized by the most visible organized victim groups after 1995. Third, I lay out the proposed framework and introduce its central concept, 'victim capital,' with its three constituent parts. I then present evidence from the ground about how victims/survivors organize and demand what they consider their rights in a protracted post-conflict setting before analyzing how the studied victim groups went about demanding redress. I show that even in a country that has been exposed to high levels of international involvement, victims/survivors have shaped both

the extent and the content of the adopted redress policies. In the final section, I offer some reflections on the dangers of the politics of victimhood and the comparative potential of this article.

### **Methodology: Researching War Victims in BiH**

Given the focus of this article on sensitive and complex issues of victimhood, my primary methodological approach relies on fieldwork-driven qualitative methods and analysis.

Specifically, this article is based on field research conducted in BiH between 2014 and 2019.<sup>6</sup>

Informed by theories of transitional justice, I approached redress and its attainment as the main puzzle but used the observed and collected data in Bosnia to understand how redress was adopted after 1995. I specifically looked at periods prior to legal adoptions or amendments of redress to glean which groups were involved in the policy discussions. I process-traced redress policies of several victim groups and used additional material to understand how and when policymakers adopted legal changes. The conceptual propositions are thus designed as within-case comparative research that studies how certain groups achieve redress and why others fail. While there is a large volume of works on international transitional justice in BiH, there is a surprising lack of data on local efforts for victim-centric state-sponsored legislation administered outside the domestic and international courts. This is why my primary data-collection method consisted of fieldwork that included interviews with key stakeholders involved in legal amendments to victim policies and participant observation. It should be stressed that even obtaining statistics and registries of victims/survivors was difficult as such data have become a key point of contention in the growing political polarization in BiH when each group tries to inflate its own victimhood during the war (cf. Subotić 2021). Therefore, I combined both official statistics provided by the Bosnian authorities as well as media reports, international documents and interview data.

During the fieldwork, with trips lasting from two weeks to three months, I conducted a total of 120 semi-structured interviews with victims/survivors, policymakers, international representatives, human-rights advocates, and civil society workers in different urban and rural locations. These locations consisted of the capital Sarajevo, other urban centres in the Federation such as Mostar and Tuzla, as well as across Republika Srpska. I have also spent significant amounts of time in areas affected by intense violence in the Krajina region (e.g. Kozarac, Prijedor), eastern Bosnia (e.g., Kalesija, Tuzla, Srebrenica) and Bihać in the northeast. In all these areas, victimhood and war suffering are present in daily discussions and news reporting. My interest thus did not strike anyone as odd. Using NGO directories of victim organizations in BiH and policy documents on victim-centric legislation that is partially available online and that I partially obtained from ministries (e.g., Human Rights and Refugees and veteran entity ministries), I identified informants with specific knowledge and expertise. I also relied on their referrals to others directly involved in the relevant victim-centric policymaking. I do not directly cite all of the interviews here, but my analysis is built on the assembled knowledge from these interviews and observations.

Especially in the case of victim groups, interview data was often tainted with one-sided narratives and ethno-national prisms, which I had to take into consideration. Therefore, to corroborate interview data, I further relied on local news collected from a Bosnian media database (*Infobiro*) at the Media Centre, NGO reports (mainly about human rights issues) and official documents provided by victim associations. In total, I analyzed 420 media articles in two prominent Bosnian newspapers (*Oslobodjenje* and *Dnevni Avaz*) on the topic of reparation, compensation, redress and victim-centric policies from 1992 to 2019 and further 100 articles from online news portals such as *Radio Free Europe* and *Balkan Insight*. I also assembled over

250 policy reports by local and international organizations on Bosnian transitional justice, human rights, and war victims.

Analytically, I first triangulated the data to understand each case separately, asking what factors explained the group's success or failure in redress adoption. I primarily assessed what actions and factors were exerted to see redress adopted in law. I then compared the cases and used existing literature to develop a framework that allowed for the within-state comparison of individual groups. This bottom-up approach had the benefit of not being constrained by existing models of transitional justice. Instead, I first analyzed the empirical data to understand how they tally with the existing scholarship. Using a 'conjunctural logic' of the comparative method (Ragin 1987) that relies on 'recipes' rather than causality, I present a framework of redress adoption for various groups when compared to each other. While it is analytically difficult to 'measure' differences in victim capital, using qualitative and observational data, I assess the groups *in comparison* to others. While my intention is not to endorse the infamous 'competition of victimhood,' I recognize that this method may potentially reinforce such tendencies. However, it needs to be recognized that the domestic dynamics of victimhood politics in BiH and elsewhere, to a large degree, are influenced by hierarchies and contests over who suffered more (cf. Subotić 2021). Finally, my theoretical enquiry is primarily focussing on the adoption of new legal measures and their amendments, leaving implementation aside. However, as these two phases of domestic policies are interrelated, the empirical material offers some insights about the existing problems with respecting the script of law.



## **Redress as a Victim-Centric Policy**

*Even if you gave all victims one million Bosnian marks, this wouldn't make a difference. We need to have a systematic change in the form of a law that gives us rights. This would lead to respecting victims.<sup>7</sup>*

Firstly, it is important to briefly outline that what I define as redress varies across different victim communities. In general, redress includes a legal recognition of harm/wrongdoing underpinned by direct victim-centric policies, such as regular financial contributions, one-off payments, material support, housing benefits, psychosocial support, and educational and health schemes (Walker 2016; van der Merwe 2014). Yet the specific combination of these provisions will matter to specific victim groups differently; while victims/survivors of sexual violence often demand psychosocial support, people with paraplegia may require physical therapy or wheelchairs (MacDonald 2013). Either way, redress belongs among tools usually associated with reparative justice, i.e., measures for victims/survivors aimed at 'repairing' previous violations, harms and grievances.<sup>8</sup> It comprises a set of material and in-kind benefits (e.g., payments, services, preferential treatment) that recognize victims' suffering and materially assist them to regain their livelihoods. Redress also denotes an official recognition of an individual's 'status' as a victim/survivor but also as a valuable member in social life (see Fraser 1995).<sup>9</sup> As used here, redress is thus often referred to as domestic victim-centric reparation. Yet the Bosnian combination of social benefits and financial payments with the official conferral of the victim 'status' without the involvement of courts or international payment schemes differs from reparation. Instead, the Bosnian policy focuses on domestic laws and regulations that provide victims/survivors with recognition in the form of a 'status' (Delpla 2014, 245–47) and socio-economic provisions.

In Bosnia, as well as elsewhere, financial and domestic legal provisions feature prominently in victims/survivors' demands (Macdonald 2017; Pham et al. 2016; Vinck and Pham 2014). War victims/survivors value redress as it helps them cope with stigma, disabilities and the debilitating effects of trauma (for those who develop the Post-traumatic stress disorder, PTSD). Yet similar to other transitional-justice measures, local authorities often resist redress. It is a policy with clear material repercussions, symbolic power and the potential to divide societies. As Lars Waldorf noted with reference to reparations, it is 'inherently divisive, pitting individuals and groups against one another over who gets compensated and by how much' (2012, 178). In some contexts, state reparation 'can work to administer and control social suffering' (Moon 2012, 188) and thus even increase polarization. Redress threatens state budgets, bureaucracies and understandings of who is 'deserving' (McEvoy and McConnachie 2013) – all aspects of potentially divisive post-conflict reckoning. It can be used to rewrite history, attract new constituencies and reap political benefits, which has certainly been in the case in BiH (cf. De Vlaming and Clark 2014). Yet unlike trials, which can be perceived as direct attacks on the implicated elites and national understandings of heroism, redress prioritizes one part of the population over another. And unlike truth commissions, which, while giving victims/survivors a voice, can pit them against perpetrators in a binary sense and even retraumatize participants. Redress is not directly and *de iure* directed *against* anyone but rather *for* someone.

Due to its large victim population, the existence of victim associations, variety in redress policies and the complex context which allows for tracing the role of international and domestic factors, Bosnia and Herzegovina is a suitable case to study the puzzle of varied redress policies. The complexity of the conflict between Bosniaks (Bosnian Muslims), Croats and Serbs between 1992-5 resulted in a great dissonance between victimhood and victims' rights. Questions about responsibility, who is a victim, and the size of the victim population have become particularly

sensitive, exacerbating divisions immediately after the war (Jansen 2007; Armakolas and Maksimovic 2013; Mihajlovic-Trbovc 2014). While refugees and those displaced were included in the peace negotiations in Dayton and peacebuilding efforts, the focus on individuals directly and disproportionately affected by war came only later through national and subnational interventions. The International Criminal Tribunal for the Former Yugoslavia, ICTY, and national war-crimes prosecutions have dominated transitional justice in Bosnia but focused primarily on the perpetrators (see Nettelfield 2010). Despite these interventions and several local attempts in truth-telling (see especially Dragović-Soso 2016), victims/survivors have consistently reported dissatisfaction with transitional justice (cf. Delpla 2014), initially criticizing the role of international actors (Biro et al. 2004; Stover and Weinstein 2004), the ‘politicization’ of justice and memory (cf. Jouhanneau 2013a) and the steadily growing culture of denial and relativization of war crimes (Barton Hronešová 2021; Gordy 2013; Obradovic 2013). In the past decade and a half, though, a critical source of dissatisfaction among victims/survivors has been the lack of direct socio-economic redress (Delbyck 2016).

Interviewed victims/survivors stressed the need for redress because of the tangible and direct benefits it would bring. The slow pace of economic development in Bosnia resulted in massive protests in 2014 (Kurtović 2015) and a need for wider socio-economic reforms (see also Lai 2020). An interviewed respondent sarcastically noted that one cannot worry about reconciliation if feeding one’s children is a struggle.<sup>10</sup> But redress also functions emotionally as it can provide a sense of societal ‘solidarity’ (De Greiff 2006) and empathy (Dunn 2012). Several respondents reported feelings of humiliation due to the lack of societal empathy towards them. ‘You come to an institution and show a certificate that you were in a prison camp during the war, and they humiliate you and make you feel like nothing,’ a victim of torture noted.<sup>11</sup> As redress contains a legal recognition of harms/wrongdoing, it can imply responsibility as well as broader

solidarity. This is particularly the case for those victimized by specific crimes that are disputed or denied by the victimizers, for marginalized groups, and for those living in poverty. Recognition, that is the official rendition of the victim status through a domestic law, to some represents a ‘starting point’<sup>12</sup> for justice, as a respondent noted. This is also why redress has become such a sought-after transitional justice measure in Bosnian recent history.

I discuss in detail only two of the most prominent and vocal victim groups that have been at the centre of the battle for redress. While the victim population in BiH is large, the vast majority of victims/survivors have organized in regional and subnational victim associations according to their victimization— e.g., sexual violence, loss of loved ones, injuries – and (in most cases) ethnicity. This has resulted in the emergence of four primary victim categories: survivors of sexual violence and rape, torture (also called camp prisoners or ex-detainees), families of the missing (‘disappeared’) persons, and individuals with life-changing injuries (also called ‘civilian war victims’ that also – confusingly – include families of killed civilians). While there are regional and crime-specific groups (e.g., parents of killed children in Sarajevo), they generally fall within one of the above categories and often also pertain to the entity-level victim unions.<sup>13</sup> Each category has secured a different level of redress in terms of content (types of payments and services) and extent (eligibility criteria depending on levels of harm), as depicted in Table 1. The Table outlines at which level the category attained formal domestic redress and when. Yet these categories are not exclusive, and individual victimization may overlap or be cumulated. Indeed, victims/survivors often opt for benefits of other categories, if eligible, in cases when the implementation of ‘their’ provisions has stalled. While this seemingly haphazard nature of redress allocation seems puzzling, I use victim capital to explain these complexities.

**Table 1 here.**

### **Understanding the Adoption of Redress in Bosnia and Herzegovina**

How can we explain the observed policy varieties? BiH is often presented in the literature as a *sui generis* case whose idiosyncrasies are hard to theorize and grasp in a comparative manner.

However, the existing scholarship on post-conflict peace and justice provides some insights that can be leveraged. For example, structural factors such as the nature of the previous regime, levels of pluralism, economic development and the regional clustering of justice measures have been theorized to account for varieties in transitional justice (Powers and Proctor 2017; see also Olsen, Payne, and Reiter 2010). Victim-centric scholarship argues that differences in the numbers of victims/survivors, levels of victimization and trauma, and financial constraints of post-conflict countries explain country-level differences (see Segovia 2006; Correa, Guillerot, and Magarrell 2009). The peacebuilding scholarship has posited that top-down international interventions could lead to the adoption of new policies (Chandler 2006). Similarly, the prominent role of ‘transnational advocacy networks’ as influential international entities and key instigators of policies provides important insights into how local groups influence policy (Keck and Sikkink 1998). And finally, and most importantly, identity politics studies in divided societies suggest that identity alignment between victims/survivors and elites is of utmost importance for policy adoption (Arthur 2011). While such research illuminates many of the observed state-level and individual differences, it cannot fully explain inter-group differences within a country such as BiH, where civic mobilization has, in fact, circumvented official structures despite the

institutional hurdles of a complex governance system (Gordy 2015). Although wider structural factors such as economic development, international presence and levels of pluralism play an important role, they commonly influence all groups within a system similarly.

Instead, I suggest that the collective victim-specific attributes, which I call victim capital, can explain the variation. Victim capital effectively represents the social, political and economic potential of each group to influence policymaking. I suggest that groups under conditions of fairly open post-conflict societies have a playing field where they can wield the power of their victim capital. For example, periods of political contestation (e.g., elections) offer victims/survivors opportunities to leverage their victim capital, respond to the incumbents' political programs, and appeal to their moral consciousness. Yet only some groups mobilize, or are able to mobilize, at such times – or disengage from political controversies – and consequently gain or lose from such actions. This does not mean that victims/survivors should be understood as scheming operators. On the contrary, their experience and suffering constitute an inherent part of their authority, which needs to be recognized rather than framed within narratives of trauma that often present victims/survivors as passive or paralyzed by fear. Indeed, some aspects of their capital will be out of their control, such as how global norms related to victimhood and human rights change. However, others, such as when and how to leverage such norms, can be influenced by their actions. As governments tend to be more accommodating of groups that may challenge their power, legitimize their rule or render reputational and economic benefits, chances of redress increase for groups that can actively leverage their victim capital. The propositions made here are by no means causal, yet they reveal interesting patterns in how group strategies affect policy.

The first facet of victim capital is linked to external actors. 'International salience' captures the prioritization of a specific victim group by peacebuilders, donors and international administrators. For example, as calls for racial and gender equality gain more traction globally,

peacebuilders are expected to pay more attention to anti-discrimination and equity policies.

Assuming that domestic governments respond to external incentives (such as financial support or reputational benefits), they will weigh the costs and benefits of adopting policies targeting such issues. A group can thus boost its international salience by aligning with external priorities. As an interviewed NGO worker in Sarajevo noted, until the mid-2000s, the terms ‘transitional justice’ and ‘reconciliation’ were imperative in foreign funding applications until the term ‘rule of law’ came into fashion as part of the European Union accession process. As a result, the same project would simply be renamed to obtain funding.<sup>14</sup> What this suggests is that a strategic choice on the part of civic actors can ensure that their priorities align with salient international topics.<sup>15</sup>

Consequently, once a group or policy issue enters international agendas, domestic governments will struggle to resist external pressures to respond, especially if they need foreign aid or financial loans (Cortell and Davis 2000, 69).

The second element of victim capital is what I call domestic moral authority. I define this as the public recognition of a group’s perceived ‘worthiness’ and perceived legitimacy for redress. As Michael Humphrey argued, ‘only those victims considered to be morally deserving have their human rights protected’ (2012, 67). Such moral deservingness influences victims’ perceived legitimacy. Victims/survivors’ influence over their moral authority results from complex contextual predispositions and framing strategies. It consists of levels of public empathy with a group, frames of sacrifice and innocence, as well as identity alignment (see Wilson and Brown 2009). In particular, ethno-national and religious identities are closely linked to moral authority (Arthur 2011, 8). Although moral authority is thus partially endogenic to the group, constructivist memory scholarship shows how narratives can be inflated and shaped through powerful symbols and mnemonic tactics (Bernhard and Kubik 2014). Victims/survivors and their advocates can deploy strategic framings of heroism, victimhood and innocence. Consequently,

political actors tend to sympathize with those whose characteristics and experiences validate their political outlooks and can advance their political appeal.

Finally, mobilization resources include leadership experience, the extensiveness of networks and allies, as well as legal, media and organizational capacities, among others. Organizational capacities and skills can increase a group's visibility and standing on policy agendas (McAdam, McCarthy, and Zald 1996; Della Porta and Diani 2009). Beyond group-based characteristics, there will be some shared hindrances, such as general levels of poverty. Other resources, though, will differ, such as the ability of groups to network and run influential campaigns. Recent work in transitional justice has argued that better organized groups with strong leadership tend to be more successful with their demands (Greenstein 2020). Such groups can influence governments more effectively by posing a potential political threat, attracting powerful allies and questioning the moral integrity of incumbents (essentially shaming them into action). Of course, the quality of mobilization resources can also parallelly increase a group's moral authority and international salience. Such overlap is inevitable but can be dissected empirically. This is why victim capital needs to be assessed as a combination of interlinked factors that often reinforce each other, as outlined below.

### ***The 'Ultimate Victimhood' of the Srebrenica Missing***

The Bosnian case offers a variety of victim groups to study and assess. To present my arguments and empirical data, I focus on a case of the most successful redress adoption and on a case of a relatively unsuccessful adoption. I also remark upon similar other groups that are included in Table 1. Out of all the victim groups in Bosnia, the comparatively most successful case of redress represent families of missing people and their efforts to secure a state-wide victims' law, adopted in 2004 (see Table 1). The adoption was a rare positive case of inclusive policymaking as the



discussions over the legal adoption of a state-wide law included victim associations from across Bosnia, incorporating their suggestions such as funding for burials, the creation of a new institution and a database, financial support for victim associations through a new Victim Fund, free healthcare and preferential educational and employment treatment for children of the disappeared (Blumenstock 2006; Wagner 2008; Nettelfield and Wagner 2013, 41). The Law on Missing Persons and its adoption process received positive evaluations from most of my respondents, mainly as victims/survivors directly participated in defining its scope and content. Even representatives of victim associations who today criticize the progress in the search for missing people spoke highly of the overall process of negotiations and the law's content. To secure a state-level law for all victims/survivors, with ethnicity disregarded, was an unprecedented accomplishment that no other victim group in BiH achieved.

The explanations for this success lie in the high victim capital of a group included among missing people families, the Srebrenica victims/survivors. The gravity of the Srebrenica genocide of approximately 8,000 Bosniak men in July 1995, the international failure to prevent it and the complicity of the Dutch battalion served as a 'shameful' impetus for an international concern with the issue (Simić 2012). In parallel, families of victims, representing over 32,000 missing people (out of the estimated 100,000 casualties),<sup>16</sup> became well-connected and effective activists, campaigners and negotiators after 1995. Visible victim associations, such as the *Mothers of Srebrenica* and *Women of Srebrenica*, soon became key victim voices and outspoken pressure groups.<sup>17</sup> They publicly shamed the UN and the Netherlands, demanding prosecutions, investigations, memorialization and compensation, leveraging their links with the ICTY, domestic and international human-rights groups, advocates and media (see especially Leydesdorff 2011; Nettelfield and Wagner 2013). To this day, they remain the most visible victim activists in Bosnia that feature on international agendas for transitional justice.

The scale of the failure in Srebrenica and the victims/survivors' activism also unleashed a wide-ranging set of operations in recovering the 'disappeared' bodies. Given the UN failure in Srebrenica, the High Representative (HR), who soon gained extensive executive powers, was closely involved in monitoring the issue and officially supported the families.<sup>18</sup> Most prominently, a large memorial centre on the site of the former UN station opened in 2003 – no other victim group has been memorialized in this fashion in Bosnian post-1995 history. Yet the most important external support that clearly manifests the salience of the issue was the US-backed establishment of the International Commission for Missing Persons (ICMP) in 1996 (Sarkin et al. 2014). By the early 2000s, the ICMP developed new DNA-based identification methods that relied on families' cooperation to provide blood samples and their active involvement (Wagner 2008). This close cooperation has also resulted in increased visibility of the needs of the surviving families and effective networking between the various associations. As one victim-respondent noted: '[ICMP] knew what hurt us and what we wanted. They listened and helped.'<sup>19</sup>

Yet it was also the domestic moral authority of 'genocide victims' that provided the issue of the missing people a special social status. Despite the ongoing political polarization and divisions, Srebrenica's surviving families, the majority of which were female, became the quintessential victims and representatives of a new Bosniak identity based on pure victimhood (Nielsen 2018). As Srebrenica families became 'genocide survivors' according to ICTY's and other international rulings, their victimhood reached levels of undeniable authority in Bosniak and Bosniak-leaning circles. The subsequent politics of Srebrenica has become domestically complex, polarizing, and imbued with conspiracy theories (Obradovic-Wochnik 2009; Nettelfield and Wagner 2013; Radisavljević and Petrov 2017). However, the event, its annual commemoration and its leading female voices have become the ideal-type representatives of

Bosniak ‘ultimate victimhood’ (Helms 2013, 41), attracting extensive support from the main nationalist Bosniak parties as well as civil-society support for political and humanistic reasons, respectively. The religious aura rendered to the commemorations has framed the deceased victims as ‘martyrs’ who sacrificed their lives for the nation, but also their religion (Henig 2017). Most importantly, immediately before the law’s adoption in 2004, the RS leadership acknowledged Srebrenica as a ‘crime’ and ‘tragedy’ (see Milanovic 2006), nudging Serb deputies to approve a law that would cater for all victims/survivors. Reluctantly and under international pressure, even in RS, Srebrenica at the time gained a status of serious mass victimization.

Indeed, the Law on Missing Persons was adopted at a time of extensive international involvement in domestic politics that lasted until 2006. Consequently, implementation quickly stalled. A Victims’ Fund has not been created, while the Missing People’s Institute has been attacked by RS associations as ineffective.<sup>20</sup> According to interviewed ICMP representatives, divisions between victim associations are partially responsible for the Law’s slow implementation. Genocide, misleadingly seen as the ‘crime of crimes,’ has become a divisive and repeatedly misused term in Bosnia. As Nielsen noted, the resulting overuse of the term genocide in Bosnia has exemplified ‘the chronic political disputes linked to the political structure of Bosnia’ (Nielsen 2013, 30). It also became so distinctive that it overshadowed other victims/survivors: ‘[t]hey [Srebrenica associations] only work for their own,’ a Bosniak victim noted in 2019.<sup>21</sup> Moreover, Srebrenica’s importance to the new Bosniak political elite has resulted in the gradual approximation of some associations, such as the *Mothers of Srebrenica* to the nationalist Bosniak political parties (cf. Duijzings 2007; Nettelfield and Wagner 2013). Internal divisions of the victim associations have blunted their mobilization resources, and politics has to some extent compromised their moral authority.

Nonetheless, however limited the achievements may seem today, no other victim group in

the country has attained a similar formal success. The Law on Missing Persons remains the most comprehensive victim-centric legislation in Bosnia and the only state-level legal mechanism of redress due to the moral authority of the issue of the missing, the extensive victim networks, and the international importance of the topic. A close approximation achieved only survivors of sexual violence who by 2006 not only created their own distinct victim association but also established coalitions with influential civil society and international actors, and leveraged the growing global salience of women's suffering in wars. Similar to the issue of disappearance, sexual violence committed during the Bosnian war featured prominently in external human-rights interventions in BiH, leading to some path-breaking war-crimes prosecutions and international awareness regarding the plight of women during conflicts (see especially Clark 2017). By June 2006, associations of victims of sexual violence convinced the main political parties in the Federation that providing survivors with a 'status' was imperative for Bosnia's international standing and moral responsibility. Among many, the Young Forum of Social Democrats at the time noted that it is 'shameful that women victims of rape are not included in any legislation today. ... that they live on the margins of society, without employment and help with resocialization' (*Oslobođenje* 2006). While sexual violence was previously entirely shunned as a public topic and carried great stigmatization, the victims' efforts, their moral authority and the growing salience of their plight internationally led to the eventual adoption of an entity legal reform that granted them a status and corresponding rights (see Table 1).

### ***Failed Recognition of Victims of Torture***

The relative success of the missing people's families is best visible when compared to another victim group in the country. Victims of torture who claim to represent an alleged 200,000 individuals (cf. Jouhanneau 2013a, 162, ft 3) have repeatedly failed to see a state law for victims

of torture adopted, despite several submissions to the state parliament of BiH. As a result, torture victims/survivors remain unrecognized in domestic victim-centric legislation, except in RS, where a subnational law (Lakic 2018) was adopted in 2018 in a very limited scope (Erjavec 2019). The frustration among victims/survivors of torture is palpable: ‘all other victims have received something, apart from us’, a respondent noted, suggesting that other victim categories have been recognized in law and can claim their rights through official channels.<sup>22</sup> As I argue here, there are three main reasons for this: the lack of public understanding of the psychological harms of torture, the leading entity-associations’ (unions) political affiliations and dubious morality of some of their leaders, and the associated lack of cooperation between the victim associations across the country.

Victims of torture have gone through a winding process of ‘proving’ that they are ‘deserving’ of redress. They initially played an important role in the memory politics of the war, testifying about their suffering in camps and well-documented horrors of torture (Jouhanneau 2013b). During the war, their plight featured prominently in world media, especially thanks to the UK TV news reporting from the Serb-run Trnopolje concentration camp in 1992 and UN investigations (Bassiouni 1994). The published blood-chilling photos of emaciated detainees were reminiscent of images of Holocaust survivors, shocking the world public (Vulliamy 1994). As first-hand witnesses of atrocities, ex-detainees were afforded an important place in courtrooms domestically and at the ICTY (see Jouhanneau 2013a). Yet, over time, many of their stories failed to ‘stick,’ especially because psychological trauma remains poorly understood in Bosnia (as well as elsewhere).<sup>23</sup> Moreover, as many ex-detainees are at the same time veterans, they are not perceived as entirely ‘innocent victims.’ Such perceptions have acted as a double-edged sword. Victims/survivors generally need to make claims of innocence, weakness and inability to act, especially in the courtroom or when demanding rights (cf. Christie 1986; see also Schwöbel-

Patel 2018). Yet such portrayals make some victims/survivors feel ‘ashamed’ or even ‘emasculated,’ as one respondent noted. Correspondingly, rather than calling themselves ‘victims of torture,’ they prefer to call themselves ex-detainees or *logoraši*.

State-wide recognition has been a key objective of most *logoraši* organizations in BiH as obtaining status at the state level would also imply victimization across entity lines (and thus victimization by the ‘other’). For the more numerous Bosniak *logoraši* in particular, a state law would also validate the unity of the Bosnian state, which has been repeatedly undermined by RS, including in the most recent secession threats (Barton Hronešová 2022). A social worker in Tuzla explained in 2015 that a state law is of utmost importance to Bosniak (and some Croat and Serb) ex-detainees precisely because it would symbolically validate the existence of a uniform state and victimization across its territory. ‘Ex-detainees know what it means when a state accepts its victims. ... They fought for BiH, and they knew what would happen if RS seceded. They would negate themselves if they let go off a state law,’ she noted.<sup>24</sup>

Unfortunately, the dynamics between the main leaders of the *logoraši* entity unions do not lend themselves to the aim of adopting a state law. In fact, the main leaders of the ex-detainee unions have been closely intertwined with the main nationalist parties.<sup>25</sup> Ex-detainee leaders in FBiH were among the founders of Bosniak nationalist parties, often assuming prominent places in high-level politics (Barton Hronešová 2020, 256–58). Subsequent political disagreements over which party to support in FBiH (nationalists or social democrats) have led to major schisms within the leadership (Jouhanneau 2013a, 161–66). In RS, the leadership has been centralized and clearly aligned with incumbent parties for the entirety of its existence (but with several splinter organizations in Banja Luka and Eastern Sarajevo). For example, the longtime RS leader, Branislav Dukić, was, until his 2019 replacement, a close ally of Milorad Dodik (Bursać 2015). Moreover, in both cases, recurrent allegations of fraud, major corruption cases and personal

enrichment resulted in disunity and internal schisms.<sup>26</sup> A Serb respondent called Branislav Dukić a ‘mafioso’ while a Bosniak respondent called the FBiH Union leader, Jasmin Mešković, a ‘fraudster’ for their dubious and corrupt business engagements. ‘Pure evil’ was another label for Mešković by a leader of *logoraši* in the suburbs of Sarajevo.

The international salience of *logoraši* has suffered as a result. While external actors have supported their demands in principle, the genuinity of the associations representing victims/survivors of torture has been put in question. Their cause was overshadowed by other priorities linked to the issue of missing people and sexually violated women. Moreover, an interviewed Bosnian lawyer noted that international actors did not prioritize ex-detainees as they considered them included in the existing veteran legislation (cf. Popić and Panjeta 2010; World Bank 2015), and thus not pushing for their systemic redress. Although a coalition of NGOs has supported a state law since 2011, its advocacy has been complicated by the mentioned and repeated conflicts between the main union leaders.<sup>27</sup> Matched by low levels of cooperation across the Bosnian territory, such disunity and distrust in leadership numbed their ability to act jointly.

With limited victim capital, victims/survivors of torture have failed to see their demand for a state law materialize. Although political connections generally make access to policymaking easier (Stokes et al. 2013), the politicized leaders of victim organizations have achieved personal benefits rather than the groups they represented. For example, in RS, a narrowly defined group of torture victims (including sexual violence) was recognized in 2018 in a pre-electoral attempt by Milorad Dodik’s party to garner votes. The adoption was beneficial for both sides – ex-detainee leadership could finally claim success (and personal benefits) and Dodik a benevolence to war victims/survivors at a time when his opposition was growing and popularity decreasing. With temporary clauses and restrictive eligibility criteria, the law has been widely criticized by victims/survivors and their advocates alike as an insufficient ruse (Bajtarević 2019). Overall,

though, victims of torture have struggled to leverage their victim capital and disassociate from overt politicization of their claims. Another group, civilian war victims, has so far not achieved an expansion of their rights that they have sought since the early 2000s. Although they are recognized due to the transposition of previous socialist legislation (Karge 2010), their rights remain restrictive, and in RS, the legal stipulations for new applicants repeatedly expired (Popovic 2010). In FBiH, there are currently indications that a reform is underway, which would encompass children born out of rape as well as civilian victims. Despite such hopeful signs, the local civilian war victims organization remain poorly organized and fragmented, rarely attracting public empathy or international concerns (cf. Hronešová 2016).

## **Conclusion**

*[J]ust adopting the Law means a lot to victims. At least they will have hope that one day they will be able to get something. ... and to formally register as a victim of war.<sup>28</sup>*

Depleted budgets of post-conflict states and other more urgent priorities such as refugee return and demobilization certainly play a role in why recognizing war victims/survivors is a process fraught with complex and drawn-out political and economic negotiations. Even more than a quarter-century after the end of the conflict in Bosnia, victims/survivors continue to engage in these negotiations to seek redress and recognition. However, as this article showed, only some victim groups enter the main policymaking priorities and assert at least some of their rights. As the case of Bosnia shows, redress is more often than not the result of victims/survivors' mobilization, their perceived worthiness and the international salience of their victimization and demands. While there is no singular pathway to achieving redress, some Bosnian victim groups have been able to influence domestic policy outcomes by leveraging what I called 'victim capital'. Missing people's families successfully attracted influential allies and domestic



sympathy, not only through their relentless fight for truth and justice, but also thanks to the public outcry after the atrocity of Srebrenica. On the contrary, ex-detainees have overtly relied on the political lobbying of their largely corrupt leaders. While politicization of victimhood has been a recurring problem in postwar Bosnia, it has affected ex-detainees more than anyone, blunting their claims to justice and their status as innocent and helpless victims. Such politicization is also linked to important competitive aspects of redress that can pit victims/survivors against each other in situations where resources are limited and the appetite for a meaningful dealing with the past is low. Yet this article also showed how important leadership and organization of victim groups is in order to make their demands resonate. Some Bosnian victim associations have had overly domineering leaders who have silenced their members. Others have been outright corrupt. With a wider, participative and more collaborative victims' movement in Bosnia, a less fragmented situation could have merged. Instead, the current state of victim activism in Bosnia bears a resemblance to its political reality: polarization, divisions and competition are rampant (despite some laudable efforts by the civil sector and some victim groups such as *Izvor* in Prijedor or *Women of Srebrenica*, among others). The resulting tensions over victimhood and victims' status are not only contributing to the current political tensions but often play a crucial role. As victimhood is closely linked to identity, status and memory (Nielsen 2018; Jankowitz 2018), each of the political ethnic leaders in Bosnia make use of victims/survivors as symbols of their suffering and to assert moral high ground.

The puzzling variety in redress adoptions in Bosnia may seem idiosyncratic and haphazard at first. However, as I argued, there are some clear parallels in and explanations for how victim groups organize themselves and demand redress. Beyond the Bosnian case, victim capital can be applied in similar contexts across Southeast Europe and even further afield in contexts dealing with similar legacies, divisions, or even live conflicts. For example, victim

dynamics in Lebanon bears some similarities with the Bosnian case, given the contextual similarities. Indeed, I built on the recent scholarship that foregrounds the nature and quality of victim participation in transitional justice and peacebuilding (De Waardt and Weber 2019; Greenstein 2020; Evrard, Mejía Bonifazi, and Destrooper 2021), namely that victims' agencies can respond to policymakers' concerns and engage with it. Rather than understanding redress as a righteous postwar policy, I presented a more practical view. Redress in Bosnia has not been adopted on the basis of the severity of harm or victims' needs but on the basis of victims' perceived 'deservingness' and ability to leverage their endowments and capacities. There are thus parallels with some latest work on the 'market' dynamics of international transitional justice (Schwöbel-Patel 2021). Similarly, the contributions made here can be extended to other aspects of transitional justice, including issues of symbolic redress and memorialization.

Lars Waldorf noted in 2012 that our enquiries into victimhood should be guided by what victims/survivors demand in order to avoid conflating different objectives and types of justice. I followed this advice as I was directed in my research by the desires of my respondents. Removing war-crimes perpetrators from the public sphere, cessation of denial and the ability to commemorate those who perished in the war remain important to victims/survivors. Yet, with a growing sense of failure and dissatisfaction with the externally designed (and often imported) transitional justice mechanisms that Bosnian victims/survivors have been subjected to (rather than participating in), a much more basic plea emerges: the wider societal acknowledgement of one's personal tragedy and empathy with one's suffering and losses. Recognition, as theorised by Nancy Fraser (1995), thus also stands as a key objective that would re-establish moral order after wars and allow victims/survivors to become valued and equal participants in social life. A legal right and a 'victim status' have consequently become important to victims/survivors. As a Bosnian victim of torture noted, recognition through 'status' enacted in law gives

victims/survivors a legal framework within which to demand their rights: ‘the law comes first,’ he said, ‘then we can face the authorities’ and demand rights.<sup>29</sup> In reality, the law often comes only after a drawn-out and painful struggle for recognition and redress, before the next phase of implementation and respect for the script of law begins. This phase, though, is out of the scope of this contribution. Suffice to say that in the Bosnian case, while the fight for implementation and access to rights is just as fierce and frustrating as the fight for recognition and redress, it is often even more fraught with political considerations and partisanship.

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<sup>1</sup> This article uses unpublished data from my previous research, see Barton Hronešová 2020.

<sup>2</sup> *Zakon o nestalim osobama* (21 October 2004), Službeni glasnik Bosne i Hercegovine Broj 50, 9. novembra 2004, str. 5225-5229.

<sup>3</sup> The term victim (*žrtva*) is generally used in Bosnian for both surviving and killed victims. However, as the term survivor is more empowering (cf. Dunn 2012). I use victims/survivors when referring to surviving victims in all contexts, but otherwise follow the local usage of ‘victim’.

<sup>4</sup> I do not analyze the District of Brčko due to the scope of this article.

<sup>5</sup> Implementation, which often stalls after adoption, is not explored here due to the scope of this article.

<sup>6</sup> Ethics has been extensively considered and obtained approval of the University of Oxford Ethics Committee. I received informed consent for all interviews, which were audio-recorded in Bosnian, translated and transcribed in English in NVivo. All interviews have been anonymized here.

<sup>7</sup> Interview with a victim of torture (former camp inmate), Ilidža, 2019. 1 Bosnian Mark equals 0.5 Euro.

<sup>8</sup> As defined in the 2005 UN ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation’.

<sup>9</sup> ‘Reparations’ are conceptually so ‘overstretched’ that they often seem to include all forms of dealing with the past.

<sup>10</sup> Personal interview with an activist, Belgrade, 2014.

<sup>11</sup> Interview with a victim of torture (former camp inmate), Ilidža, 2019.

<sup>12</sup> Interview with a victim of torture, Sarajevo-Dobrinja, 2019.

<sup>13</sup> It is plausible to include other groups, such as children born out of rape. Here, my aim here was to illustrate the arguments on the most prominent victim groups in Bosnia. For analyses of other groups, see Barton Hronešová 2020.

<sup>14</sup> Interview with a human rights expert, Bijeljina, 2015.

<sup>15</sup> This is notoriously difficult to measure. Yet similar concepts have been studied using documents such as UN resolutions, court decisions, memoranda and reports by multilateral organizations (see Oppermann and Viehrig 2011).

<sup>16</sup> Around 7,600 still remain missing as of 2021 (Trepanic 2021).

<sup>17</sup> Interviews with survivors in Srebrenica and Sarajevo, 2019.

<sup>18</sup> The OHR website documents this. See <http://www.ohr.int/cat/ohr-press-releases/page/2/?mo&y=1996>, accessed 1 September 2021.

<sup>19</sup> Interview with a victim leader, Srebrenica, 2019.

<sup>20</sup> Interviews with survivors in Eastern Sarajevo, 2015.

<sup>21</sup> Interview with a missing-persons organization, Sarajevo, 2019.

<sup>22</sup> Interview with an ex-detainee, Ilidža, 2019.

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<sup>23</sup> Interviews with social workers in Tuzla and Sarajevo, 2014 and 2015.

<sup>24</sup> Interview in Tuzla, 2015.

<sup>25</sup> The Croat union has been involved in all negotiations but is less salient.

<sup>26</sup> In 2019, the then leader of the FBiH Union was arrested for fraud (*Radio Slobodna Evropa* 2019).

<sup>27</sup> Interview with an NGO worker, Sarajevo 2015 and 2019.

<sup>28</sup> Interview with an ex-detainee, Višegrad, 2015.

<sup>29</sup> Interview with an ex-detainee, Sarajevo, 2019.

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