

### The War Crimes Chamber in the Court of Bosnia and Herzegovina

Citation	Abstract and/or Summary of Findings	Methods	Key Evidence or Figures
<b>Internal - Analyses of jurisprudence and judicial system development</b>			
Barria, Lilian A., and Steven D. Roper. "Judicial capacity building in Bosnia and Herzegovina: Understanding legal reform beyond the completion strategy of the ICTY." Human Rights Review 9, no. 3 (2008): 317-330.	Since 2005, domestic courts in BiH have had jurisdiction over the following: (1) Cases which were initially under the jurisdiction of the domestic courts but remanded to the ICTY and recently returned to BiH. (2) Cases which originated at the ICTY and have been transferred to the State Court, and (3) new cases which originated and remained in the domestic court system.	Literature review, case law analysis, institutional analysis, informant interviews	We find that while human rights norms have been incorporated into the new legal code, the diffusion of these human rights norms has been inadequate because of the lack of judicial capacity building. While some courts in the capital enjoy significant resources, the vast majority of cases will be tried at provincial courts which are under-funded and unable to prosecute the significant number of cases. Moreover, the government structure of BiH has had a decidedly negative impact on the prosecution of these cases. Ultimately, the rule of law requires consistency of approach and funding to protect human rights throughout the state.
Chehtman, Alejandro. "Developing Bosnia and Herzegovina's Capacity to Process War Crimes Cases: Critical Notes on a 'Success Story'." Journal of International Criminal Justice 9, no. 3 (2011): 547-570.	This article assesses initiatives aimed at developing the capacity of national courts in Bosnia and Herzegovina (BiH) to conduct war crimes cases, with particular focus on the International Criminal Tribunal for the former Yugoslavia and the Court of BiH. It critically examines both formal and informal mechanisms implemented in order to enhance the capacity of BiH courts and legal professionals to investigate, prosecute, defend and try cases for war crimes, and assesses its main strengths and weaknesses.	Interviews conducted with ICTY officials, Court of BiH officials, judges, and attorneys.	1) There are significant difficulties in terms of coherence, coordination and sequencing of capacity development initiatives. 2) Efforts are too focused on the transfer of knowledge or skills to individuals, and do not pay enough attention to the institutional context and culture in which these individuals work. 3) The greatest contribution to local capacity made by the international community, and in particular the ICTY and the Court of BiH, has been connected to certain aspects of their institutional design. In particular, their contribution to the enhancement of local capacity, which largely took place through the information transferred to the local legal system through the sending of files, the horizontal collaborative relationships developed between the relevant professionals, and the institutional incentives towards having local courts process cases of war crimes.
Donlon, Fidelma, "Armed Conflict, Peacekeeping, Transitional Justice Law as a Solution: The effectiveness of the human rights component in the EU peace operations in Bosnia", in Faria Medjouba, "Building Peace in Post Conflict Situations", British Institute of International and Comparative Law (2012).	How can peace be effectively achieved after conflict? Experts from academia and practice explore in this book examples of post-conflict resolution and its history as well as issues pertaining to different mechanisms to achieve national reconciliation whether via courts, truth and reconciliation commissions and international prosecution.		
Donlon, Fidelma, "Complementarity in Practice: ICTY Rule 11bis and the Use of the Tribunal's evidence in the Srebrenica Trials before the Bosnian War Crimes Chamber", in Carsten Stahn, "The International Criminal Court and Complementarity: From Theory to Practice", Cambridge University Press (2011).	Since 2005, the ICTY has transferred six cases under Rule 11bis to the Bosnian War Crimes Chamber for trial. The use of evidence collected by the ICTY in the Srebrenica trials before the War Crimes Chamber has proven invaluable to the success of the national proceedings and is an example of positive complementarity in practice. The challenges to the admissibility of the ICTY's evidence in proceedings before the War Crimes Chamber will be examined to highlight the lessons learnt from the Bosnian process. In addition, the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Use of Evidence collected by the ICTY in Proceedings before the Courts in BiH will be analyzed as a model national legal framework for the implementation of a 'reverse' cooperation regime as foreseen under Article 93(10) of the Rome Statute.	Case law analysis, institutional analysis	

Garms, Ulrich, and Katharina Peschke. "War Crimes Prosecution in Bosnia and Herzegovina (1992–2002) An Analysis through the Jurisprudence of the Human Rights Chamber." <i>Journal of International Criminal Justice</i> 4, no. 2 (2006): 258-282.	The Human Rights Chamber of BiH heard complaints linked to war-time atrocities from two main perspectives: (i) that of persons put on trial for war crimes and (ii) the perspective of the relatives of war-crimes victims complaining about the failure to investigate and prosecute. The Chamber cases establish that (a) the few prosecutions which took place were nearly exclusively directed against suspects belonging to the war-time adversary, (b) the authorities failed to comply with the Rules of the Road (a procedure put in place to enable the International Criminal Tribunal for the former Yugoslavia (ICTY) to supervise Bosnian war-crimes prosecutions) and (c) suspects were often severely ill-treated to extort confessions and denied a fair trial.	Literature review, case law analysis, interviews	The authors discuss three reasons for the poor record: (i) ethnic bias among the authorities, (ii) disempowerment and passivity of the victims and (iii) failure to enact legislation that would give effect to and clarify the BiH side of the obligation to exercise jurisdiction concurrently with the ICTY.
Garbett, Claire. "Localizing criminal justice: an overview of national prosecutions at the war crimes chamber of the Court of Bosnia and Herzegovina." <i>Human Rights Law Review</i> 10, no. 3 (2010): 558-568.	This article provides a timely overview of the establishment and role of the WICK and of developments in its legal practice, and then highlights several notable aspects of the criminal prosecutions within the cases that it has tried to date.	Literature review, case law analysis, institutional analysis	Charges to date show that a domestic institution can successfully prosecute a broad range of war crimes committed in the region and so defied those who argued that it would be unable to conduct fair trials in accordance with due process.  However, it is important to acknowledge that the successful prosecution of perpetrators of war crimes by the BiH legal system as a whole requires strengthening the capacity of the district and cantonal courts in the region. Once those courts can function effectively alongside the WCC, the domestic courts and mechanisms of BiH have the potential to bring to justice a significant number of the war crimes and criminals of the Yugoslav conflicts in years to come.
Hehir, Aiden, "Step Towards Justice or Potential Time bomb?" <i>Balkan Investigative Report Network</i> (2018).	This project was launched to determine how existing 'best practice' principles – informed by both expert academic thinking and local/regional experience – relating to transitional justice can be applied to prevent the proceedings of the Kosovo Specialist Chambers (KSC) causing inter-community tensions, political instability and civil unrest in Kosovo. Comprising a series of interviews and workshops, this project focused on establishing; <ul style="list-style-type: none"> <li>• How transitional justice initiatives should be presented to their subject populations to maximize both understanding and popular support</li> <li>• How the KSC is actually engaging in outreach</li> <li>• How civil society and the general public in Kosovo and Serbia view the efforts made to date by both the KSC and the Government of Kosovo in explaining the working methods of the KSC and bolstering its popular legitimacy.</li> </ul>	Focus groups, interviews, workshops	<ul style="list-style-type: none"> <li>• The KS's working methods and remit remain misunderstood. It is seen as an illegitimate foreign imposition by most of the Kosovo Albanian population; it is deemed likely to be ineffective by the majority of Kosovo Serbs; there is cross-community consensus that the proceedings are likely to inflame nationalist sentiments; and as an isolated judicial mechanism, the KSC cannot on its own foster reconciliation.</li> <li>• The overwhelming majority of respondents were highly critical of the government of Kosovo's approach to explaining both the necessity and working methods of the KSC.</li> <li>• Few – if indeed any – participants expressed satisfaction with the KCS's outreach; the dominant view is that outreach has been conducted at a remote and elite level.</li> </ul>
Sharratt, Sara. <i>Gender, shame and sexual violence: The voices of witnesses and court members at war crimes tribunals</i> . Routledge, 2016.	Drawing on extensive interview material gathered amongst victims, witnesses, judges and NGOs, this book investigates the prosecution of rape and sexual violence in war crimes tribunals, with special attention to The International Court for the Former Yugoslavia (ICTY) and World Court in Sarajevo.	Literature review	Adopting a feminist approach, 'Gender, Shame and Sexual Violence' challenges the assumption that the deterrent effect of making rape trials more visible would reduce the occurrence of sexual violence in conflict situations, contending instead that the manner in which cases are handled both increases the victims' sense of shame and serves to propagate a representation of women's bodies that may actually serve to increase the use of sexual violence during war.
<b>External - Hybrids' effects on individuals and communities</b>			

<p>Hodžić, Refik. "Living the legacy of mass atrocities: Victims' perspectives on war crimes trials." <i>Journal of International Criminal Justice</i> 8, no. 1 (2010): 113-136.</p>	<p>This article examines the dominant perceptions of war crimes trials among victims from Prijedor, a municipality in Bosnia and Herzegovina. Largely based on interviews with victims who have testified in trials before international, state and district courts, and victims who have never testified, non-governmental organization activists working with victims in their communities, and some professionals involved in Prijedor-related cases, the article attempts to cast new light on the factors which create and shape these perceptions</p>	<p>Ethnography, surveys, key informant interviews</p>	<p>By the time the War Crimes Chamber of the Court of BiH came into being and the promise of a local Bosnian effort to combat the legacy of mass atrocities became real, the expectations of victims were reduced to the hope that some of the most notorious perpetrators still walking the streets of Prijedor, and in some cases occupying positions in the local institutions and police, would be brought to justice and removed from the communities.</p> <p>In the opinion of most of those interviewed, the municipal authorities have actively obstructed any form of joint remembrance of victims from all ethnic groups. In that sense, the ability of criminal courts and their organs to impact upon the lives of victims was hampered by local authorities and these judicial institutions were unable to overcome the hurdles that stood between them and the promise of justice that they had embodied</p> <p>Length of sentence is viewed by victims as a reflection of the gravity of crimes committed against them and thus as a mean of acknowledging their trauma and suffering. The view shared by many victims is that low sentences imposed on war criminals amount to an implicit denial or to a failure to acknowledge the depth and gravity of their suffering.</p>
<p>Kostić, Roland. "Transitional justice and reconciliation in Bosnia-Herzegovina: Whose memories, whose justice?." <i>Sociologija</i> 54, no. 4 (2012): 649-666.</p>	<p>This paper shows that transitional justice initiatives such as the trials at the International Criminal Tribunal for the Former Yugoslavia and the State Court of Bosnia and Herzegovina, the Commission for Srebrenica and the establishment of accurate statistics on deaths during the conflict have had only a limited impact on inter-group reconciliation in Bosnia and Herzegovina</p>	<p>Interviews conducted from 2005-2010.</p>	<p>In the 2010 survey there was almost no change in the prevailing ethno national perceptions that dominate popular opinion among the three groups in Bosnia and Herzegovina.</p> <p>Overall, the empirical findings clearly indicate that the members of the three ethno-national communities in Bosnia and Herzegovina maintain diverging perspectives on and memories of wartime events and actors. The vast majority of all the respondent groups share the view that their people had been fighting a defensive war.</p> <p>The data presented above show vividly that, at present, there is hardly any common understanding of the past between the ethno-national communities in Bosnia and Herzegovina, and that the great majority of the members of each group continue to subscribe to mutually exclusive ethno-national narratives.</p>