

**A Casualty of Politics:
Overview of Acts and Projects of Reparation
On the Territory of the Former Yugoslavia**

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INTRODUCTION*

In the years following the signing of the Dayton Peace Agreement in 1995, the issue of reparations for victims of the Yugoslav conflicts was not a high priority for governments in the former Yugoslavia. Government attempts at assistance were targeted primarily at war veterans and the disabled who fought on their side in the conflicts, neglecting to consider citizens who fought for opposing forces and refugee populations fleeing to other newly established states. For a variety of reasons, claims for reparations between states were not filed, due at least in part to the perceived futility of such a process. Full diplomatic relations between regional governments were not yet established and, in some cases, the claims made before international institutions such as the International Court of Justice (ICJ) in The Hague promised a lengthy legal process. Following the decisive victory of the opposition against Franjo Tudjman's Croatian Democratic Party in Croatia in January 2000 and the removal of former President Slobodan Milošević in the Federal Republic of Yugoslavia (FRY) in October 2000, reparations finally became an issue on the agenda for transition. Despite sporadic public debate concerning reparations, most local actors interviewed for this report agreed that very little has been done beyond the discussion phase. Few individuals and organizations work specifically on reparations, and no viable projects for comprehensive reparations have been implemented. A great deal of skepticism exists among those consulted for this report, many of whom seem resigned to the idea that victims will never be fully compensated.

This study examines various aspects of existing reparations following the 1991–1999 conflicts on the territory of the former Yugoslavia.¹ It seeks to clarify the different categories of reparation; identify groups potentially entitled to compensation; assess the extent and fairness of existing policies; and point toward obstacles to inclusive programs in order to develop strategic responses for improvements. It focuses on the main components of existing reparation programs, including: eligibility requirements; starting and cut-off dates of application; proportionality of compensation to forms of loss and disability; and the profile and specific needs of the beneficiaries. It also identifies victim groups whose interests were deliberately left out or altogether neglected.

This report uses the concept of “reparation” broadly to include symbolic reparations and various forms of material compensation. Part I first considers

* This study was prepared through off-site research and interviews with officials from social and political sectors in the region. The information presented is accurate to the best of the author's knowledge; it is recognized that some portions of the study may be limited, but attempt was made to include information indicative of posited trends and relevant to a broad, regional approach to reparations. The author wishes to thank the ICTJ for its support in completing this project, and also Bogdan Ivanisevic, Anna Morawiec Mansfield and Antonia De Meo for their comments and corrections on selected parts of this report. All errors and omissions in the report are, however, those of the author alone.

¹ This study is limited to acts and projects of reparation for the 1991–1999 wars in Croatia, Bosnia and Herzegovina, and the FRY, including Kosovo.

statements of state officials that may count toward acknowledging responsibility for one state's misdeeds toward another states' citizens and property. Second, Part I examines other acts of symbolic reparation in the former Yugoslavia, including monuments, memorials, and commemorative events for the victims. Part II examines material compensation efforts, including: reparations between states; national reparations for war veterans, disabled, and civilian victims; and individual reparation claims made against governments through civil suits. Regarding the former, Bosnia and Herzegovina and Croatia have brought separate cases before the ICJ against the FRY, and the FRY has filed claims against NATO member states. Each seeks reparation. Regarding domestic reparations, states' acts of reparation toward their own war veterans and disabled form the largest efforts of compensation in the former Yugoslavia. Civilian victims and their families, as well as former soldiers of opposing armed forces, are generally excluded from these compensation programs.

While it is not easy to access information about reparations programs in different parts of the world, the resources available and relevant to this study are listed in the conclusion. It is recommended that key local NGOs and policymakers turn their attention to comparative approaches taken by other countries on the question of reparations—to which attention is likely to increase in the former Yugoslavia in the coming years—so as to gain a diverse perspective on and apply international best practices to the process locally. A full set of recommendations follows on page 25 of this report.

I. SYMBOLIC REPARATIONS

1) Public Apologies

A limited number of statements made in the former Yugoslavia qualify as a state official's apology for or acknowledgement of responsibility for crimes committed during the Yugoslav conflicts. All such statements have been made in the past two years, perhaps signaling a changing political climate in the region. Official symbolic acts of reparation include taking responsibility for previous governments' acts, expressing regret for victims' suffering, showing readiness to pay war indemnities to another state, and conveying hopes for reconciliation based on acknowledgement of responsibility.

The most explicit and comprehensive apology came from Milo Djukanović, President of Montenegro, in his apology to the Croatian people in June 2000. Djukanović expressed regret

to all citizens of the Republic of Croatia, especially the citizens of Konavle and Dubrovnik, for all the pain, all the suffering and all material damage inflicted on them by any representative of Montenegro as a member of the Yugoslav National Army (JNA) during the tragic developments in the past years.²

The Montenegrin president also hinted at the possibility for material reparations:

Should it be determined that Montenegro ought to pay war indemnities to Croatia, we will not hesitate to do it. We are aware that we cannot just enjoy privileges because we are accepting democratic international rules and standards, but that we will also have to pay all the bills that result from it.³

Finally, hopes were expressed that this act of acknowledgement would contribute toward reconciliation between Montenegro and Croatia: "A hand is offered to Croatia with absolute confidence in deep conviction that we have left these difficult pages of our joint history behind us."⁴

Following the extraordinary political transformations in Croatia in early 2000, the new President, Stipe Mesić, suggested, "everyone should apologize to everyone for some reason in this region" for the past conflicts in the former Yugoslavia.⁵ Although this statement received a great deal of publicity both at home and throughout the region, no action followed. Soon after the former President of the Federal Republic of Yugoslavia (FRY), Slobodan Milošević,

² AIM Zagreb, June 29, 2000: www.aimpress.org/dyn/trae/archive/data/200007/00704-001-trae-zag.htm.

³ AIM Zagreb, June 29, 2000: www.aimpress.org/dyn/trae/archive/data/200007/00704-001-trae-zag.htm.

⁴ Ibid.

⁵ DANAS, November 3–4, 2001, www.danas.co.yu/20011103/dezurna.htm.

stepped down in October 2000, the newly elected President Vojislav Koštunica acknowledged responsibility for crimes committed during the Milošević era. However, President Koštunica's most pronounced statement of acknowledgement, recorded in an interview for CBS's "60 Minutes II," did not contain a formal apology:

I am ready to accept the guilt for all those people who have been killed. I'm trying to...tak[e] responsibility for what happened on my part...for what Milošević had done. And as a Serb I will take responsibility for many of these crimes.⁶

The Yugoslav President recognized only that criminal acts were committed; he did not specify particular crimes or victims. The recent gesture of Yugoslav Foreign Minister Goran Svilanović also falls short of a full apology. On his visit to Croatia in November 2001, Svilanović expressed

sincere regret for all that happened on these lands. Localities, such as Vukovar or other places of suffering, will always stay remembered in the hearts of Croats. It is for historians to explain why things happened the way they happened, but it is for the politicians to make a step towards reconciliation, which will never be easy and it will take years to accomplish.⁷

Despite the limited scope of these gestures, they gained much publicity and demonstrated the significance and potential impact of symbolic acts on regional reconciliation.

2) Monuments and Memorials

The most extensive commemoration of events and sites of the last war through the erection of monuments and memorials has taken place in Croatia. The **Ministry of Croatian Defenders in the Patriotic War** has a sizeable budget and mandate to memorialize all mass gravesites of Croats who died in the recent conflicts. Thus far, the ministry has erected 14 tombstone memorials, and another 10 gravesites are in the process of being marked. In 2000, a special monument dedicated to Croatian victims in Vukovar was created in the Memorial Cemetery for the Victims of Patriotic War. In the last days of the Tudjman era, the Altar of the Homeland was erected in Medvedgrad. On his visit to the site, the late President Tudjman wrote in the "Books of Memories" that the monument was created "in honor of all who lived, died and were killed for achieving Croatian liberty in an independent, sovereign, and internationally recognized Croatian state."⁸

⁶ BBC, October 24, 2000, news.bbc.co.uk/hi/english/world/europe/newsid_988000/988602.stm.

⁷ DANAS, December 15–16, 2001, www.danas.co.yu/20011215/hronika1.htm. See also FRY Ministry of Foreign Affairs press releases at www.mfa.gov.yu/Policy/bilateralna/en/161201_2_e.html.

⁸ HRT, May 30, 1998, www.hrt.hr/vijesti/arhiv/98/05/30/h4_hrv.html.

At the same time, commemorative policies and destruction of monuments are subject to much public debate in Croatia. It is alleged that more than 2800 monuments erected at the time of SFR Yugoslavia to commemorate anti-fascist resistance during WWII have been damaged or destroyed. The Center for Peace Studies in Zagreb has started a campaign to remove a monument recently erected in Slunj for the fascist collaborator, Jure Francetić, founder of the infamous Black Legion.

The monuments and memorials marking the events of war in other parts of the former Yugoslavia have generally not moved beyond the initial planning stages. For example, the **Ministry of the Liberation War Veterans and Disabled Veterans Issues** is responsible for the commemoration of events and sites in the entity of the Federation of BiH. Part of its mandate is “construction, renovation and maintenance of memorials, soldiers’ graves, and places where innocent people were killed.” Due to the lack of action by local authorities, the **Office of the High Representative** launched an initiative to create a memorial on the site of the Srebrenica massacre. However, failure by officials of the Srebrenica municipality to decide on the exact site of the future memorial prompted High Representative Wolfgang Petritsch to designate the plot in Potočari, outside Srebrenica, in October 2000. The Foundation of Srebrenica-Potočari Memorial and Cemetery was registered in May 2001 and will provide an opportunity for all families of victims to bury their kin in the Srebrenica memorial graveyard.⁹ Prior to the establishment of the Foundation, on July 11, 2000, the fifth anniversary of the massacre, a commemoration ceremony was held in Potočari. Some 2000 people gathered to participate in a simple prayer service. “The real monument to the victims of Srebrenica will be a successful return [of refugees to Srebrenica], will be an eventually democratic and prosperous Bosnia and Herzegovina,” said High Representative Petritsch at the ceremony.¹⁰

There is no institution in either the FRY or Kosovo with a mandate to consider the establishment of monuments and memorials to the victims of the 1991–1999 wars.

⁹ See www.ohr.int/ohr-dept/hr-rol/srebrenica/default.asp.

¹⁰ BBC July 11, 2000, news.bbc.co.uk/1/hi/english/world/europe/newsid_828000/828390.stm.

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II. MATERIAL REPARATIONS BETWEEN STATES

There are several international cases pertaining to the 1991–1999 wars in former Yugoslavia pending before the International Court of Justice (ICJ) in The Hague. Bosnia and Herzegovina (BiH) in 1993, and Croatia in 1999, filed actions against the FRY for violating the Genocide Convention. Both BiH and Croatia assert that the FRY must pay reparations for damages to persons, property, the economy, and the environment caused by its alleged violations of international law. Neither country gave a precise evaluation of the full quantum of damages in the initial applications, but both reserved the right to submit one at a later date. Damages are presumably more substantial in BiH, an assessment of which is currently underway. In Croatia, the Ministry of Finance did comprehensive evaluations of war damages in 1999. The total value of direct damage and expenses resulting from the war is estimated at DM 65,3 billion (US\$ 37,4 billion). Some 240,000 persons suffered property losses, up to 20,000 were killed and more than 30,000 were disabled. In the Croatian government's claim to the ICJ, material damages account for 40.2% or DM 26.3 billion; war expenses and nonmaintenance of property account for 26.1% or DM 17.0 billion; and the loss of human life and health account for 33.7% or DM 22.0 billion. In the overall damage structure, corporate losses total DM 10.2 billion, while individual losses amount to DM 12.9 billion.¹¹

During the April 1999 NATO bombing of Serbia and Kosovo, the FRY filed eight separate claims with the ICJ against member states of the NATO coalition involved in the campaign; claims were brought against the United States, the United Kingdom, France, Germany, the Republic of Italy, the Netherlands, Belgium, Canada, Portugal, and Spain. The FRY alleges that NATO states violated several international obligations, including the obligation not to use force against other states, to protect the civilian population and civilian objects in wartime, to refrain from using prohibited weapons, and to protect the environment. FRY government officials have not yet made a comprehensive evaluation of damages resulting from the NATO campaign. However, Group 17 (G17), a non-governmental association of economic experts, undertook its own evaluation of the damage costs. G17 estimates the damage at \$4 billion, with less than five percent of that damage having been repaired as of 2000.¹²

¹¹ The full report can be found at www.vlada.hr/bulletin/1999/sep-oct/document-full.html.

¹² Group 17 came into being during civil protests in 1996 and 1997 organized because of what they perceived were stolen local elections by Milosevic. Their goal was to prepare a serious program of government reforms. See <http://www.ce-review.org/00/24/serbianews24.html>.

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III. MATERIAL REPARATIONS AT THE NATIONAL LEVEL FOR VETERANS, DISABLED, AND CIVILIANS

1) Reparations for Personal Losses

Reparations allocated for personal losses suffered in the recent conflicts include monetary compensation and social benefits. Recipients are typically war veterans or families of those killed who fought on the side of the government making reparations; in addition, recipients predominantly belong to majority ethnic groups. Consequently, there exist no provisions to compensate the military personnel of the Yugoslav forces in Croatia; Bosniak and Croat forces in the RS; Serb forces in the Federation of BiH; or Kosovar Albanian forces in the FRY. In addition, no effective programs to compensate civilian victims of the past conflicts exist.

While all governments have passed legislation to compensate war veterans and their families, the amount of reparation and the scope of those eligible vary from one state to another. The degree to which information about government compensation and benefits programs are readily available also varies. In some countries, like Croatia, it is possible to find government documents online, including relevant legislation, summarized terms and conditions for receiving benefits, annual department budgets and allocations, and major program decisions and recommendations. In the FRY, on the other hand, there are no special bodies that deal with compensation for war veterans, and the various sub-departments that work on this issue are typically understaffed. As a result, regulations and programs are not widely publicized. There is no online information available and it is difficult to obtain it by phone or other means. The BiH ministry in charge of protecting war veterans' rights in the Federation entity has a website with contact numbers of persons overseeing the program in that entity, but it contains no relevant regulations or instructions about how to apply for the programs. No comparable information was found on-line for governmental response to compensation of veterans in the Republika Srpska entity.

Croatia

Croatian war veterans and their families receive the most extensive financial compensation and other privileges granted by the state. According to the 2000 Croatian Parliament Declaration on Patriotic War, "the Republic of Croatia will, within its material capacities, secure all Croatian families, families of the killed and deceased in the Patriotic war who contributed most for its creation, full protection, respect and material compensation."¹³ The most recent legislation passed in Parliament in Fall 2001 identifies the recipients of compensation as "Croatian defenders" in the war against the armed forces of the SFR Yugoslavia. This group includes war invalids and the families of veterans who were killed,

¹³ See www.mhbdr.hr.

detained or missing during the war. The **Ministry of Croatian Defenders from the Patriotic War** is responsible for implementing the law. The amount of monthly financial support varies depending on the degree of disability and the number of family members requiring support. According to one's level of disability, living standards, and other circumstances, a victim can apply for a wide range of additional funds and other benefits. This additional financial support includes full costs of care for the disabled, orthopedic devices, costs of physical and professional rehabilitation, and financial assistance for the unemployed. Other rights and privileges include priority employment in governmental institutions, priority enrollment in educational institutions, grants for textbooks and other supplementary costs of education, low-interest housing loans, and pensions. In current public debate in Croatia, some critics ask whether these payments and privileges are not too extensive in comparison to those granted in other countries.

Bosnia and Herzegovina (BiH)

In BiH, the **Federal Ministry of the Liberation War Veterans and Disabled Veterans Issues** protects and promotes the rights of war veterans in the Federation entity. Currently, compensation is based on two laws: the Law on Basic Rights of War Invalids and Families of Killed Soldiers, and the Law on Protection of Members of Territorial Defense from 1993 and 1994. These laws are considered a temporary measure; the Ministry is preparing systematic regulations that will define eligibility.

Kosovo

In Kosovo, reparations are directed toward those who died or became disabled, including combatants and civilians. Former Special Representative of the UN Secretary-General Bernard Kouchner signed **UNMIK Regulation 66** in December 2000. The regulation covers both Albanian and Serb victims and their families.¹⁴ Benefits include financial payments to war disabled and families of those killed, free access to medical care provided in governmental health centers, and exemption from taxes and customs duties on vehicles for the disabled. Local reparations in Kosovo constitute a regional exception in that they specifically include members of all ethnic groups.

Federal Republic of Yugoslavia (FRY)

As mentioned above, neither the federal government of Yugoslavia nor the government of the Republic of Serbia has a ministry or other governmental body devoted exclusively to issues of war veterans and disabled. The **Federal Secretariat for Labor, Health and Social Welfare** was mandated to address the issue of reparations for war veterans and invalids, while civilian victims are compensated at the respective republic level (e.g., by the Republic of

¹⁴ See www.unmikonline.org/regulations/2000/reg66-00.htm.

Serbia and the Republic of Montenegro). There is no legislation specifically designed to compensate the victims of the 1991–1999 wars. Instead, the law on war veterans defines general rights of “soldiers,” including veterans from different conflicts in and outside of Serbia and the former Yugoslavia, and belonging to a variety of different military forces. They range from those who fought in the early twentieth-century Balkan wars, the First and Second World Wars, as soldiers of the Royal Army of Yugoslavia and the “Partisan units” (later JNA) and in the Spanish civil war, to recent veterans of the 1991–1999 wars. The law recognizes soldiers deserving of compensation as those who “defended the security, integrity and sovereignty” of Socialist Federal Republic of Yugoslavia (SFRY) prior to the disintegration that began in July 1991. The legislation excludes former members of the JNA who sided with the breakaway authorities in Croatia, Bosnia and Herzegovina, and Kosovo after July 1991. Soldiers of the JNA who remained in Bosnia and Herzegovina after its withdrawal in May 1992, as well as those belonging to paramilitary units involved in the conflicts in Bosnia and Herzegovina and Kosovo (e.g., in no official military capacity), do not qualify for compensation. Qualifying invalids with full disability receive maximum benefits of 180% of the calculated average national income. However, according to Deputy Minister Maksim Korać, this amount is likely to decrease to 140% in the near future. There are also a limited number of other benefits, such as up to 60% of the cost for personal care of the disabled and for orthopedic devices. The federal legislation was used as a model in the Serbian Parliament to determine reparations for Serb civilians killed in recent conflicts. Thus, the same amount of compensation is paid on the federal and local levels to military personnel and civilian victims of war, respectively. In other words, members of the families who lost their civilian relatives in the war will receive the same monthly payments as the families of deceased war veterans and war invalids with the highest degree of disability.

2) Reparations for Property Losses

Loss of real estate due to war is a significant aspect of reparation claims. There was massive destruction of property in the 1991–1999 conflicts, due in large part to systematic burning and destruction of villages and other structures of particular significance to opposing forces. Under the reparations programs now in place, those who lost their homes typically receive some sort of assistance from the state, either through temporary housing, loans or other financial subsidies for rebuilding. They do not, however, receive full restitution. In Bosnia and Herzegovina and Croatia, there is some hope that compensation for property losses will come from war indemnities the FRY will pay pursuant to ICJ rulings.

The process of reclaiming and repossessing property that was *not* destroyed, but taken away and reoccupied by newly established local authorities, is not exactly a compensation issue. However, it is closely related to reparation claims, and a timely resolution will impact the overall scope of reparations. In Bosnia and Herzegovina, where the problem is most acute, an internationally established body, the **Commission for Real Property Claims of Displaced Persons**

and Refugees (CRPC), is granted primary decision-maker status on property rights for dispossessed people, although it has interpreted its mandate somewhat narrowly. Established under Annex 7 of the Dayton Peace Agreement, the CRPC determines claims from the hundreds of thousands of people who lost property during the war. Specifically, it decides who had the occupancy right to a given apartment as of April 1992, and then issues decisions authorizing the rightful owners to repossess their apartments. Bosnia and Herzegovina, through its local authorities, is responsible for implementing CRPC decisions on individual property claims, including vacating occupied houses through evictions.¹⁵ As of January 2002, the CRPC issued a total of 202,209 property decisions, but very few were ever implemented. While registration of property claims is now largely complete in the Federation and is progressing in the Republika Srpska, according to the 2001 OHR Human Rights Coordination Center report, “progress on rendering decisions on those claims is lagging significantly behind, and implementation of decisions, including evictions of current occupants, is barely occurring at all outside of Sarajevo Canton.”¹⁶ An area where progress has been achieved, however, concerns the right of officers of the former Yugoslav National Army (JNA) to return to their pre-war apartments. The OHR imposed amendments to the Law on Cessation of the Law on Abandoned Apartments (in particular Article 3a), which in essence prevented officers of the JNA who continued to fight for the aggressor army during the war in BiH from repossession their apartments. In its late 2001 Miholić decision, the Human Rights Chamber (HRC) said that in application, the relevant parts of Article 3a discriminated against the applicants. The decision was highly controversial and discussed at length in the local media. It was critical to the analysis that the applicants owned their apartments and had either retired from or deserted from the JNA shortly after the critical date in the law. The HRC has not addressed the same law from the perspective of occupancy right holders or persons who are still, to this day, members of the JNA.

CRPC has offices throughout the former Yugoslavia and has recently hosted a Regional Property Conference in Belgrade.

¹⁵ It is worth noting that CRPC decisions have, on occasion, created confusion in property repossession issues; this is especially true with regard to valid exchange contracts. This is best illustrated in a situation where a rightful owner of an apartment in April 1992 enters into a contract to exchange her apartment with the rightful owner of another apartment, and the transaction is completed with the two owners moving residences. Then, the first owner gets a CRPC decision saying she is entitled to her pre-war apartment based on her former occupancy right. The owner with whom she exchanged apartments is subsequently threatened with eviction, but perhaps this second owner has not obtained a CRPC decision or her CRPC decision has not been implemented. The result is that the first owner could end up with two apartments, while the second could feasibly be left to live on the street. This is particularly problematic where the exchange occurred between republics of the SFRY (i.e., Croatia and Bosnia). A new law imposed by the High Representative requires local courts to conduct proceedings to validate exchange contracts. If valid, then the parties stay in their exchanged apartments. If not valid, they have the right to return to their pre-contract apartments. Since CRPC only decides who had the occupancy right in April 1992, it is left to the domestic courts (and now the HRC) to sort out the confusion of post April 1992 exchange contracts. The HRC has not issued a lead case on exchange contracts yet, but has handled the matter on a case by case basis, issuing an order for provisional measures when required by the situation.

¹⁶ See www.ohr.int/ohr-dept/hr-rol/thedepthr-reports/hrcc-hr-rep/hr-rep-spec/default.asp?content_id=5110.

The government of Croatia has established **Housing Commissions** in almost 150 towns and municipalities to implement the Return Program. According to the OSCE Mission to Croatia, however, repossession of property under the Program has been limited and deadlines have not been respected. The problem is one of lack of political will, lack of resources, and lack of coordination from the Government. Housing Commissions cite insufficient alternative accommodation as the main reason they cannot resolve many cases. The lack of a clear definition of what constitutes multiple and illegal occupancy as well as the absence of legislation to address cross-border multiple occupancy has also hindered repossession of property. There also continue to be reports of uneven treatment of the Return Program by courts in different parts of the country, mainly to the disadvantage of ethnic Serbs.

The OSCE Mission in Kosovo protects residential property rights through a quasi-judicial body set up to deal with major property issues. The **Housing and Property Directorate** (HPD) and **Housing and Property Claims Commission** (HPCC) is a joint international and local body vested with exclusive jurisdiction to settle the most serious residential property claims until the Kosovo courts are able to deal with these cases. The HPD's mandate includes handling claims for restitution of property lost through discrimination; claims for registration of informal property transactions; and claims by refugees and internally displaced persons who have lost possession of their homes but wish to return or transfer their property. In addition, the HPD is authorized to compile a Kosovo-wide inventory of abandoned and vacant housing and to supervise the temporary allocation of such property for humanitarian purposes. The HPCC has the exclusive power to resolve residential property legal disputes, issue eviction orders, and hand down final and binding decisions.

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IV. MATERIAL REPARATIONS THROUGH CIVIL SUITS

Because of the lack of comprehensive governmental reparations, some individuals have chosen to achieve compensation through litigation. The number of such suits is limited, and there is some skepticism (even on the part of the advocates) about their potential for success. One of the main obstacles to filing civil suits is the cost. The suits must be funded either by private monies, which are usually insufficient, or by the limited resources of non-governmental organizations that must decide between such cases and other priorities. Other limitations include the promise of a long legal process with appeals before courts of higher instance, biased judiciaries, and the inherent uncertainty of judicial outcomes.

The agencies that assist individuals in filing lawsuits for war losses also provide other legal support, such as representing cases of property reclamation and repossession and obtaining legal documents. Refugees and displaced persons form the largest group of suit filers. In general, civil actions against states are more likely to be successful in BiH than in Croatia or Serbia/FRY, partly because of international bodies in BiH that promote the rule of law and oversee domestic legal practices.

The **Human Rights Chamber** (HRC), as part of the Human Rights Commission in BiH, and the **Office of the Ombudsperson**, are two such institutions devoted to the promotion of human and civil rights in Bosnia and Herzegovina. The HRC decides individual applications involving alleged or apparent violations of human rights (as defined by the Human Rights Agreement, or Annex 6 of the General Framework Agreement for Peace, the "Dayton Accords," and the European Convention on Human Rights) and discrimination in respect of those rights or the rights protected by the human rights instruments listed in the Appendix to Annex 6. As the highest court in BiH on all human rights issues, the decisions of the HRC are final and binding. The HRC also issues orders for provisional measures, which are interim measures similar to preliminary injunctions, intended to protect certain rights until a final decision can be reached in a particular case. The HRC does, in some circumstances, award compensation, but it also issues orders to require certain authorities to act upon a judgment, such as authorize a permit to allow the Islamic Community to rebuild a mosque or to reinstate an applicant into his or her apartment.

Although the HRC receives numerous applications, it only has jurisdiction to decide those that fall within the scope of Article 8 (2) of the Human Rights Agreement. Applications falling outside its jurisdiction are inadmissible. Admissibility depends on the facts of the case occurring after December 14, 1995, or involving a "continuing violation" after that date. Further, the HRC can only award remedies, including compensation, for the violations occurring after December 14, 1995. It can, however, consider as relevant background facts events that occurred prior to December 14, 1995. This has been particularly true

in the cases involving the destruction of mosques by forces opposed to the Islamic community and the former Bosniak army. Many of the cases the HRC has considered include violations of the "right to respect for private life and home" (Article 8) and the "right to peaceful enjoyment of possessions" (Article 1 of Protocol No. 1) of refugees and displaced persons. Often, HRC decisions concern the right to repossess property and award compensation for both pecuniary and non-pecuniary damages as a result of the violations of protected property rights (that occurred after 14 December 1995).¹⁷

The Office of the Ombudsman for Human Rights is an independent public institution that investigates individual complaints of human rights violations and improprieties of public authorities, operating under the Law on the Human Rights Ombudsman of Bosnia and Herzegovina. The Ombudsman, Frank Orton, thus has the power to consider cases involving: employment and labor issues; problems of the mentally ill and invalids; issuing of documents; police affairs and prisons; delays of court proceedings (criminal, civil or administrative); education issues; freedom of religion; freedom of information, and; other administrative fields. If human rights or fundamental freedoms have been violated, the Ombudsman may intervene and issue a recommendation to the authority concerned. In 2002, 7741 complaints were registered at the Office of Ombudsman. The total number of formal recommendations to local authorities based on investigation of complaints has reached 2254.¹⁸

In Croatia, there are several NGOs that help the Serb minority in Croatia as well as Serbian refugees from Croatia now living in BiH and Serbia make their claims in the Croatian courts. The **Croatian Law Center** (CLC) in Zagreb has specifically analyzed domestic laws that deal with issues relevant for the minority and refugee populations living in Croatia. Its goal is to assess the existing laws based on European Union (EU) standards and promote these standards in Croatia. The CLC also represents Serb refugees in the Croatian courts, and has examined the legal consequences of the dissolution of the SFR Yugoslavia. One of

¹⁷ In its first highly publicized case of human rights violations related to the destruction of religious structures, the HRC heard *Islamic Community v. RS* in 1999. (Case no. CH/96/29). The case involved a request by the Islamic Community of BiH for authorization to reconstruct 15 mosques that were destroyed in Banja Luka in 1993. The claim alleged that municipal authorities in Banja Luka destroyed mosques or did not prevent the destruction from taking place. Subsequently to December 14, 1995, the municipality allegedly converted several of the sites to other uses. The Islamic Community argued that such acts allegedly constituted discrimination on the basis of religious and national affiliation against the Bosniak community in Banja Luka. The HRC issued a decision in favor of the Islamic Community. It ordered the Republika Srpska, upon an appropriate application, to issue the necessary permits to allow the Islamic Community to reconstruct the destroyed mosques. The RS authorities did not immediately implement the decision, and the Office of the High Representative consequently took measures to ensure the decision would be executed. Among its actions at the time was the dismissal of the Mayor of Banja Luka. The permit to reconstruct has finally been issued and there was a failed cornerstone ceremony in May 2001, followed by a successful one several months later. To date, no rebuilding has commenced because of a lack of funds in the Islamic Community to do so. Since this decision, the HRC has issued five more Islamic Community cases.

¹⁸ See <http://www.ohro.ba/articles/cs.php?id=144>

the most contentious issues in both Croatia and BiH is the legal status of JNA retirees and the property formerly owned by JNA officers. The CLC is assisting former JNA soldiers and other personnel in receiving their pensions and reclaiming their occupancy rights.

There are two large NGOs based in Serbia with offices in other parts of the region that specialize in legal support for the Serb refugees from Croatia. The main aim of the **Serbian Democratic Forum** (SDF) in Belgrade is repatriation of those refugees back to Croatia. It has six branches in Serbia, 18 in Croatia, and two in BiH. Apart from offering legal representation in filing lawsuits, the SDF also provides assistance in obtaining birth certificates, traveling documents, documents for citizenship, pensions, and compensation for disability. The **Humanitarian Center for Integration and Tolerance** (HCIT), based in Novi Sad, has offices or holds regular consultancies in 46 different towns and cities in the region. About two-thirds of the clients HCIT assists are Serb refugees from Croatia; the rest are from BiH. Both SDF and HCIT are implementing partners of the UNHCR. One of the major complaints of these and other NGOs is that Croatian law does not recognize the prewar, socialist form of occupancy right (socially owned apartments) as a form of property right. Some have claimed that this violates the European Convention on Human Rights; in order to bring a case before the European Court of Human Rights in Strasbourg, however, all domestic remedies must first be exhausted, which implies a long and expensive process.

There are currently only a few civil suits against Serbia for damages incurred on the territory of Serbia and Kosovo during the 1991–1999 wars. **Humanitarian Law Center** (HLC) took legal action against Serbia in two cases, asking for compensation for different forms of human rights violations. In the first case, HLC acted in 1996 on the behalf of 686 Serbian refugees from Croatia and Bosnia. The male refugees were allegedly unlawfully detained and taken against their will to the Serbian military and paramilitary training camps. The allegations also claim that some of those detained were exposed to physical maltreatment, including beating and being tied to a tree for two days. In the second case, Serbia is presently being sued for the false arrest of three University of Pristina students in May 1999 in Pristina and transferred to the prison in Belgrade. They were allegedly unlawfully detained without trial until June 2000, and frequently beaten by police and prison guards. Both cases are still pending in the First Municipal Court in Belgrade. The **Lawyers Committee for Human Rights-YUCOM** in Serbia also represents clients in cases against government authorities; most cases involve alleged unlawful detention and harassment of citizens by the authorities. Through its Local Community Legal Aid Network, YUCOM helps strengthen the legal aid opportunities and services for individuals who are victims of human rights abuses, or discrimination based on ethnic or religious background.

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CONCLUSIONS

The problems with instituting reparations following the 1991–1999 Yugoslav conflicts result from unique circumstances. First, the Socialist Federal Republic of Yugoslavia (SFRY) split into five independent countries: Slovenia, Croatia, Bosnia and Herzegovina (BiH), the Federal Republic of Yugoslavia (FRY), and the Former Yugoslav Republic of Macedonia. The FRY further comprises the Republics of Montenegro and Serbia, while BiH is divided into two entities, the Federation of BiH and the Republika Srpska. The permanent status of Kosovo is still pending, and the United Nations Mission in Kosovo is overseeing the political transition in the interim. An additional complicating factor is the nature of the conflicts: they were neither a standard civil war nor purely interstate conflicts, but a host of parallel conflicts that included involvement of local governments in the internal conflicts of direct neighbors. Further, the scope and degree of responsibility of particular states for war crimes and material damages remain highly contested. It is also important to note that even if political will among the governments of the region existed to pay reparations to former enemies, the lack of money with which to do so presents perhaps the largest obstacle in the way of successful reparations programs. Moreover, where funds do exist, attention must first be paid to reconstruction; it seems futile to speak of compensation of victims while a great proportion of them do not yet have homes to which they can return or communities to which they can be integrated with the aid of compensation benefits. Finally, the question of reparation in general becomes complicated when one asks what losses, from which period in the embattled history of the Balkans, are being compensated. Many individuals still seek recompense for losses they incurred as a result of World War II. A great number of people also suffered considerable losses when their property was nationalized circa 1960. The question of to whom reparations shall be made seems impossible to answer in the face of such complicating factors.

Successful reparations will also depend largely on adequately solving the issues of citizenship following the breakup of the SFRY, which provided a cohesive framework for 73 years. Many people were born in one republic, lived and worked in another, and feel the strongest ethnic or cultural affiliations with a third. However, the rights of citizenship are often narrowly defined in order to curb the potential demands to property and reparation, especially against ethnic minorities. The problem is aggravated by the refusal of some states involved in the conflict to grant dual citizenship. In addition, many refugees, specifically from the two entities in BiH and Croatia, have trouble obtaining the documents legally required to acquire citizenship, property deeds, travel papers, etc., to which they are entitled.

There also remains much to be desired regarding symbolic acts of reparation on the part of state officials. This is unfortunate, because official statements generate considerable public discussion and can play a significant role in normalizing relations between countries. Erected memorials are still limited in number, and no monuments or ceremonies to commemorate victims on both sides of the

conflict or those who belong to different ethnic groups have been established. War disabled, veterans, and the families of killed soldiers who fought in official military and police forces continue to be the key beneficiaries of material reparations. Moreover, the methods of reparation vary substantially from one state and local authority to another. In most cases, the benefits are limited to compensation through monthly payments. Other benefits consist of a range of social privileges, including additional financial support for special needs (e.g., housing and health insurance) and priority in employment and university enrollment. The next of kin of civilians who died in the course of the conflict also receive varied amounts of compensation. Overall, however, a very large percentage of those who suffered personal losses in the conflicts are excluded from any kind of material reparations. Typically, they come from the most vulnerable groups, including refugees, minority ethnic groups, and members of the armed forces that were defeated or dissolved. Most former combatants in the paramilitary troops are also excluded from the group of beneficiaries. These exclusions are generally deliberate, as reflected in the relevant legislation in place throughout the region.

Reparations through civil suits comprise only a minor portion of overall reparation efforts due to a number of obstacles, including cost, biased judiciaries, and the length and indeterminacy of legal proceedings. It is difficult to overcome these obstacles, so the litigation approach to reparations is unlikely to become more effective in the near future. The upcoming rulings in the ICJ cases may, however, determine the prospects of more substantial and comprehensive forms of reparations in some parts of the region.

On the basis of this overview, we can isolate several areas that require a more in-depth investigation. They include a need to determine precisely the groups of victims excluded from existing programs, and to canvas all obstacles and potential strategies to improve the scope and system. A broad range of opinions from regional actors should be consulted in order to adequately address these areas. The investigation should include opinions from legislators, administrators, human rights activists, economists, program beneficiaries, and members of groups that may be unjustly left behind. A wide spectrum of opinions from interested parties in the region can be used as a platform for discussion of appropriate programs for intervention.

As for the international community, apart from the UN and OSCE institutions in BiH and Kosovo, surprisingly little attention has been directed to the complex problem of reparations in the former Yugoslavia. This reflects a more global level of inattention to reparations. Indeed, while the international community has paid a great deal of attention to accountability *for perpetrators* in periods of transition, it had focused far less on what must be done *for victims*. Clearly, both retributive and reparative efforts must form part of any comprehensive framework of justice. While it is not easy to access information about reparations programs in different parts of the world, there are at least some resources

available and worth reviewing. Some of these are listed in the appendix at the end of this report.

RECOMMENDATIONS

FOR GOVERNMENTS IN THE REGION:

1. With regard to *interstate reparations*:
 - (a) Authorities that may be required to pay war indemnities should make good faith efforts to publicly and fairly address this issue and its potential political and economic repercussions.
2. With regard to *citizenship rights*, authorities should:
 - (a) Reexamine relevant legislation and adjust citizenship requirements to conform to EU and international standards and practices.
 - (b) Facilitate granting dual citizenship to their citizens.
 - (c) Create agencies that will administer a network of offices in the region to assist refugees, displaced persons, and others citizens living in the region and abroad to obtain their legal documents.
3. With regard to *property rights*:
 - (a) All governments should adjust relevant legislation to conform to international standards regarding the so-called “occupancy right” of formerly socially owned property, with a particular focus on standards and best practices of formerly socialist states.
 - (b) Both entities in BiH, the RS and the Federation of BiH, should start fully implementing decisions of the Human Rights Chamber and the Ombudsperson regarding the decisions on repossession of real estate and evictions of illegal occupants.
 - (c) Authorities in Croatia and the Federation of BiH should reexamine the issue of the apartments previously owned by the JNA, and provide mechanisms for repossession or compensation of the previous occupants.
4. With regard to *victim reparations* generally:
 - (a) Take measures to make state reparations programs more comprehensive, in particular by making civilian victims eligible for some forms of compensation.
 - (b) Take meaningful measures to commemorate *all* of the victims of the 1991–1999 wars.

FOR REGIONAL NONGOVERNMENTAL ORGANIZATIONS:

4. With regard to *groups unfairly excluded* from reparation programs, NGOs should:

- (a) Work locally on identifying groups who are intentionally or arbitrarily excluded from the state reparation programs.
- (b) Raise public awareness at home and advocate before local authorities to stop these exclusions; NGOs should also educate relevant actors in the international community about the unfair exclusions.
- (c) Help members of the identified groups organize into pressure groups in order to obtain adequate compensation.

5. With regard to *memorials and commemorations for victims*, NGOs should:

- (c) Consider a wide variety of mechanisms to commemorate the victims of the 1991–1999 wars; such mechanisms must recognize the suffering of each group and be planned and designed in a manner that is non-nationalistic.
- (d) Consider long-term projects in cooperation with regional counterparts that will include victims from all sides of the conflicts as an initial symbolic act of reconciliation.
- (e) Consider the development and implementation of cross-cultural sensitivity outreach and public awareness programs.

FOR INTERNATIONAL COMMUNITY:

6. International agencies working in the region should put more emphasis in their projects on the issues of reparative justice and look at postconflict interventions that will directly address the needs of victims. International actors should:

- (a) *Promote interest and build confidence* in the institutions of reparative justice in the region and show the significance of these projects for the whole community.
- (b) *Offer expertise* and conceptual clarity among the various complex issues of reparation in the region, based on comparative experiences and international best practices.
- (c) *Facilitate regional dialogue* on reparations, e.g., between governments and their displaced populations in neighboring countries, or between regional NGOs cooperating on projects for memorials.
- (d) *Exert pressure* on governments in the region to pass more inclusive and fair legislation.

APPENDIX: GENERAL RESOURCES REGARDING REPARATIONS

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