

Compensation, transitional justice and conditional international credit in Bosnia and Herzegovina

Attempts to reform government payments to victims and
veterans of the 1992-1995 war

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1. Introduction

In April 2010, thousands of former soldiers converged on the Federation of Bosnia and Herzegovina (FBiH) Government building in Sarajevo in protest, some smashing windows with stones, setting offices alight and clashing violently with riot police. Images of the violence were beamed around the world to news audiences accustomed to stories about the risk of renewed conflict in post-war Bosnia and Herzegovina (BiH). The violence, as always, attracted more attention than did the reasons for the protest: amongst them, the prospect of compulsory means-testing of payments made to disabled war veterans and the families of fallen soldiers.

The backdrop to this social unrest was the decision by the governing authorities of BiH (the Federation and Republika Srpska governments, the state government and the Council of Ministers) to petition the International Monetary Fund (IMF) and World Bank (WB) for loans and credits to prop up a debt-ridden economy. The authorities' request was accepted by the IMF in July 2009 in the form of a \$US1.2 billion Stand-by Arrangement, and by the World Bank, which approved an additional \$US111 million loan in April 2010. Like all IMF Stand-by Arrangements, and many World Bank loans, the periodic transfer of the loan money to BiH was conditional on the implementation of specific fiscal and economic reforms by the BiH authorities, reforms which had earlier been approved by the IMF. These reforms included an overhaul of payments to war veterans and civilian war victims in both entities, with the most radical changes – including those which precipitated the violent protest of April 2010 – affecting payment recipients in the Federation.

At the same time, local and international civil society organisations and international agencies in all parts of the country continued their efforts to keep transitional justice initiatives – including victim-focused measures – on the public agenda, and in the budget of all BiH governments. Amongst these initiatives were efforts to secure 'compensation', as well as other types of reparations, for those who had suffered abuses during the 1992-1995 war.

All of this has taken place in a country which has never established a formal 'reparations' scheme, at least one which bears resemblance to transitional justice initiatives in other post-conflict countries. What BiH does have, however, is a complex array of ongoing payments to people who suffered war-related personal harm: some of these are allocated to civilian victims and their families, and an even more comprehensive set of payments and allowances are allocated to soldiers who served in the military during the war, and to family members of soldiers who were killed or disappeared during the war. These payments (especially those given to former soldiers and families of soldiers), have for years swallowed up a large portion of entity budgets. All of these payments are now the subject of reforms as part of the government-brokered conditions tied to the IMF and World Bank loans to BiH, formalised in 2009 and 2010 respectively.

These ongoing payments are referred to by various stakeholders as 'compensation' payments (for violations of human rights and the laws of war), as 'welfare' payments, as 'benefits' in recognition of service, 'disability' payments, or with the catch-all term preferred by international financial institutions: 'social transfers'. This variety in terminology reflects the divergent conceptions of what these payments are and what their function is, which, in turn, influences conceptions of how the payments should be regulated, who should receive them, and how any changes should be made.

This study begins from the standpoint that the current and planned reforms to war-related payments in BiH are not just an issue of fiscal and economic reform, but they also bear great significance for the evolution of transitional justice policy in Bosnia. The paper examines ongoing government payments made to people in Bosnia and Herzegovina who suffered disabling physical, psychological or sexual harm as a direct result of the 1992-1995 war; or whose family members were killed or went missing as a direct result of the war. Reflecting the divisions created by BiH legislation, these people are referred to as civilian victims and their families; as disabled war veterans and as the families of fallen soldiers (or the families of soldiers who were killed or disappeared). Payments to demobilised soldiers from the 1992-1995 war (soldiers who did not suffer disability), are also examined briefly. For the purposes

of this study, these payments are collectively referred to as 'war-related payments'.

It is beyond the scope of this paper to also analyse special payments made to soldiers awarded military distinctions for their part in the war, as well as the many additional non-pecuniary 'benefits' or assistance to which all recipients of war-related payments are entitled¹.

The aims of the paper are as follows:

(i) to examine the nature of these 'war-related' payments, with particular reference to definitions of compensation and reparations in international law and practice; and broad definitions of welfare payments - in order to determine to what extent these payments bear the characteristics of compensation, welfare, or something in between.

(ii) to analyse the influence of conditional international credit providers (specifically, the IMF and World Bank, and the loans they granted to BiH in 2009 and 2010) on the evolution of war-related payments policy in BiH. This includes examining policy changes and public responses to these changes.

(iii) to identify key problems within war-related payments policy and practice in BiH which are, or should be, the subject of reforms – including the issue of fraud perpetrated during claims for payment.

(iv) to make recommendations for further policy-making and reforms to existing war-related payments in BiH.

2. Methodology

This study makes use of a number of research methodologies, including the interpretation of primary sources such as BiH and international legislation; records and statistics of payments produced by the relevant BiH government authorities; audit reports; and media sources (largely online and print newspapers and news agency reports). Information was also sourced from analytical and informational reports published by international agencies, international financial institutions, and international and national civil society organisations. Books and peer-reviewed journal articles were also utilised.

Formal and informal interviews were conducted with government officials who work in departments which administer war-related payments; with representatives of international financial institutions; and representatives of international agencies and institutions. Other information was received from these institutions and individuals by correspondence.

Interviews were not conducted with victims' and veterans' associations for several reasons. First, it was beyond the scope of this study to be able to interview the number of victims and veterans necessary to construct a representation of their views (given that different victims and veterans may receive vastly different payments, depending on their individual circumstances, and some do not receive payments at all). Second, there have been a number of consultative research processes which have produced credible information about the views of victims and veterans². For these reasons, this study includes the opinions of veterans and victims as cited by media articles, instead of opinions sourced through primary research.

Statistical data about payments and recipients was sourced by making requests to the relevant BiH authorities – the Ministry of Labour and Social Policy, and the Ministry of Veterans and Disabled Veterans of the Defensive-Liberation War in the Federation; and the Ministry for Labour and the Protection of Veterans and the Disabled in Republika Srpska (RS). More information about specific data sets is presented in section 4.

3. An overview of the war-related payments 'system' in BiH

Monthly payments to disabled war veterans, civilian victims of war and demobilised soldiers are regulated by legislation in each entity in BiH, although municipalities in RS and cantons and municipalities in the Federation can legislate to provide additional assistance. The only state-level law which exists is the Law on Missing Persons. However, the Law on Missing Persons ³ has remained largely a dead letter law since it came into force, due the fact that the provision it makes for 'compensation' for family members of missing persons, has not been matched by actual funds ⁴.

Both entities have established separate laws to govern the rights of war veterans and their families and the rights of civilian war victims and their families, but strong links exist between the two different types of legislation. Civilian victims' legislation is largely based on disabled and fallen soldiers' legislation, but with typically more restrictive provisions and payments of reduced financial value. In the Federation, the monthly payment for individual civilian victims is legislatively prescribed at 70% of the amount allocated by veterans' legislation to individual disabled war veterans with the same level of disability. ⁵ In RS, the base payment amount for civilian victims is slightly more (75% of the veterans' base payment in 2009) but its civilian victims' legislation is also more restrictive in scope and eligibility provisions than is the entity's disabled and fallen soldiers' legislation. ⁶ Additionally, veterans with low levels of disability are eligible for payments, unlike civilians.

The entity laws which set up these more favourable conditions for disabled war veterans, and the families of former soldiers, have their roots in Yugoslav legislation which established generous payments to soldiers who fought on the victorious 'Partizan' (Socialist) side during WWII, and which provided much lower payments to civilians victims of the war.

Apart from differences in rights granted to civilian victims and war veterans, there are also notable differences in payment amounts between the two entities. As of June 2009, the maximum monthly individual payment for a civilian victim (without allowances) was 514KM in the Federation, and 375KM in RS. The maximum monthly individual payment for a disabled war veteran (without allowances) was 734KM in the Federation, and 650KM in RS.

The Federation makes war-related payments to significantly more people than Republika Srpska does, and this, coupled with its more generous payments, means it also spends significantly more on war-related payments than Republika Srpska does.

According to December 2009 data received from Federation and RS ministries, a total of 182,486 people in BiH were receiving war-related payments (individual and family civilian victim payments, and individual or family military victim payments), excluding payments to demobilised soldiers and payments to decorated soldiers. This figure is comprised of 109,192 payment recipients in the Federation (10,943 receiving civilian victim payments, and 98,249 receiving military victim payments); and 73,294 payment recipients in Republika Srpska (3,843 receiving civilian victim payments and 69,451 receiving military victim payments).

Both entities combined spent an estimated total of 482.6 million KM on these war-related payments in 2009 (excluding payments to demobilised soldiers and payments to decorated soldiers). The amount spent on these payments made up 19.4% of the Federations' total budget for 2009 (which was 1.6 billion KM before cuts were made during the year)⁷, and 10.3% of Republika Srpska's 1.67 billion KM budget for 2009 ⁸. In that year, the Federation spent an estimated total of 310.4 million KM (26,671,896KM on civilian victim payments; and an estimated 283,779,660KM on military victim payments); ⁹ and RS spent 172.2 million KM (7,676,804KM on civilian victim payments; and 164,538,323 on military victim payments).

The legislative definition of someone with the status of 'civilian victim' and 'disabled war veteran' is similar in both entities. In Republika Srpska, civilian victims of war with the right to payments are people who have a minimum of

60% physical disability,¹⁰ which was caused by warfare (such as shelling and sniper fire), or as a direct consequence of injury sustained from left-over weapons or ammunition. Civilian victims eligible for payments are also those who have suffered a minimum of 60% physical disability due to sexual abuse, rape, involuntary detention (imprisonment in a jail or concentration camp, home detention and forced labour), or who suffered a wound or injury while in enemy hands, as well as people who were killed or went missing as the direct result of warfare.¹¹

Federation legislation contains essentially the same provisions which define civilian victims eligible for payments, with the exception that individuals who suffered sexual abuse or rape do not need to establish physical disability of 60%.¹²

Disabled war veterans are defined in both entities as former members of the armed forces (including established armies and paramilitary forces), who sustained an injury or illness while on duty during the period of the 1992-1995 war and until disarmament (1996). Under Federation law, veterans are eligible for payments if they have at least 20% physical disability caused by injury, illness or worsening illness;¹³ while RS law requires at least 20% physical disability caused by illness, and at least 40% physical disability where the disability was caused by illness.¹⁴

Disabled and fallen soldiers' legislation in the Federation excludes former soldiers of the so-called Autonomous Province of Western Bosnia (APWB). These former soldiers instead have rights under Federation civilian victims legislation instead. Republika Srpska veterans' legislation stipulates that those who fought on the side of the enemy or assisted the enemy are not eligible for payments. Section 8 contains more details about these aspects of Federation and RS legislation.

The families of civilian victims and war veterans in both entities are also eligible for war-related payments. Family members who may be eligible for payment include children, step-children, spouses, parents, siblings, grandparents and step-parents of the direct victim or veteran. Both entities offer payments to family members of civilians who were killed or who disappeared during the war. The payment is divided amongst eligible family members, and it is conditional on the family's income not exceeding a certain threshold. Both entities also offer a family payment to the families of people who died after establishing their right to civilian victim payments. This payment is also means-tested, as further described in Section 4.

Families of soldiers who were killed or went missing during the war, and families of disabled war veterans who died after establishing their right to individual payments, are eligible for family payments which are notably higher than payments to families of civilian victims. These military family payments are only partially dependent on the family's income, although legislative changes made in late 2009 and in 2010, are set to change this situation.

Applications for all war-related payments in BiH are made (or were made) through an administrative procedure which begins at municipal level. Civilian victim claimants and their families in the Federation submit applications to the Centre for Social Work in the municipality where they live or have a registered address. Civilian war victims, disabled war veterans, and the families of former soldiers in RS submit their applications to a dedicated department within their municipality government, while veterans do the same in the Federation.

All applications, apart from being lodged before any relevant deadline, must be supported by written evidence, including (where available) medical records from the time the injury, death, disappearance or other harm occurred. In recognition of the difficulty in procuring medical evidence for certain wartime violations, Federation legislation omits the requirement for medical evidence for victims of sexual violence and rape. That an individual was raped or sexually abused must be certified by a designated victims' association. Designated victims' associations in the Federation also certify whether a person was an inmate of a concentration camp. In RS, medical documentation is compulsory for all civilian victim applications, and it must date from within a year of when the injury or harm was sustained, or from within a year of the end of the war-related activities which led to the injury or harm. Witness statements cannot be used as evidence in either entity for either civilian victim or former soldiers' applications.

Disabled war veterans and families of killed and missing soldiers, and families of disabled veterans who have since died, also have to submit medical documentation in support of their application. In RS, the military service of a claimant is verified according to certification by veterans associations, while in the Federation, this is done by the relevant ministry (most often the Ministry of Veterans and Disabled Veterans) which holds records of military service.

Before recent legislative changes made in response to the Stand-by Agreement with the IMF, 'demobilised soldiers' were also eligible for payments on the basis of their military service. According to Federation law which was in force until April 2010¹⁵, a demobilised soldier who served in the BiH armed forces for at least a year during the war, had the right to receive a monthly financial payment while unemployed, which was 25% of the average pay in the Federation in the previous year. In 2009, when the average monthly pay in the Federation was 792KM¹⁶, the demobilised soldier was eligible for 198KM per month. This monthly payment would be paid out for a maximum of one year or until the former soldier started working, or until he rejected an offer of employment for which he was suitably qualified. A soldier who served in the defence forces for at least two years during the war, had the right to these unemployment payments for a maximum of two years, while service of three years gave the right to payments for a maximum of three years. In contrast, an ordinary citizen in the Federation has the right to a monthly unemployment benefit of 40% of the average pay in the entity (which, in 2009, made the payment 317KM), but whether and for how long they receive this benefit is dependent on whether they have been in registered employment. Someone with five or fewer years of employment may receive the unemployment benefit for a maximum of three months, a person with 25 years of employment for 12 months, and a person who has worked for more than 35 years is eligible to receive unemployment benefits for 24 months.¹⁷

Legislation passed in February 2010 brought to an end these special unemployment benefits for demobilised soldiers in the Federation, as of April 30, 2010. Demobilised soldiers retained their right to extensive 'non-material rights.'¹⁸ In Republika Srpska, before changes were made to laws in December 2009, demobilised soldiers had the right to an yearly financial payment, as well as other forms of assistance.¹⁹

4. Payment data

Note: Payment amounts are valid as of June 2009.²⁰ Victims and veterans are eligible for the allowances in addition to the base monthly payment, as specified. For the sake of reference, the average gross monthly wage in 2009 was 792KM in the Federation, and 788KM in Republika Srpska.²¹

Table 1
Payment amounts for civilian war victims and their families – Federation and RS

Civilian victims – individual payments in Federation	Civilian victims – individual payments in RS
<p>Monthly payment depending on level of physical disability (from 60% to 100% disability). Victims of sexual violence receive payments equivalent to 100% disability. 93KM (60% disability) to 514KM (100% disability requiring a carer)</p>	<p>Monthly payment depending on level of physical disability (from 60% to 100% disability). 113KM (60% disability) to 375KM (100% disability requiring a carer)</p>
<p>Carer's allowance for victims with 80% or greater disability. 257KM to 514KM</p>	<p>Carer's allowance. 300KM</p>
<p>Orthopaedic allowance where applicable 88KM to 186KM</p>	<p>Additional financial assistance for victims with 70% or greater disability; and for victims with 60% disability and their families, who are unable to work. This payment is means-tested. 23KM to 75KM</p>
<p>Maximum total payment (100% disability requiring a carer + carer's allowance + orthopaedic allowance) = 1214KM</p>	<p>Maximum total payment (100% disability requiring a carer + carer's allowance + additional financial assistance) = 750KM</p>
Civilian victims – family payments in Federation	Civilian victims – family payments in RS
<p>Monthly payment for families of civilians who were killed or disappeared during the war. Payment divided up amongst eligible family members. Family payment recipients with an income which exceeds the average wage in the Federation in the previous year, receive 50% of the applicable payment. 221KM (1 family member killed or missing, not reduced by means-testing) to 334KM (4 or more family members).</p>	<p>Monthly payment for families of civilians who were killed or disappeared during the war. Payment divided up amongst eligible family members; this payment will be means-tested. 150KM (1 family member killed or missing)</p>
<p>Monthly payment for families of civilian victims who passed away after receiving victim payments for disability of 80% or more plus carer's allowance (carer's allowance not required for victims of sexual violence); and provided their death was a consequence of their war injury or illness. Payment divided up amongst eligible family members. Means-tested: family payment recipients with an income which exceeds the average wage in the Federation in the previous year, receive 50% of the applicable payment. 221KM (1 family member a direct victim, not reduced by means-testing) to 334KM (4 or more family members).</p>	<p>Monthly payment for families of civilian victims who passed away after receiving victim payments. Payment divided up amongst eligible family members; this payment will be means-tested. 75KM (1 family member a direct victim)</p> <p>Additional allowance for (living) family member unfit for work. 50% of amount received by direct civilian victim. 57KM to 188KM</p>

Table 2

Payment amounts for disabled war veterans, fallen soldiers and their families – Federation and RS

Disabled war veterans – individual payments in Federation	Disabled war veterans – individual payments in RS
<p>Monthly payment depending on level of physical disability (from 20% to 100% disability). 37KM (20% disability) to 132KM (60% disability) to 734KM (100% disability requiring a carer)</p>	<p>Monthly payment depending on level of physical disability (from 20% to 100% disability). Current payment amounts 25KM (20% disability) to 650KM (100% disability requiring a carer)</p>
<p>Carer's allowance for veterans with at least 80% disability 367KM to 734KM</p>	<p>Carer's allowance. 230KM to 500KM</p>
<p>Orthopaedic allowance where applicable 125KM to 266KM</p>	<p>Orthopaedic allowance for veterans with at least 60% disability, where applicable 35KM to 145KM</p>
<p>Maximum total payment (100% disability requiring a carer + orthopaedic allowance + carer's allowance) = 1734KM</p>	<p>Maximum total payment (100% disability requiring a carer + orthopaedic allowance + carer's allowance) = 1295KM</p>
Veterans who were killed, died, or went missing – family payments in Federation	Veterans who were killed, died, or went missing – family payments in RS
<p>Monthly payment for families of veterans who were killed or disappeared during the war. Payment divided up amongst eligible family members; payment partially means-tested. 316KM (1 payment recipient) to 477KM (4 or more recipients). 149KM for families with income and without children</p>	<p>Monthly payment for families of veterans who were killed or disappeared during the war. Payment divided up amongst eligible family members. 300KM (for 1 payment recipient) to 600KM (4 or more recipients) Monthly payment increased by 175KM for particularly vulnerable family members upon death of veteran (e.g. orphaned child)</p>
<p>Monthly payment for families of veterans who passed away after receiving payments for disability of 80% or more, or for disability of 50% or more and where their death was a result of their war injury. Payment divided up amongst eligible family members; payment partially means-tested. 316KM (1 payment recipient) to 477KM (4 or more recipients). 149KM for families with income and without children</p>	<p>Monthly payment for families of veterans who passed away after receiving payments for disability of at least 60%. Payment divided up amongst eligible family members. 150KM to 225KM per family</p>

Table 3**Federation: Number of people receiving individual and family civilian victim payments; and total spent on these payments from the Federation budget**

Note: According to the financing arrangement between the Federation and cantons, the Federation Government pays 70% of payment costs for civilian victims, while cantons pay the other 30%. The expenditure presented below therefore amounts to only 70% of the total cost.

A small number of recipients receiving payments on the basis of World War II disability are also included in the data presented, because according to the Ministry for Labour and Social Policy, separate information for payments related to the 1992-1995 war is not available.

	2004	2005	2006	2007	2008	2009
Recipients of individual civilian victim payments on the basis of physical disability. From 2006, these include victims of torture and APZB Army members	3688	3683	3418	4199	4512	4541
Recipients of individual civilian victim payments on the basis of sexual abuse and rape. ¹	-	-	96	353	493	612
Recipients of family disability payment.	4344	4605	4056	4812	5504	5797
Total number of people receiving individual and family civilian victim payments	8032	8288	7570	9364	10509	10950
Amount spent by Federation PER YEAR in KM on all civilian victim payments (including allowances) ²	5,590,670 ³	11,301,578 ⁴	5,470,824 ⁵	21,280,981	27,819,376	26,671,89

1 This category, as a separate basis for payment, came into existence in 2006. Before this time, some victims of sexual violence and rape were able to secure payment on the basis of physical disability. Victims of sexual violence and rape may therefore be also represented amongst recipients of other individual payments.

2 This total includes the amount spent on carer's allowance and orthopaedic allowance.

3 Three cantons (Bosansko-Posavski; Hercegovačko-Neretvanski and Herceg-Bosanski) did not make any payments in this year, and hence the Federation did not either.

4 Bosansko-Posavski; Hercegovačko-Neretvanski and Herceg-Bosanski again did not make payments in this year; and Unsko-Sanski canton provided data for eight months of the year only.

5 This amount is for September to December 2006 only. Full year expenditure figures were not available.

Table 4**Federation: number of people receiving individual and family war veterans payments based on the soldier's disability, death or disappearance; and total spent on these payments**

Note: The Federal Ministry of Veterans and Disabled Veterans was only able to provide data from 2006 onwards. They noted that before 2006, payments to Croatian Defence Council soldiers were not the responsibility of the Ministry.

	2004	2005	2006	2007	2008	2009
Disabled war veterans receiving individual payments	-	-	40 445	52 799	54 348	53 978
Recipients of family payments based on death or disappearance of war veteran	-	-	40 400	45 801	44 991	44 271
Recipient total	-	-	80 845	98 600	99 339	98 249
Amount spent PER MONTH in KM on individual and family war veterans' payments, without allowances ⁶	-	-	18 428 002	22 581 654	24 539 707	23,648,305
Amount spent PER YEAR in KM on individual and family war veterans' payments, without allowances				270 979 848 (estimate)	294 476 484 (estimate)	283 779 660 (estimate)

6 The per month expenditure is based on the figures for December of each year.

Table 5**Republika Srpska: number of people receiving individual and family civilian victim payments; and total spent on these payments**

Note: A small number of recipients receiving payments on the basis of World War II disability is also included in the data presented, because according to the Ministry of Labour and the Protection of Veterans and the Disabled, separate information for payments related to the 1992-1995 war is not available.

	2004	2005	2006	2007	2008 ¹	2009
Recipients of individual civilian victim payments on the basis of physical disability, including disability caused by sexual violence and torture	1 941	1 867	1 818	1 795	1 828	1 790
Recipients of family disability payment	1 679	1 631	1 596	1 579	1 750	2 053
Total number of people receiving individual and family civilian victim payments	3 620	3 498	3 414	3 374	3 578	3 843
Amount spent on all civilian victim payments PER MONTH in KM⁷	399 870	365 658	355 453	516 209	-	-
Amount spent on all civilian victim payments PER YEAR in KM	4 798 440 (estimate)	4 387 896 (estimate)	4 265 436 (estimate)	6 194 508 (estimate)	6 827 814	7 676 804

⁷ This amount is for December in each year

Table 6**Republika Srpska: number of people receiving individual and family war veterans payments based on the soldier's disability, death or disappearance; and total spent on these payments**

Note: As in the previous data table, a small number of recipients receiving payments on the basis of World War II disability is also included in the data presented. Data for 2004-2007 was not available.

	2004	2005	2006	2007	2008	2009
Disabled war veterans receiving individual payments					37,639	37,232
Recipients of family payments based on death or disappearance of war veteran					33,875	32,219
Recipient total					71,514	69,451
Amount spent PER YEAR in KM on individual and family war veterans' payments					155,300,962	164,538,323

5. Are war-related payments in BiH ‘compensation’, ‘welfare’, or something else?

What are ‘war-related payments’ in BiH? Are they welfare payments? Compensation payments? Or something in between? Arguably, the way these payments are characterised - and there may be different characterisations, depending on the payment in question - is connected to a set of beliefs, assumptions and ideologies, about the way they should operate, and whether and how they should be reformed. Given that beliefs, assumptions and ideologies all power reform agendas, this study will analyse the extent to which different assumptions in BiH centre on an idea that war-related payments are compensatory (or that at least some of them are), or the idea that they are welfare payments.

First, an attempt will be made to define ‘compensation’, and to identify the typical traits of compensation payments. Public international law gives the right to compensation, as well as other forms of reparation, to victims of gross violations of international human rights law, and victims of serious violations of international humanitarian law. According to the UN General Assembly Resolution ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’, a victim is a person who:

...individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.²²

The UN Basic Principles state that victims have a right to ‘adequate, effective and prompt reparation.’ Reparation has five main elements according to the Basic Principles: compensation is one, and victims also have the right to restitution, rehabilitation, satisfaction, and guarantees of non-repetition. The Basic Principles set out the following in regards to compensation:

Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medicinal services, and psychological and social services.

The UN Basic Principles codify the international legal obligation to provide reparation, including compensation, to those who suffered gross violations of international human rights law and serious violations of international humanitarian law. Many other international instruments also provide rights to a remedy for violations of human rights law and humanitarian law.²³ A civilian harmed during war is by definition someone who has suffered such a violation, as civilians are protected under the laws of war.²⁴ A soldier who suffers harm during combat has only suffered a violation of his rights if subject to illegal warfare (for instance, through the use of banned weapons) or harmed while a prisoner of war.²⁵ These constitute serious violations of international humanitarian war. Other injuries or death suffered by soldiers through legitimate warfare do not constitute violations and hence the same international legal obligation to provide reparation does not exist.

According to the UN Basic Principles, states obliged to provide reparation, including compensation, are those which have committed the aforementioned violations through acts or omissions. The Basic Principles also state that ‘States should endeavour to establish national programmes for reparation and other assistance to victims in the event that

the parties liable for the harm suffered are unable or unwilling to meet their obligations.' This provision is important in the BiH context, because it obliges the BiH state to provide reparations, despite the fact that the question of which state, states, or other entities, committed the violating 'acts' in BiH is a source of dispute. Transitional justice advocates also argue that the BiH authorities have a moral obligation to provide reparations to victims of human rights and humanitarian law violations, because the authorities had an obligation to protect the rights of BiH citizens during the war, and they failed to do so.²⁶

Naturally, legal doctrine is not the only rationale for compensation, or for war-related payments more broadly. Compensation, especially in a post-conflict context, is as much a socio-political question as a legal one (or perhaps even more so). It follows that compensation, as an element of reparations in a post-conflict society, is usually offered through an explicitly-designed administrative scheme which is the product of negotiations and consultations with victims' groups and other stakeholders.

What are the basic characteristics of compensation payments? The answers differ according to the scale of the violations, but there are few easily identifiable features which are shared across borders. One is the tendency to award lump-sum payments, at least where administrative compensation schemes are established following mass violations of human rights.²⁷ There are, however, exceptions in the trend towards lump sum payments. Chile implemented a reparations program in response to violations by the Pinochet regime, which included a monthly 'reparations pension', as well as a one-time 'compensatory bonus' (the equivalent of a year's worth of the pension payments).²⁸ Importantly, victims in Chile were awarded this pension regardless of any other payments they were receiving, including social security benefits. Victims would continue to be entitled to the reparations pension regardless of changes in their circumstances, and specific assurances were made that the payment could not be taken away by the state.²⁹

While the purpose of payments is not a characteristic of the payments themselves, it is an aspect which may be an important indicator of whether payments are compensatory, or reparatory. Segovia states that 'the general aim of programs of reparation is political: recognition of the victims and acknowledgment of the abuses committed by the authoritarian regimes and/or by the groups in the conflict.'³⁰ According to Issacharoff and Mansfield, reparations are 'closely related to a process of social reintegration of the victims. They involve both recognizing the victims as victims and citizens (i.e. as rights holders), and fostering civic trust and social solidarity.'³¹ Issacharoff and Mansfield argue that the US September 11 Victims' Fund 'can only hesitatingly be described as a reparations program,' because the US Federal Government's main reason for creating the Fund was to stop victims bringing a rush of civil claims against the airline industry, and hence bankrupting it.³² Of course, unless a payment is not created within the framework of an explicitly designed scheme, it might not be straightforward to identify the purpose of a payment. It could be said that this is the case in BiH.

Is the purpose of war-related payments in BiH to provide welfare assistance to the recipients? It is first necessary to look at the purpose and characteristics of welfare payments themselves. Welfare is perhaps most commonly known as 'government support to the poor, and particularly the free or subsidized supply of certain goods and services, for example, health and education.'³³ European economists prefer the term 'social assistance', although they acknowledge that this term, too, has no 'fixed or universal meaning.'³⁴ Mataganis prefers this definition: 'social assistance is defined in such a way as to include all cash benefits, whether contributory or not, provided they are explicitly (or, at least, implicitly) income tested.' He also states, 'these benefits are usually funded out of general taxation, and are negatively related to income (higher benefits to lower incomes).'³⁵

Allen emphasises purpose in his definition of welfare as 'payments to the poor, given as a last resort because they are poor.'³⁶ While alleviating poverty may be the most common purpose of providing welfare payments to individuals, there are other possible aims. These include to alleviate other forms hardship (including congenital or incurred disability); to give the recipient a means by which to live according to an acceptable living standard; and perhaps (in some societies) to redistribute wealth so that living standards amongst citizens are more equal.

The characteristics of welfare payments also vary according to their aim, the population they target, and the government which administers them. Most cash welfare payments (which provide income assistance) are dispensed as bi-monthly or monthly payments; there may also be other allowances or ‘benefits’ which are given as a lump sum once a year, or upon a change in circumstances (for example, the birth of a child).

Means testing is both a (typical) characteristic of welfare payments, and a way of defining what is a welfare payment. In their study of ‘social assistance’ in OECD countries, Gough et al focus on ‘resource-tested benefits’. They identify a significant amount of variety in types of social assistance (or welfare) that exist in OECD countries. Of ‘resource-tested’ benefits, they identify ‘poverty-tested’ benefits; general means-tested benefits; ‘tied’ benefits which entitle the user to a specific service – such as housing assistance; and benefits aimed at specific groups of people, such as the elderly or disabled.³⁷

Means testing, therefore, means that eligibility for payments is tied to the recipient’s circumstances, and if these circumstances change, the recipient can lose the payments. The change in circumstances may be a rise in income level, or, for example, an improvement in health so that the recipient is no longer classified as ‘disabled’.

5.1. The characteristics of BiH war-related payments, compared to general characteristics of welfare and compensation payments

Given these definitions, and the general characteristics described above, what can be concluded about the nature of war-related payments in BiH? First, it is useful to compare some basic characteristics in tabular form. In order to analyse the empirical situation which gave rise to recent reform efforts, the BiH payments described are those which existed prior to the beginning of reforms in the second half of 2009. By highlighting the characteristics of these payments, it is also possible to draw some conclusions about the assumptions which motivated the reforms. Changes made to payments since late 2009 are detailed in section 7.

Table 7
General characteristics of welfare and compensation payments

	Welfare/social assistance	Compensation for human rights violation under international law
Purpose	To alleviate poverty; to provide a basic income to someone who cannot work because of disability, age, etc	To provide redress for wrong
Lump sum or ongoing payment?	Ongoing	Typically lump-sum, sometimes over two or three instalments
Means-tested?	Yes	No
Eligibility on basis of?	Income level; disability; old age	Right violated (according to international and/or domestic law)
Possible to lose payment, based on change in income or disability level?	Yes	No, because payment is based on the violation of a right (something which cannot change, unless the person is found to have given false information)

Table 8**Characteristics of war-related payments in BiH**

Note: Republika Srpska and Federation payments are considered together unless otherwise specified.

	Civilian victim individual payment	Civilian victim family payment	Disabled war veteran individual payment	Veteran who was killed, died or disappeared - family payment
Lump sum or ongoing payment?	Ongoing	Ongoing	Ongoing	Ongoing
Means-tested?	No	Yes (Federation). Will be in RS	No	Federation – partial means testing. RS – No.
Eligibility of basis of?	Level of physical disability – except for victims of sexual violence in Federation Victims of sexual violence in Federation are eligible on basis of right violated, not physical disability	Level of physical disability of civilian victim + income of family	Military service + level of physical disability	Military service of veteran who was killed or disappeared + (in Federation) income of family and level of physical disability of veteran who died
Possible to lose payment, based on change in income or disability level?	Yes – based on change to disability level, except for victims of sexual violence in Federation Victims of sexual violence in Federation cannot lose payment due to change in disability or income, because payment is not tied to either of these	Yes – based on change to disability level and/or income level	Yes – based on change to disability level	In Fed -Yes – based on change to income level; in RS -No

Before coming to some conclusions about the nature of war-related payments in BiH, it is also worth noting that, apart from war veterans in the Federation, administration over war-related payments is the responsibility of ministries which also have responsibility for payments which are explicitly welfare payments – such as unemployment benefits for the general population.³⁸ Legislation which governs civilian victims in the Federation, also makes provision for welfare payments to children in need, and non-war disabled people.³⁹

It is also interesting to note how various transitional justice actors, and indeed fiscal reform actors, refer to BiH's war-related payments. The IMF and World Bank refer to them as 'social transfers', or 'rights-based transfers', which casts them firmly in the category of social assistance or welfare. Amnesty International, in a 2009 report into the situation of victims of sexual violence in BiH, argues that the BiH state has not provided adequate compensation to victims, and refers to payments to civilian victims as 'social benefits which are related to their status as civilian victims of war.'⁴⁰ In 2006, the UN Office of the High Commissioner for Human Rights (OHCHR) made reform recommendations to BiH in which payments to civilian victims and war veterans were characterised as welfare payments, with references to war-related payments as 'personal disability benefits'⁴¹ and 'pension benefits' as part of 'social protection.'⁴²

However, the UNDP, which produced the 'Transitional Justice Guidebook for Bosnia and Herzegovina' in 2009, refers to payments to both civilian victims and disabled war veterans as 'compensation'. According to the Guidebook: 'The

basic method of reparation [in BiH] is compensation through administrative provisions set out in laws on civilian victims of war and disabled war veterans.’⁴³ Prominent civil society organisations like the Humanitarian Law Center and Documenta, also consider (some) war-related payments in BiH to be compensation. In their ‘Transitional Justice in Post-Yugoslav Countries 2007 Report’, payments to civilian victims are presented as compensation, and critiqued as such, while payments to veterans are not classified at all.⁴⁴ Clearly, there is no consensus about the nature of war-related payments in BiH, even amongst actors which have a common interest in transitional justice mechanisms in the country.

5.2. What are war-related payments in BiH?

It is evident that war-related payments in BiH are the product of a mix of principles and attributes. They are all ongoing, monthly payments. Payments to civilian victims and disabled war veterans and their families will continue for the duration of the recipients’ lives (according to current laws), unless their level of disability changes, or, in the case of family members of civilian victims, unless their income changes.

With one notable exception, it is possible to say that war-related payments in BiH resemble neither compensation payments which are an aspect of reparations under international law, nor do they resemble welfare payments. To this extent, they do not adequately serve the purpose of either type of payment. The payments are not compensatory in the sense espoused by international law, because eligibility is not based on a right being violated. Eligibility is based instead on disability level, which may or may not correspond with an experience of being a victim of gross violations of human rights and serious violations of international humanitarian law. A civilian who suffered an injury due to warfare, but who recovered, is not eligible for payment, because she or he is not disabled. Similarly, a civilian victim or disabled war veteran who has been receiving payments but whose health improves, will lose her or his payment on the basis of the change in health. Families of civilian war victims in BiH qualify as the secondary victims described by the UN General Principles on the Right to Reparation, and hence have a right to reparations. However, the payments they receive upon the death of their family member can also be lost because eligibility is based on income.

Eligibility for payment, in the case of disabled war veterans (and indeed, demobilised soldiers) is based on participation in the war as a member of the armed forces. These people receive payments regardless of whether their disability is a result of violation under international law, one which would give rise to a right to compensation. Payments to war veterans in BiH, therefore, clearly do not fit the mould of compensation, at least in the sense required by international law. Similarly, payments to family members of disabled war veterans and soldiers who were killed or who disappeared, are made regardless of whether the death, disappearance or disability were the result of a violation.

The exception to this characterisation of BiH war-related payments, are Federation payments to victims of sexual violence. Eligibility for this type of payment is based on the violation itself (sexual abuse or rape), and victims do not have to prove disability. The fact that they do not have to prove disability also means that their eligibility cannot be lost through a change of circumstances, and, like other civilian victims who receive individual payments, the payments are not (currently) subject to income restrictions. Ironically, these payments to victims of sexual violence in the Federation stand out, at least theoretically, as the most ‘compensatory’ in nature. This is despite the fact that, according to research by Amnesty International, adequate compensation has not been provided.⁴⁵

War-related payments in BiH also do not meet typical criteria for welfare payments, which is of course why they are the subject of reform proposals by international financial actors. Only payments to families of civilian victims are means-tested. Eligibility is not based on disability alone (and it is worth noting that non-war disabled people in BiH qualify for vastly different payments), but is of course linked to war service or experience. Similarly, family members of disabled war veterans qualify for payments, even though it is not typical in disability policy for families of disabled people to receive separate payments.

5.3. Why the nature of BiH war-related payments matters

War-related payments in BiH are clearly a curious hybrid of the intents and characteristics of both compensation payments, veterans' benefits (which are neither compensation or 'welfare', but more akin to a remuneration for service) and welfare payments. Arguably, this particular hybrid quality means that the payments fail to fulfil the typical purposes of any of these types of payments: welfare, veterans' benefits, or compensation for human rights and humanitarian law violations. The question is then, which type of payment should current BiH payments resemble? Certainly, no country should operate without a valid social security system, which extends basic support to vulnerable people in need of income assistance and other forms of help. However, it is also clear that BiH has an obligation under international law to provide reparations - of which compensation is one element - to victims of serious violations of human rights law and gross violations of international humanitarian law. In addition, as a matter of domestic policy, BiH (like other former Yugoslav states), inherits a tradition of providing monetary 'benefits' to war veterans which are significantly greater than any payments offered to civilians who suffered during war.

Recognition of the varying assumptions which underpin policy over war-related payments in BiH would seem to be an important step towards untangling the awkward knot of principles which make up the current payments 'system'. Reforming the current war-related payments so that they resemble welfare payments will not stop calls for reparations and compensation, nor will it fulfil BiH's international human rights obligations. Likewise, the social situation in BiH may become even more desperate, and all BiH citizens even more embittered and resentful of those who receive war-related payments (particularly of veterans) if a proper social safety net, unrelated to war service or experience, is not set up. While clearly there are important decisions to be made about how to distribute resources in BiH, the first step, it seems, should be to have clarity in what is being discussed, and to interrogate assumptions about the purpose of (different types of) war-related payments, rather than confusing them.

6. The role of the IMF and World Bank in war-related payments policy in BiH

The IMF and World Bank have entered into loan arrangements with BiH since the end of the 1992-1995 war, and their influence on war-related payments policy in the country is not new. In a 2002 report, the World Bank expressed concern about the unsustainably high rate of GDP allocated to veterans in the form of payments and other allowances (3-4% of GDP), and recommended reduction of payment amounts, reform of eligibility criteria, institutionalised checks of recipients' eligibility, and 'integration of data recording on veteran and family beneficiaries and expenditures under a single registry.'⁴⁶

According to the UNDP's Transitional Justice Guidebook:

In 2002, the World Bank initiated negotiations with entity governments to adjust current budgetary allocations for social benefits as a prerequisite for BiH to have access to WB financial programmes. During these negotiations, the WB gave the following recommendations to entity governments: the minimum percentage of bodily disability should be increased from 20 to 50 in terms of exercising the rights for disabled war veterans; entities should not prescribe rights which they cannot meet so as to avoid the growth of internal debts; and a maximum of 20% of the total budget should be allocated for social benefits, as a standard (including benefits for civilian war victims and disabled war veterans).⁴⁷

According to the UNDP, the RS Government implemented some of these recommendations, while the Federation Government ignored them, which meant that BiH failed to meet the World Bank's requirements, and negotiations to implement the financial programmes were abandoned.⁴⁸

Suada Hadžović, former Federal Minister for Veterans' Affairs stated that in 2002, the World Bank recommended that payments to former soldiers be conditional on any other payments they received, and payments received by their families. Hadžović said that complying with this recommendation would have required the Federation to stop payments to 45,000 former soldiers – something the Federation Government declined to do.⁴⁹

6.1. Conditions of the current IMF and WB loans

On July 8, 2009, following several months of negotiations, the IMF formally announced the approval of a \$USD1.6 billion loan to BiH in the form of a 'Stand-by Arrangement' valid from July 2009 to June 2012.⁵⁰ The first instalment of \$USD282 million was transferred soon after the approval, with the remainder to be dispensed every three months, pending reviews by the IMF of whether the BiH authorities had enacted promised reforms.

As is usual procedure, the BiH authorities had previously formally requested the loan by sending a 'Letter of Intent' to the IMF. Once it was approved, the letter formed the conditions of the SBA, along with the Technical Memorandum of Understanding. 'Letters of Intent' are secured by the IMF through negotiations with the national authorities of a country which has requested a loan, and form a plan for how to meet monetary and budgetary targets. The BiH authorities' letter includes various promises for reforms to war-related payments policy.

On April 8, 2010, the World Bank publicly announced its approval of a \$US111 million 'Development Policy Operation' (DPO) for BiH – also a loan.⁵¹ According to the WB, the 'focus of the reforms supported by the DPO is to strengthen the targeting of a wide array of cash-transfer programs to families and individuals, to better reach the most vulnerable in BH.' The cash-transfer programs in question include the same ones targeted by the IMF – on other words, war-related payments. Also in early 2010, the World Bank approved \$US15 million to 'strengthen the institutional capacity necessary for implementation of the reforms, and to provide employment services to active job-seekers among vulnerable groups.'⁵² Clearly, both international financial institutions exercise significant influence over reforms to war-related payments, at least in the short-term.

To understand recent and future changes to war-related payments policy in BiH, it is necessary to look at the provisions of the Letter of Intent delivered to the IMF by the BiH authorities, which outlines a reform agenda which is also supported by the WB. According to the Letter of Intent⁵³, the BiH authorities intend to:

- (i) strengthen fiscal policy to reduce the government's financing needs and improve medium-term fiscal sustainability;
- (ii) exercise public sector wage restraint;
- (iii) undertake structural fiscal reforms aimed at reforming the system of transfers and strengthening public finance management;
- (iv) adopt a coordinated approach to ensure financial sector stability; and
- (v) promote other structural reforms that would safeguard competitiveness and ensure the stability of the CBA [Currency Board Arrangement]

The reform of the so-called social transfers system was one of the key measures promised by the authorities. The necessary measures differed by entity, and entailed cooperation with the World Bank. The Federation Government proposed a series of measures:

The Federation government will undertake a comprehensive reform of its rights-based benefits system, in consultation with the World Bank. We understand that making reforms of the current complex system will take time; and we intend to phase out the revision of the various laws over the next 18 months. As a first step, by end 2009, we intend to:

- (i) eliminate special unemployment benefits granted to demobilized soldiers by allowing the sunset clause to expire;
- (ii) introduce a maximum income threshold for eligibility for civilian and veterans benefits;
- (iii) reduce all civilian and veterans' benefits by 10 percent and eliminate indexation; and
- (iv) reform war veterans' pensions.'

Over the medium term, we will seek the assistance of the World Bank to undertake a comprehensive income and property census and introduce means-testing for all civilian and war-related benefits.

Republika Srpska authorities agreed to a similar goal, although their promises were not so specific (perhaps reflecting the fact that RS was in a better fiscal position):

In the RS, the central government will reduce spending on...

- (ii) veteran and disability benefits, by streamlining eligibility criteria and improving targeting

Both entities promised to augment the changes to 'rights-based benefits', with changes which would 'ensure the protection of the poor'. According to the Letter of Intent: 'We understand that our adjustment program may have an impact on the vulnerable groups of our population. Thus, we will reform the social safety net to ensure the protection of the poor.' The Letter offers no other details of how the 'social safety net' will be reformed, beyond a statement that the authorities will work with the World Bank to make sure public funds 'target' vulnerable groups.

According to news reports, the total amount that needed to be shaved from the budget in the Federation was 414 million KM, while Republika Srpska needed to save 146 million KM.⁵⁴ It was clear from the outset that the Federation was faced with the greatest hurdles in implementing reforms to war-related payments.

7. Reforms to war-related payments since 2009

By tracking practical progress towards the reform of war-related payments policy in BiH, it is possible to highlight contradictory views about the purpose of the different payments, and also to consider the extent to which this affects the climate for transitional justice efforts in BiH.

The contradictory – or perhaps more accurately, radically opposing – views about changes to payments were evident even before the IMF Stand-by Agreement became official. Angry at the proposed 10% cut to veterans' and civilians' payments in the Federation, disabled war veterans and family members of fallen soldiers protested violently outside the Federation Government building in June 2009. In response, the Federation Government sought to exclude changes to payments for disabled war veterans and their families from the list of promised reforms before the SBA was approved.

However, the IMF refused to agree to such a change, and the Federation's leaders were left to ponder their options. Local and foreign media relayed the dire warnings of Federation politicians like Finance Minister Bevanda that if the country did not secure the SBA, the Federation would face "financial collapse, that is equal to a suicide", and predicted that the entity would be bankrupt by September or October.⁵⁵

With the all-inclusive 10% Federation budget cut still in the Letter of Intent, the IMF approved the SBA on July 8, 2009, and released the first transfer soon afterwards. Although the 10% cut was supposed to have been made by the end of May 2009, it was not until July 30, 2009, that the Federation Parliament passed the promised savings law, which shaved 10% from all payments from the budget, and established that the planned 2009 budget for war-related payments would be reduced by 10%. How the savings would be achieved from the war-related payments budget, was left to subsequent legislation to establish.⁵⁶ Federal politicians agreed to continue consultations with veterans' organisations to work out a plan for how the savings would be made.

However, negotiations in the next couple of months did not satisfy members of some veterans' organisations, and violent protests followed again. After a two-day protest in which demonstrators destroyed part of a fence which separated them from the parliament building, an emergency parliament session which went ahead without Premier Mujeginovic, as well as members of whole parties) struck down the 10% cut in benefits as well as the abolition of the law granting special payments to decorated veterans.⁵⁷ "The essence of our requests is for the parliament to respect legislation it had passed, to respect soldiers," Reuters cited a decorated war veteran and protest leader as saying.⁵⁸ The backflip by the Federation Parliament was condemned by IMF representatives, as well as the state and RS politicians, and the Federation Premier and Finance Minister.

Later in the year, the Federation Parliament did succeed in passing legislation which stipulated that audits of war-related payments to war veterans would be conducted. Although the law came into force on December 30, 2009, it introduced only the principle of audits. The details of how these audits would be conducted, were to be specified in additional legislation which would be in place by January 1, 2011, in line with the SBA conditions.⁵⁹ According to news reports, the initial plan was to audit the entitlements of 110,000 veterans over 18 months.⁶⁰

In Republika Srpska, proposed reforms to war-related payments were also controversial. A bill was introduced to the entity's Parliament in December 2009, which proposed the elimination of additional payments to decorated soldiers, and the introduction of means-testing of all veteran's payments (two measures recommended by the IMF and WB). However, the RS Parliament only passed amendments which introduced limitations for establishing rights to monthly payments for disabled soldiers with 50% or less disability, and means-testing only for veterans who had sources of income other than the war-related payments.⁶¹ Debate over how to reduce spending on payments to civilian war victims failed to produce agreement.

At the same time as the governments of both entities were debating means-testing for payments to former soldiers,

veterans' organisations in the Federation vowed to prevent the introduction of means-testing, by any means possible. They made frequent references to the debt the Bosnian state owed veterans, without which it would not exist. A January 2010 statement by the Union of Disabled War Veterans said that its members would 'protect their population by all available means and mechanisms, which had built the foundations of the BiH state using parts of their bodies.'⁶²

In February 2010, veterans groups and their families pressured Federation parliamentarians to sign a promise that they would not even debate veterans' laws which introduced means testing, and which would confirm the end of payments to demobilised soldiers. The parliamentarians refused to sign. Other veterans' groups threatened radical measures if the reform laws were passed. A representative of the Union of Soldiers Awarded the 'Golden Lily' stated that the organization would 'create blockades of all public institutions in the Federation, from federal to cantonal and municipal institutions.'⁶³

Despite the threats from veterans' associations, the Federation laws were passed in late February 2010. A law amending the main veterans' law introduced the principle of means-testing for disabled war veterans who had less than 60% disability as well as for recipients of military family payments. These payment recipients had to submit applications to have their income status confirmed by the end of 2010, in order to continue receiving payments.⁶⁴ Means-testing was also introduced for all decorated soldiers who received special payments.⁶⁵

Another law confirmed the expiry of the Law on the Rights of Demobilised Soldiers and Their Family Members, which had offered special unemployment payments to demobilised soldiers from January 1, 2007 (for a maximum of three years, depending on military service).⁶⁶ Subsequently, the last of these payments to former soldiers, was finalised on April 30, 2010. Although their monthly payments were cut, the expiry law did stipulate that these former soldiers would continue to enjoy other 'non-material' rights, including priority in employment, priority in receiving loans to encourage self-employment, basic healthcare, housing assistance, and other advantages.

Soon after, the IMF approved the second tranche of the SBA, which had been contingent on the passage of the reform laws.

The most dramatic response to these reform measures occurred on April 21, 2010, when a protest in front of the FBiH Government building in Sarajevo, led by war veterans, turned violent. According to news reports, of the several thousand people who attended the protest, approximately 70 people were injured, including several police officers. Government offices were torched and windows smashed, with damage to the building later estimated to be significant – including damage to the computer centre which contained records of payment recipients.⁶⁷

According to news website Balkan Insight, after the FBiH Parliament passed the reform laws in late February, the FBiH Government agreed to apply means-testing to all budget beneficiaries. The protestors claimed that this had not been done, and that the Government was in fact considering further cuts to veterans' payments.'⁶⁸ One disabled veteran who took part in the protest, carrying a banner which read, 'Government = Elite of Bandits,' commented to Reuters, "'We who went to war barefooted and hungry are still penniless today but have a new burden - they are preventing us from sending our children to schools.'" Another veteran commented, "'We are ready to bear our part of the burden to ease the impact of the crisis but everybody else should do the same.'"⁶⁹

Veterans associations continued to lobby the Government after the April protest which made headlines all over the world due to the scale of the damage which resulted. The veterans' demands centred on the reinstatement of special unemployment benefits for demobilised soldiers, and the application of means-testing to everyone receiving government money.

Ahead of a meeting with veterans' leaders in the aftermath of the violent April protest, the Federation Premier Mustafa Mujezinovic stated that if the Government did not stick to its plan to cut payments to 20% of veterans – those with the highest total incomes – that the SBA would be in jeopardy. He stated the Government would work to create an audit law which would weed out the 20% of veterans' payments recipients who had the highest incomes.

The response of veterans' representatives highlights the differing conceptions of the payments in question. Izet Ganic, president of the Organisation of Families of Fallen Soldiers in the Federation, stated to Radio Free Europe:

What I don't understand is – someone who says that the wife of a soldier who was killed has an income of two and a half thousand marks and so she doesn't need the disability payments. The disability payments are compensation, a compensatory right. If her husband was alive, he would receive two and a half thousand [marks] and there would be no means testing.⁷⁰

The Premier addressed the issue in a different fashion:

People want to defend the interests of the entire group [of veterans], including those who receive total payments of four, five, six thousand marks, because there are people who are really well-off and receive payments, and there are people who have their own companies. I think it isn't fair for a company manager or enterprise owner to receive 200-300 marks from the government, to take that from the poor. I think that isn't acceptable, and it isn't an acceptable solution. However, a medal remains a medal even if there is no money behind it.⁷¹

Arguably, what is at stake in relation to veterans is recognition of the role they played in defending citizens, and indeed in defending state(s). Whether this recognition is best afforded through monthly financial payments is an open question, but what is apparent is that the dispensing of payments to veterans in BiH has not been accompanied by adequate rehabilitation and reintegration into the rest of society.⁷² Unfortunately, this (and the creation of unsustainable fiscal policy) has led to a situation in which the public image of veterans of the 1992-1995 war increasingly centres not on their service and sacrifice, but on an idea that they are dragging down the economy and the country. It is difficult to not conclude that this will lead to further embitterment of a sizeable portion of the BiH population. Not only that, but because of the pressing need to overhaul their cost to the budget, and certainly because of their numbers and vociferous and violent protests, veterans continue to dominate the BiH authorities' war-related payments agenda, unintentionally squeezing out other themes, such as the aptness and scope of civilian victim payments, from public and media airtime.

All of this seems to be quite a retrograde environment for transitional justice efforts in BiH, particularly for those which advocate for reparations, adequate compensation, and appropriate ways of dealing with the past in order to foster future peace. Clearly, BiH (and particularly the Federation) has come to a point where quite radical fiscal reforms need to be made, including to war-related payments, but it also seems that there is a need to address the issues surrounding war-related payments in a holistic way. It could perhaps be done by incorporating the expertise, opinions and concerns of transitional justice actors and stakeholders, to create a separate strategy for war-related payments (including their financing), and working on the conceptual and practical disentangling of compensation payments and veterans' benefits from welfare payments. The disentangling of different payments is not just an issue of budgetary coherency, but it also an issue deeply connected to the recognition due to victims, and the recognition due to veterans, as part of a state's obligations towards its citizens, and as a means to moving into a peaceful and just future after conflict.

8. Selected issues for further policy development

The large proportion of public expenditure dedicated to war-related payments is not, of course, the only aspect of policy in this area which has met with criticism. Other aspects of policy are also of questionable efficacy. Selected issues relevant to future policy development are highlighted here.

8.1. Differences in payments to civilian victims and disabled war veterans

The vast discrepancy between payment amounts given to disabled war veterans, compared to those given to civilian victims, even where the harm may be similar (for example, for an amputated leg), has been heavily criticised. One reason for this favoritism is the continued legacy of Tito's laws which rewarded Yugoslavia's Partizan soldiers after WWII; another reason is political pandering. The population of former soldiers is large, well-organised and has extensive political power as a voting block. BiH politicians at all levels of power have actively courted their votes since the end of the war with successive proposals for (arguably) favorable legislation. Moreover, many members of parliament and members of the government's civil service are former soldiers themselves, and hence it has been in their personal interest to ensure favorable legislative conditions to which they themselves, in some circumstances, are then entitled.

Human rights organisations, victims' organisations and international agencies have repeatedly recommended that the discrepancy between payments to civilian war victims and disabled war veterans be reduced, with some arguing for the equalisation of payments. Amnesty International, in a report released in 2009 which focused on the plight of victims of sexual violence in BiH, characterised the discrepancy as discrimination and recommended that the BiH authorities 'remove discrimination in the level of social benefits available to survivors of war crimes of sexual violence in comparison to war veterans.'⁷³

Other agencies recommended that non-war disabled also be considered when revising legislation for war-related payments. In 2006, the UN Office of the High Commissioner for Human Rights (OHCHR) recommended that legislation be amended to 'equalise rights and amounts of disability pensions of disabled war veterans, civilian war victims and all other persons with disability.'⁷⁴

While these recommendations stem from the justifiable concern that payments to disabled war veterans are monopolising the BiH budget to the extent that other vulnerable groups are suffering, the recommendations also seem to be logically questionable, or at least, exhibit the same shaky assumptions upon which the entire war-related payments system in BiH is based. The Amnesty position assumes some fundamental similarity between the situation of civilian victims, and that of disabled war veterans. Certainly, members of both groups were harmed by the war. Most were disabled physically. However, if physical disability is the basis for equal treatment, then why should non-war disabled people not be included in claims for equal payments?

The OHCHR position includes all disabled people, and also favours equalisation, but then the vexed question returns: if all disabled people should receive equal payments, then does that mean that all of these payments are 'welfare' payments, that is, that the connection to war is not relevant? That these payments are not compensatory?

The logical next step, it seems, is to identify the purpose of the different payments, and one is therefore again confronted with definitional issues which need to be resolved in order to know the nature of the problem. This paper certainly does not argue that the discrepancy in payments for civilian victims and disabled war veterans should be maintained, but it does argue that fundamental questions about the purpose and nature of all BiH war-related payments need to be addressed, which will then inform policy recommendations about how to change them.

8.2. Fraud and error in determinations of eligibility for payment

Clearly, a major blight on the system of war-related payments in BiH is the issue of fraud – the wrongful approval of payments to people who are not legally entitled to them, or approval based on fraudulent documents or claims. High levels of fraud have been cited by BiH politicians, media outlets, and international financial institutions. Due to the much higher payments rates available to disabled war veterans, the consensus seems to be that the bulk of this fraud has been perpetrated by those claiming disability payments under war veterans’ legislation. According to Orhan Niksić of the World Bank in BiH, the figure regularly circulated is a fraud rate of between 20 to 30% amongst disabled war veterans claiming payments.⁷⁵

However, before 2009, the absence of comprehensive or verifiable auditing procedures meant that these allegations remained allegations (or estimates); and conversely, the lack of audits was a principal reason for the suspected high rate of fraud. Republika Srpska began an entity-led auditing process in 2009, while the Federation, at the time of writing, was yet to make significant progress in establishing effective auditing procedures.

8.3. Auditing in Republika Srpska

The RS Government approved an audit ‘action plan’ in June 2009, and a Central audit commission was established soon afterwards. According to information obtained from the RS Ministry of Labour and the Protection of Veterans and the Disabled, the commission began work in July 2009, supervising the administration of individual and family disability payments in all RS municipalities. Commission members also became acquainted with the work of all municipal veterans’ organisations. The veterans’ organisations were ordered to identify members whose military service they believed was not accurately categorised, and to refer these opinions to the municipal authorities.

At the same time, the Ministry checked documents which certified the death, murder, disappearance, wounding or injury of a former member of the Republika Srpska Army. The municipal authorities were ordered to conduct checks of family payments, and individual payments for all those with disability classifications of 60% to 100%.

According to the Ministry, the commission supervised the municipal authorities’ checking of 13,897 cases of payments to disabled war veterans with 60% or greater disability; and 19,280 cases of payments to families of disabled war veterans; making a total of 33,177 cases checked.

Of these 33,177 cases, 7,431 (22%) were found to have flaws. Of the 7,431 flawed cases, 5,699 cases were allocated to the Ministry for audit; and 1,732 cases were assigned to municipal authorities for correction of the shortcomings – specifically, municipal medical commissions had to re-assess the disability levels of the war veterans in these cases. This reassessment resulted in changes in the rights, or elimination of the rights, of 688 payment recipients.

By December 2009, the RS Ministry managed to audit 490 cases of the 5,699 cases which were referred to it for audit. 76% of the 490 cases audited were subject to no change of status, while for 24%, eligibility for payment was cut altogether, or the category of disability revised. The amount of flawed cases found by the ministry, therefore, matched the estimates previously circulating about rates of fraud or error amongst veterans’ payments.

The audit commission’s general findings were:

- that a large number of cases, of both individual and family payments, had never been audited by the Ministry.
- that there were differences in the way medical commissions across RS interpreted and applied the provisions of the Rulebook on Establishing Levels of Veterans’ Disability.
- that there was a lack of standardisation in the way municipal veterans’ organisations assessed the military service of their members.

The audit commission reorganised medical commissions and disbanded those which were found not to be acting according to the Rulebook on Establishing Levels of Veterans' Disability.

The Ministry estimated in March 2010 that the changes made as a result of the audit commission's work would save 140,000KM per month from the budget for individual and family military disability payments, and that further savings were expected as the cases assigned to the Ministry for audit were resolved.

According to the Ministry, the audit process enjoyed the full support of the public because of the Ministry's close cooperation with veterans' organisations during the process. It also stated that, as of March 2010, it would take a further two years to audit the remaining cases amongst the 5,699 identified for audit, unless staffing levels were increased. Payments to the 22,421 former soldiers with 50% or lower levels of disability, also needed to be audited. Not only that, but there were a further 13,526 other cases brought by (alleged) war veterans - in the form of appeals, administrative disputes and requests – which were also waiting to be processed.

8.4. Auditing in the Federation

Compared to Republika Srpska, the Federation has made much less progress in addressing the issue of fraud. Comprehensive audits of payments to both civilian victims and disabled war veterans and their families, have never been carried out in the Federation. Individual municipal authorities had the jurisdiction to check payments for both civilian victims and disabled war veterans, but in practice, this was not done. Instead, the federal ministries received summaries from the relevant cantonal ministries of recipient numbers, recipient categories according to disability levels, and payment amounts. According to an officer in the Federation's Ministry of Veterans and Disabled Veterans, individual cases of veterans' payments are only investigated by the federal ministry if they are the subject of an anonymous tip-off that the individual is fraudulently claiming payments.⁷⁶

A recent significant step towards auditing of payments to war veterans and their families was the passage of the Law on Checking Entitlements in the Field of Protection of Veterans and the Disabled, which came into force on December 30, 2009.⁷⁷ According to news reports, the plan was to audit the entitlements of 110,000 people.⁷⁸

Crnkić, the Minister for Veterans' Affairs, stated in January 2010 that the whole auditing process could last for a year and a half. He was quoted as saying that the first priority was to check individuals' membership of the armed forces, and the circumstances of their injury or wounding. Following that, disabled war veterans would be reassessed to confirm their disability level, and then family payments based on the death or disappearance of their family member would be checked by reviewing the fallen soldier's military membership, and the circumstances of their death or disappearance.⁷⁹

The December law also contained provision for fines of between 500 – 15,000KM, disciplinary action and criminal punishment, for claimants, government officials or third parties who perpetrated fraud in claiming or assessing a payment or allowance.

Despite the passage of the legislation and the public statements about its effect, auditing still had not begun by May 2010, and little progress had been made apart from establishing an action plan, according to Orhan Niksić from the World Bank in BiH.⁸⁰

The lack of audit processes and adequate controls in the Federation seem largely a result of a 'lack of political will', a common catchphrase in BiH. Interestingly, the Federal Ministry of Veterans and Disabled Veterans, has been chastised by auditors of its own financial records, for its failure to establish effective controls and checks on war-related payments. In its 2009 audit report (for the 2008 calendar year), the Office for the Audit of Institutions in FBiH, recommended, amongst other things, that the 'Ministry undertake efforts to – in cooperation with municipal institutions – secure accurate evidence of military recipients of war-related payments, and, in cases of

illegal payment, to determine the reasons for the payment, their value and to undertake activities to secure the return of the funds.' The Audit Office found in its 2010 audit (for the 2009 calendar year), that the Federal Ministry had failed to act upon the recommendation.⁸¹

The same audit institution found inadequate of supervision and control over payments to civilian victims of war in the Federal Ministry of Labour and Social Policy in its 2009 audit report (for the 2008 year). However, in its 2010 audit report, the audit body concluded that its recommendations to 'secure continuous controls of payments to civilian victims of war and to undertake appropriate measures for the return of funds illegally paid out', were partially implemented by the Ministry in the 2009 financial year. The progress was largely due to an improvement in administrative checks of data entered into the recipient database.⁸²

8.5. Payment databases maintained by the BiH authorities

Audit processes in both entities (but particularly in the Federation, because of its more complex administrative structure) are significantly hampered by the inadequacy of electronic databases which store information about payment recipients – and the lack of integration of these databases. The inadequacy of the databases affects more than just potential audits, it also makes analysis of past and future trends, recipient coverage and applicant profiles, more or less impossible.

In the Federation, a 'new' database (which became operational in November 2009) holds data about payments to civilian victims, and payments to other disabled people, but offers only basic functionality to the departmental officers who work with the database.⁸³ It has been installed and is used by the Centres for Social Work (the municipal bodies to which claims are first lodged), by the cantonal ministries and by the federal ministry. According to the 2010 audit of the Ministry, the database has not been linked to computer systems used by the institutes for medical expertise which conduct the disability assessments, despite the fact that budget funds were set aside for the development of such a linkage.⁸⁴

Instead of storing a detailed profile of each payment recipient (with links to evidentiary material provided), the database only contains basic information: identification details; the percentage assessment of disability; whether the recipient receives an individual or family payment; and whether they qualify for an additional allowance such as an orthopaedic allowance). The database does not group data by type of victim – for example, by victim of sexual violence; victim of torture; concentration camp survivor; victim of physical injury (including victim of landmine, during or after the war); former soldier of APZB. Nor is it possible via the database, to view the documentary evidence submitted by a payment recipient or applicant, and there are no records of whether a payment has been checked.⁸⁵

Senior staff in the Federal Ministry of Labour and Social Policy's department for civilian victims expressed their frustration that they were not able to analyse the demographic profile of their payment recipients. One staff member explained that new initiatives, even in relation to financing payments, could potentially be developed if they had better information. She gave the example of international donors being interested in supporting landmine victims, but noted that they (Ministry staffers) did not have data about these recipients, which was necessary to put forward a proposal.⁸⁶

The Federal Ministry of Veterans and Disabled Veterans uses a different database from the one in operation in the Ministry for Work and Social Policy. Like the database of civilian war victims, records for disabled war veterans cannot be sorted by type of disability (psychological or physical, injury at the front line or as a prisoner of war), but only by disability level (70%, 80% etc). Individual payments are also identified separately from family payments.

Neither of these databases are tied to tax records, or records of other payments.⁸⁷ Moreover, neither database

provides the possibility to create meta-analyses of data, like comparisons of victim data by year, trends in disability levels, trends by separate canton, etc, and certainly not of trends by type of victim. The civilian victims database also does not distinguish between payments related to the 1992-1995 war, and those related to World War II.

Republika Srpska has the advantage of a unified ministry which deals with all war-related payments, and a unified database (including civilian victims and disabled war veterans). According to a Ministry official, the records in the database are not sorted by victim type (for example, victim of physical injury, of sexual violence, etc), but there was the possibility that a software solution could be devised by the Ministry programmers, in order to extract this data.⁸⁸ It is not clear whether auditing data will be included in the RS database, and whether it is linked to data about tax and other social contributions.

The need for more sophisticated and comprehensive data about war-related payments in BiH, for which more sophisticated databases (or ideally, a single database) are required, has been recognised by BiH authorities and foreign actors alike, including the World Bank.⁸⁹ It is clear that lack of information about recipients and payments hinders policy development and analysis, as well as making monitoring of recipients and accountability almost impossible. It is questionable why databases of this kind have not yet been established, despite international support, local knowledge, and expertise from many sources. The issue warrants further investigation.

8.6. Discrimination enshrined in law?

Possibly the dominant perception of war-related payments in BiH is that too many people receive them, and that a sizeable percentage of people should not be receiving them at all. While there may be a basis for this perception, it is also possible that some who have valid cause to claim payments, have missed out. Existing, or previous, legislative provisions may limit legitimate candidates from claiming war-related payments and allowances to which they should be entitled.

- **The RS law which regulates the rights of civilian war victims is potentially discriminatory.** The RS Law on Civilian Victims of War – which came into force in its original form during the 1992-1995 war – stipulates that people who were members of an enemy military formation, or who assisted the enemy, cannot establish rights to payments or other allowances.⁹⁰ Vaša Prava, the national legal aid provider, considers this to be discrimination on the grounds of ethnicity.⁹¹ The deadline for new applications has now passed (it was December 31, 2007), so those who might have wished to establish a claim in RS are no longer able. Similar provisions do not exist in the Federation. Federation laws ban only those who have been convicted of criminal offences (against the Constitution of BiH, or offences against international criminal law) from establishing rights to any allowances or payments as a civilian victim or former soldier.⁹²
- **According to the RS Veterans' law, people who have been convicted of a criminal offence while fighting on the enemy side (that is, against Serbs), cannot claim payment or allowances under the law.**⁹³ However, those former soldiers who have been convicted of criminal offences against other citizens of BiH, are not expressly prohibited from establishing rights under the law. This can also be deemed discrimination on ethnic grounds.
- **Former APWB soldiers and their families are only eligible to claim as civilian war victims.** Members of the People's Defence Force of the Autonomous Province of Western Bosnia, a military force which fought against the Army of Bosnia and Herzegovina from 1993, were excluded from federal veterans' legislation after the war, as were their families. The Federation Law on the Rights of Veterans and Members of their Families encompassed members of military and paramilitary formations, but excluded members of the APWB force.

Angry at this treatment, more than 10,000 members of the APWB force lobbied their entity's politicians to request a decision of the Constitutional Court of the Federation of BiH about the constitutionality of the veterans' law. The request was brought by parliamentarians in 2004, and in 2005, the Constitutional Court confirmed that the APWB force was a military outfit like other armed forces which had been recognised by BiH legislation.⁹⁴ The Court found that former soldiers of the APWB, and members of their families, were subject to discrimination and their human rights violated, by being prevented from claiming rights under the Veterans' Law.⁹⁵ Legislative change followed in 2006, but not to the Veterans' law: instead, the Law on Basis of Social Protection, Protection of Civil Victims of War and Protection of Families with Children was amended to include eligibility for members of the APWB forces and their families, according to the entitlements of civilian victims (which are, of course, significantly lower than for former soldiers).⁹⁶ The Ombudsman for Human Rights in BiH is now investigating the matter on behalf of the APWB former soldiers.

8.7. 'Certification' of victims

Legislative provisions which regulate the process of applying for some war-related payments, may also indirectly discourage genuine applicants from applying, because the provisions encourage a lack of accountability amongst those responsible for 'validating' victims.

Federation law requires that civilians who survived sexual abuse and rape, obtain documentation certifying that they were abused or raped, from a civil society organisation, the victims' association Women Victims of the War (Žene žrtve rata). WVV is the only organisation in FBiH accredited to do this, and must interview survivors to determine whether to issue the certification. According to Amnesty International, the interview process is often not sensitive to the psychological needs of survivors. The interview takes place in the presence of a number of people, which adds unnecessary stress to the survivor's experience, and adds to the risk of retraumatisation. Amnesty's researchers also found that survivors were pressured during the interview to sign a statement giving authorisation for their testimony to be used as part of criminal proceedings against those charged with war crimes.⁹⁷ These problems highlight the need for (at least some) choice on the part of survivors, about which organisation they consult in order to obtain the required certification. This is especially the case because the organisations are supposed to be representative of their needs.

9. Conclusion

War-related payments in Bosnia and Herzegovina are a product of a mix of principles - including the principle of compensation for victims of violations of international law; the state imperative to secure the welfare of vulnerable citizens; as well as a civic desire to reward military service during wartime. Even if one only considers payments to 'civilian' victims, there is clear incoherency in the underlying rationale for eligibility, which means the purpose of these payments is also unclear.

As a post-conflict country in which no comprehensive and specifically designated reparations scheme has been established, it is clear that different stakeholders, including victims and veterans, hold different views about the purposes of existing war-related payments, and hence also hold different views about the legitimacy of changes and reforms.

According to the findings of this study, only payments to victims of sexual violence and rape in the Federation of Bosnia and Herzegovina bear sufficient resemblance to the characteristics of compensation or reparations payments (according to international law and practice), for them to be classified as such. Other payments to civilian victims of war, which are assessed on the basis of physical disability, are a curious blend of characteristics drawn from welfare models, as well as from compensatory or reparatory models. Payments to former servicemen and their families are also confusingly poised between some kind of recognition for service, recognition of harm incurred during service – and welfare considerations.

This lack of coherency means that war-related payments in BiH cannot accurately be referred to as welfare payments, and nor can they be considered compensation payments. The mix of imperatives raises the question: according to which criteria should war-related payments in BiH be reformed? Those which are associated with compensation; with veterans' service benefits; or with welfare or social assistance payments? Is it appropriate to try to accommodate all of these in any reform agenda? The recent public and institutional battles in BiH (particularly in the Federation) over how payments to veterans and their families should be remodelled according to conditions brokered to secure the IMF Stand-by Arrangement and World Bank credits, illustrates what is at stake in this clash of ideologies.

It is almost indisputable that BiH's current financial capacities do not extend to financing monthly payments at levels in place since 2006. The financial burden these payments have placed on the BiH state is a source of serious concern. It is appropriate that past, current and future payments for war-related harm or service, if they remain a budget line of public expenditure, be subject to scrutiny and analysis along fiscal-economic lines. As long as BiH's economy remains fragile, and its options for credit limited, international financial institutions will have a role to play in this scrutiny and reform.

However, the need to balance budgets and the imperative for sustainable development does not remove Bosnia and Herzegovina's obligation to pay reparations to those of its citizens whose rights have been violated under international human rights and humanitarian laws. Clearly, like in other many other post-war states, payment of compensation poses a problem while ever the resources of that state are over-stretched. Imperfect solutions will need to be reached, which may include creative methods of financing a compensation fund, and offering more benefits-in-kind, rather than cash payments.

In such a situation, it seems, transitional justice lobby groups (including victims' and veterans' associations, and international agencies) will not achieve practical outcomes unless they explicitly acknowledge the existence of a fiscal-economic imperative, and work together with fiscal reformers (who may be members of government, as well as international financial institutions), to stake their claim on the national budget. Any initiative, including consultation-oriented initiatives, which address reparations and compensation in BiH without sufficient consideration of the current war-related payments system - including reforms to the current system - is questionable in its efficacy.

Similarly, fiscal reformers would do well to acknowledge that the pressure and impetus for adequate compensation for those who have suffered gross violations of their rights – and perhaps also for those who suffered during war-time military service - is unlikely to disappear even if government spending on welfare shows 'improved targeting', and the economic position of BiH improves. The durability of claims for compensation for gross violations of human rights can be seen in a myriad of examples from around the world, including examples of continued demands for WWII-related compensation, 60 years after that war's end. BiH's legal and moral obligation to victims (and perhaps to veterans) will not be eradicated by welfare reform, and this fact should be acknowledged by all who plan the distribution of Bosnia's resources, now and in the future.

10. Recommendations

Compensation and reparations policy

1. The BiH authorities should work together with transitional justice actors (including victims and veterans) and fiscal reform and economic development actors to create **a clear, explicit and time-bound reparations strategy for BiH, which includes the payment of compensation**, and which specifically addresses how compensation payments, and other measures of reparations, will be financed. This strategy should explicitly address **whether, or to what extent, individuals have already been compensated or been offered reparations**, if they have received war-related payments, allowances, and in-kind benefits since the war. The reparations strategy and the plan for how it will be financed must also be balanced against other demands on public expenditure, including social assistance for all disadvantaged people in BiH, and the need for investment in economic development.

2. **Transitional justice actors - including international agencies which work in the area of transitional justice - and fiscal reform and economic development actors, should explicitly recognise the overlap in their areas of interest, and endeavour to cooperate on issues connected to war-related payments policy.** Underlying this is evidence that transitional justice efforts will not be successful or sustainable unless aligned to the fiscal-economic capacities of the country; and that fiscal reform measures will not have the support of the wider population, and will continue to be undermined, if recognition for war-related harm and service is not appropriately delivered.

3. All involved in the production of a reparations and compensation strategy should **begin by defining key concepts based on fundamental moral and philosophical norms, and by interrogating justifications for certain priorities** (such as the favouring of former soldiers) in the abstract, rather than with reference to current BiH war-related payment legislation and practice. In order to foster critical thinking about the status quo, the empirical situation (including existing war-related payments policy, and the actual socio-economic position of the country), should be addressed only after these first principles are defined. Transitional justice initiatives which use the current system (or part of it) as a conceptual basis upon which to discuss reform, seem destined to obscure fundamental issues, because the current policy system is already markedly ad-hoc and confused.

Financing of compensation

4. **The BiH authorities, transitional justice actors and economic development actors should think creatively about how to finance a reparations strategy**, and compensation payments in particular. A study into the relevance of financing options employed by other transitional countries (including those with limited resources, and limited non-war social assistance programs), should be commissioned. Certainly, compensation payments should not come out of budgets for social welfare.

Public information

5. The BiH authorities, transitional justice actors, and fiscal-economic reform actors should **improve access to clear public information about payment amounts, allowances, and in-kind benefits for all recipients of war-related payments.** Comparisons to payments to people disadvantaged by factors other than the war (such as non-war disabled) should also be readily available, as well as comparisons to other forms of public expenditure.

6. **The BiH authorities should declare to the public the income sources of each of its politicians, including those who received war-related payments.** Transitional justice actors should also pressure prominent **war-related lobbyists (such as the leaders of veterans' and civilian victim associations) to declare their income sources, including from war-related payments.** Allegations of self-interest should be met with detailed information.

Database and reporting

7. The BiH authorities should – possibly with the support of fiscal reform authorities and others – make it a priority to develop and implement a comprehensive and fully-functional database of war-related payments and recipients (or at least, implement such a database in each entity, and enable data to be shared across entity lines). This database should be integrated with records of other social transfers and tax obligations, and should have the functionality to produce analyses, including on the basis of gender, and on the basis of the type of harm suffered (for example, physical injury, torture, psychological injury, etc). Proper record-keeping and detailed data analysis are essential for a number of reasons: to produce informed policy; to reduce fraud and errors in the allocation of payments; and to manage means-testing of eligible recipients.

8. The BiH authorities – with the oversight of the entity general audit commissions, and perhaps also the World Bank and IMF – should investigate previous efforts to establish such a database, and identify why the results were not up to standard. Instances of corruption or ineptitude should be eradicated and punished, and new efforts closely monitored.

- ¹ While all war payment recipients in BiH are entitled to various non-pecuniary 'benefits' they differ according to jurisdiction and according to status as a civilian victim or war veteran. Benefits include priority in employment and priority in admission to educational institutions.
- ² A current initiative includes the UNDP's Consultation Process for the Production of a State Transitional Justice Strategy. Amnesty International conducted field research and consultations in 2008 and 2009 in relation to the position of victims of war-time sexual violence in Bosnia, which resulted in the report: Amnesty International (ed.). 2009. 'Whose Justice?' The Women of Bosnia and Herzegovina are Still Waiting. London: Amnesty International
- ³ Law on Missing Persons ("Official Gazette of the BiH", No. 50/04)
- ⁴ UNDP BiH (ed.). 2009. Transitional Justice Guidebook for Bosnia and Herzegovina. Full-length Bosnian edition. Sarajevo: UNDP BiH, 114.
- ⁵ Law on Basis of Social Protection, Protection of Civil Victims of War and Protection of Families with Children ("Official Gazette of the FBiH", No. 36/99)
- ⁶ Law on Protection of Civilian Victims of War, ("Official Gazette the RS" No. 24/10)
- ⁷ FBiH Ministry of Finance. 2008. 'Planned Income 2009'. <<http://www.fmf.gov.ba/>> Sarajevo: FBiH Ministry of Finance.
- ⁸ RS Ministry of Finance. 2008. '2009 Budget'. <<http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mf/Budzet/Budzet%20Republike%20Srpske%20za%202009.%20godinu%20-%20latinica.pdf>> at 4
- ⁹ This figure is an estimate, as the Ministry of Veterans and Disabled Veterans only provided a monthly expenditure total.
- ¹⁰ Disability levels for all recipients of war-related payments are calculated in according to world standards for establishing limits to an individual's ability to work.
- ¹¹ Law on Protection of Civilian Victims of War, ("Official Gazette the RS" No. 24/10)
- ¹² Law on Amendments to the Law on Basis of Social Protection, Protection of Civil Victims of War and Protection of Families with Children ("Official Gazette of the FBiH", No. 39/06, No. 54/04 and 36/99)
- ¹³ Law on Rights of Veterans and Members of their Families ("Official Gazette FBiH" 33/04 and 56/05)
- ¹⁴ Law on Rights of Veterans, Disabled Veterans and Families of Fallen Soldiers of the Defensive-Liberation War of the RS ("Official Gazette of the RS", No. 46/2004 and 53/04)
- ¹⁵ Law on the Rights of Demobilised Soldiers and Members of their Families, ("Official Gazette FBiH" No.61/06, 27/08 and 32/08)
- ¹⁶ Republika Srpska Investment-Development Bank. 2009. 'Main Economic Indicators: Comparative Review'. <<http://www.irbrs.net/statistika.aspx?tab=2&god=2009&lang=eng>> Banja Luka: IRBRS
- ¹⁷ Employment Bureau, Canton Sarajevo. <<http://www.juszzks.com.ba/ba/materijalna-i-socijalna-sigurnost-za-vrijeme-nezaposlenosti.html>> Sarajevo: Canton Sarajevo
- ¹⁸ See section 7 of this paper for more details
- ¹⁹ Article 33, Law on Rights of Veterans, Disabled Veterans and Families of Fallen Soldiers of the Defensive-Liberation War of the RS ("Official Gazette of the RS", No. 55/07)
- ²⁰ For the sake of simplicity, relatively minor allowances (such as 'assistance in medical costs and in procuring orthopaedic aids' and additional allowance for single providers) are not included.
- ²¹ See note 16
- ²² UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly Resolution 60/147, 16 December 2005
- ²³ These are mentioned in the Preamble to the UN Basic Principles (ibid)
- ²⁴ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 75 UNTS 287, 12 August 1949
- ²⁵ Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 75 UNTS 135, 12 August 1949
- ²⁶ UNDP BiH (see note 4) at 30. Also: Humanitarian Law Center and Documenta (ed.). 2008. Transitional Justice in Post-Yugoslav Countries: 2007 Report. Belgrade: Humanitarian Law Center, 43.
- ²⁷ See pp.3-13 of Pablo De Greiff (ed), The Handbook of Reparations, The International Center for Transitional Justice (Oxford University Press, New York, 2006) for an overview of some compensation schemes, and Part 1 for more details of particular schemes.
- ²⁸ Elizabeth Lira, 'The Reparations Policy for Human Rights Violations in Chile', in Pablo De Greiff (ed), The Handbook of Reparations, The International Center for Transitional Justice (Oxford University Press, New York, 2006) 59
- ²⁹ Ibid
- ³⁰ Alexander Segovia, 'Financing Reparations Programs: Reflections from International Experience', in Pablo De Greiff (ed), The Handbook of Reparations, The International Center for Transitional Justice (Oxford University Press, New York, 2006) 655
- ³¹ Samuel Issacharoff and Anna Morawiec Mansfield, 'Compensation for the Victims of September 11', in Pablo De Greiff (ed), The Handbook of Reparations, The International Center for Transitional Justice (Oxford University Press, New York, 2006) 310
- ³² Ibid at 310-311
- ³³ Allan Bullock (author), Stephen Trombley (author), Oliver Stallybrass (ed.), The New Fontana Dictionary of Modern Thought, 3rd edition (HarperCollins Publishers, London, 1999), 919
- ³⁴ Ian Gough, Jonathan Bradshaw, John Ditch, Tony Eardley, and Peter Whiteford, 'Social Assistance in OECD Countries', 7 Journal of European Social Policy (1997) 17-43 at 18
- ³⁵ Manos Mataganis, 'Social assistance in Southern Europe: the case of Greece revisited', 10, Journal of European Social Policy, 2000; 68-80 at 70
- ³⁶ Douglas W. Allen, 'Welfare and the Family: The Canadian Experience', Vol. 11, Journal of Labor Economics, No. 1, Part 2: U.S. and Canadian Income Maintenance Programs (1993), S201-S223 at S202
- ³⁷ Ian Gough, Jonathan Bradshaw, John Ditch, Tony Eardley, and Peter Whiteford, (see note 34) at 19
- ³⁸ In Republika Srpska, the Ministry of Labour and the Protection of Veterans and the Disabled administers payments to civilian victims, disabled war veterans, as well as pensions and work allowances to all other RS citizens. In the Federation, payments to civilian victims of war are the responsibility of the Ministry of Labour and Social Policy, which also administers pensions and welfare payments to families, the disabled, and the elderly.
- ³⁹ Law on Amendments to the Law on Basis of Social Protection, Protection of Civil Victims of War and Protection of Families with Children ("Official Gazette of the FBiH", No. 39/06, 54/04, 36/99)
- ⁴⁰ Amnesty International (ed.). 2009. 'Whose Justice?' The Women of Bosnia and Herzegovina are Still Waiting. London: Amnesty International, 40
- ⁴¹ UN Human Rights Committee. 2006. 'Concluding observations of the Human Rights Committee, Bosnia and Herzegovina', International Covenant on Civil and Political Rights, CCPR/C/BIH/CO/1, 22 November 2006
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- ⁵⁵ Srećko Latal. 2009. 'Bosnia's IMF arrangement shelved', *Balkan Insight*, <http://www.balkaninsight.com/en/main/news/20435/> 23 June 2009
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