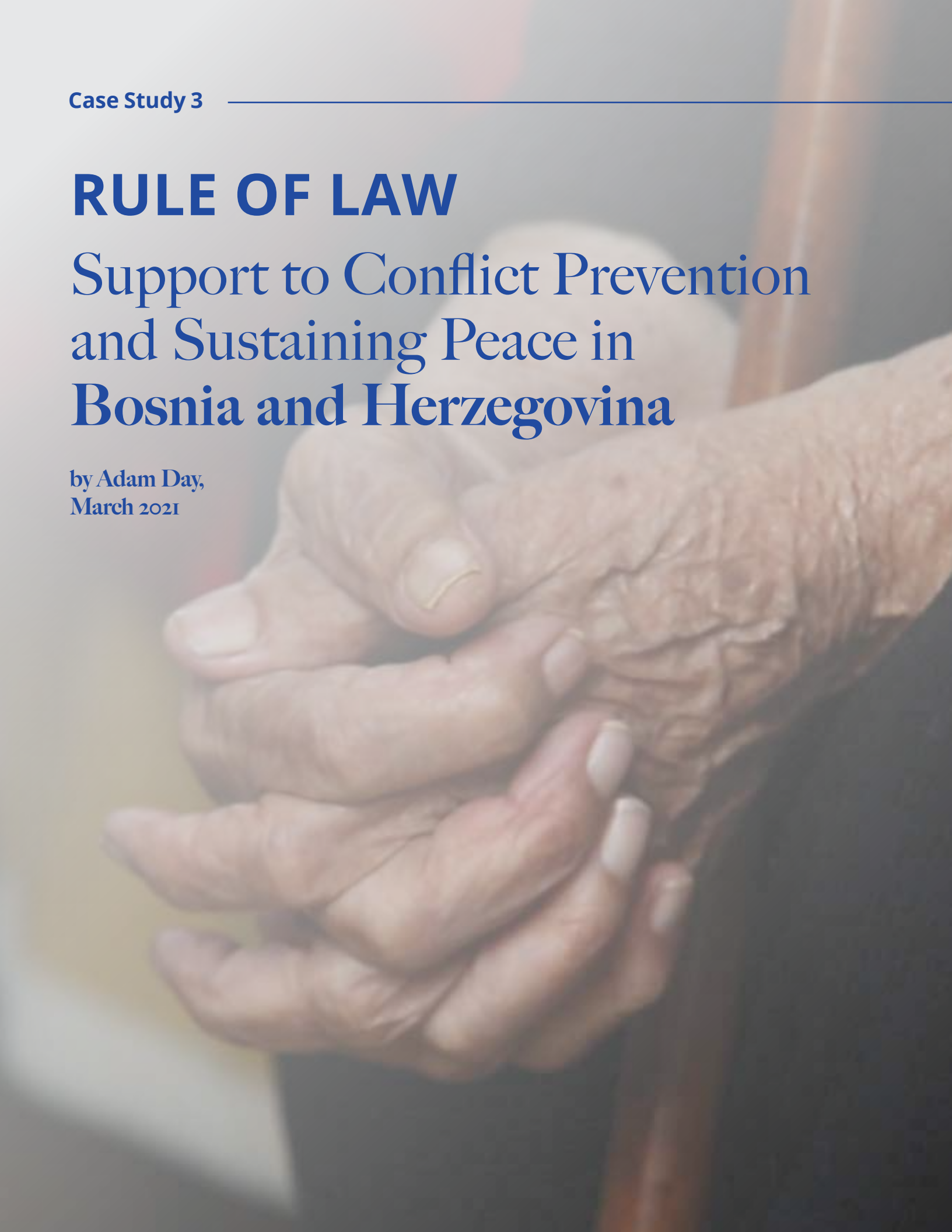


# **RULE OF LAW**

## **Support to Conflict Prevention and Sustaining Peace in Bosnia and Herzegovina**

by Adam Day,  
March 2021





# I. Introduction

In the early 1990s, Bosnia and Herzegovina (BiH) underwent large-scale armed conflict characterized by widespread and systematic human rights violations against civilian communities, often on the basis of ethnicity. More than 100,000 lives were lost in violent conflict, while roughly 2.2 million people were forcibly displaced from their homes. The 1995 Dayton Peace Agreement ended the war and established a constitutional framework composed of a complex system of institutionalized power-sharing arrangements. The position of an international High Representative was created to oversee the implementation of the civilian aspects of the peace agreement. While this system successfully saw BiH out of a period of intense conflict, it has also proven an extraordinarily challenging environment to develop effective rule of law institutions and more sustainable forms of governance in a region that remains riven by ethnic and political divisions. Today, BiH lags significantly behind neighbouring countries in terms of meeting EU accession goals, in particular with respect to rule of law institutions such as independent

courts, effective policing, and open political space. As a result, while the country has not relapsed into conflict, it has remained deeply divided and has failed to progress towards constructive dialogue, greater trust and reconciliation between ethnic groups and between society and the State. In particular, exploitation of divisions across Bosniak, Bosnian Serb and Bosnian Croat communities on how to address the legacy of widespread human rights violations during the conflict have led to deep polarization and a rise of ethnonationalist political leadership that plays a protectionist role in politics in BiH. Rather than help advance cohesion and end impunity, this atmosphere has led to further fragmentation, a loss of confidence in the State, and stagnant politics. While the risk of an immediate return to conflict is held at bay by the significant international presence in BiH, the lack of progress on rule of law, transitional justice, as well as towards constructive dialogue, trust-building and reconciliation means that peace remains fragile, and conditions for escalation remain.

This case study examines the UN's rule of law work in BiH from 2015 to 2021, with a particular focus on the activities and programmes it has conducted to build capacities and confidence in the institutional capacity of the State.<sup>1</sup> The principal question guiding this study is: *How have the UN's rule of law interventions contributed to conflict prevention, to a reduction in risks of widespread violence in BiH?* As such, it aims to provide an assessment of the impact of the UN, identifying good practices, inhibiting and enabling factors, and lessons for the broader UN system.

The study has five sections: (1) a background description of the risk landscape and the endemic shortfalls in State rule of law capacities; (2) an overview of the main rule of law actors in BiH; (3) an assessment of areas where there is evidence of the UN's impact in terms of conflict prevention; (4) an examination of the enabling and inhibiting factors for the UN's impact; and (5) lessons and recommendations for the broader UN system.

## A note on scope and methodology

Rule of law is defined by the UN as a “principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.”<sup>2</sup> Traditionally, this has resulted in a focus on police, justice, and corrections as the primary vehicles for the UN's rule of law engagement. However, we recognize that other areas of the UN's work may also contribute to the core goals of the UN's rule of law work, including efforts to combat impunity, build accountability, advance transitional justice, limit corruption, and address conflict-related sexual violence, amongst others. This project does not adopt a strict definition of rule of law but is instead largely guided by interviews with experts in a range of field settings, asking them what they consider to be the key rule of law programmes by the UN and its partners.

Regarding the scope of these studies, it is important to highlight that this is not a comprehensive assessment of the UN's work in a given setting. It does not try to capture every rule of law programme, but instead reflects the views of experts about the most impactful, relevant,

and effective rule of law interventions in the given timeframe. This expert-driven approach to cases studies is to ensure that they feed meaningful cross-cutting policy recommendations, which is the core purpose of this project.

In terms of methodology, we note that the UN's rule of law work takes place alongside the interventions of a range of actors, including national leaders, bilateral donors, INGOs, and local organizations. While it is our goal to identify evidence of the UN's impact, often the UN is a small player amongst these, supporting and coordinating rather than leading on programming. Given these limited supporting roles and the large number of other intervening factors, it can be difficult to isolate the UN's impact via its rule of law interventions. Rather than speak in direct causal terms about impact, we contextualize the UN's *contribution*, alongside the interventions of others, to the broader goals of risk reduction.<sup>3</sup> Where the precise impact is impossible to ascertain, or where the UN has not generated evidence that directly supports causal findings about impact, we rely on a broad set of expert consultations to help us identify good practice and lessons that could be applied beyond a single country context.<sup>4</sup>

## 2. BiH – a highly fragmented rule of law setting

Today, BiH poses a low risk of return to the kind of large-scale deadly conflict of the early 1990s, but after billions of dollars in foreign assistance, ambitious international administrations, and a supportive stance by the EU, the country has failed to build State institutions necessary for effective governance. In February 2014, popular dissatisfaction with the Government spilled over into widespread protests that resulted in the destruction of many government buildings and temporary momentum for national-level reform, but the demanded changes have still not taken place and institutional capacities have lagged far behind what is demanded by the EU. By 2020, BiH was continuing its downward trajectory in global rule of law rankings, reflecting the stagnation and backsliding of rule of law institutions and processes within the country.<sup>5</sup>

This lack of progress is due in large part to the structures put in place by the 1995 Dayton Accords. At the time of writing, there are a total of 13 constitutions, 14 legal systems, and 140 ministries in the country. Multiple legal frameworks and jurisdictions have led to extraordinary inconsistency in the application of laws, driven in large part by nationalist politicians who have emphasized protection of their ethnic communities' interests over impartial rule of law institutions. Popular confidence in rule of law

institutions and the central State more generally is extremely low, while international assessments of judiciary, police, and other governance entities suggests that the country is unable to exercise basic State functions without significant external assistance.<sup>6</sup>

Importantly, constitutional fragmentation on the basis of ethnicity has kept tensions high across the country; ethnic quotas in government institutions mean that State positions are viewed more as sinecures than as representation of the citizenry, while most institutional incentives appear to drive ethnonationalist politicians towards more extreme positions in support of their respective ethnic groups.<sup>7</sup> Politics is often seen as a zero-sum game based more on competition than collaboration, a pernicious context for achieving institutional growth and legitimacy. The combination of slow legislative progress, rampant corruption, and periodic citizens' protests have combined to send warning signals of a potential return to more serious tensions in-country, while the prospects for accession to the EU grew dimmer.

Between 2015 and the time of writing, BiH underwent its worst economic and social period since the end of the 1992-1995 war. Unemployment ranged between 27 and 45 per cent according to many figures, as the

country slipped to 131<sup>st</sup> out of 189 countries according to the World Bank. While there were some positive developments – such as the 2015 adoption of a Reform Agenda and medium-term Economic Reform Programme to generate greater financial support from international financial institutions – the results have left many communities behind, while institutional capacities have been slow to develop.

Poverty has not been felt evenly across the country: with over 60 per cent of the population living in rural areas, BiH is one of the most rural countries in Europe, leading to chronic shortfalls in the areas of access to justice and highly differentiated levels of institutional capacity from location to location.<sup>8</sup> Indeed, over 50 per cent of the population in BiH suffers from some form of social exclusion, with internally displaced persons and the Roma people largely cut off from State services.

The Gender Agency of BiH states that 53 per cent of women have suffered some form of gender-based violence, while only 10 per cent of those have received support through the victims and witness support offices. Access to justice for women is particularly challenging and takes place in a broader context of limited employment and political opportunities: women account for only 37 per cent of the working population and well over 60 per cent of the inactive, working-age population.<sup>9</sup> However, in some respects, BiH is a leader of the region: it was the first country in the Balkans to adopt a Gender Equality Law (2003) and to adopt a National Action Plan (NAP) on UN Security Council Resolution 1325 in 2010.<sup>10</sup> BiH also adopted a Gender Action Plan in 2013,<sup>11</sup> and successfully launched a financial mechanism to channel donor funds into projects aligned with the Plan. The country has a robust and vibrant community of NGOs focused on gender equality that monitor and advocate for progress.<sup>12</sup>

# 3· The UN's rule of law mandate and actors in BiH

The UN's role in BiH is largely seen as complementary to the far larger actors in the region, most notably the EU and the development agencies of major donor States like the US, Switzerland, Sweden and the Netherlands.<sup>13</sup> As such, the UN's programming aligns broadly with the Regional Strategy of the Bureau for Europe and the Commonwealth of Independent States and the South-East Strategy of the Regional Cooperation Council, which set out the priorities for BiH to accede to the EU. The UN's work also complements the significant rule of law programming by the OSCE and various international Bar associations.<sup>14</sup>

The UN's Development Assistance Framework of 2015-2020 focused on four areas: (a) the rule of law and human security; (b) sustainable and equitable development and employment; (c) social inclusion; and (d) women's empowerment. Common issues across all four areas include the need to bolster good governance capacities, improve access to public services, and increase employment opportunities in marginalized populations. Specifically within the justice and human security area, the UN's programming focuses on expansion of free legal aid, victim/

witness support (especially in the area of gender-based violence), management of military weapons/ammunition and landmines, support to the judiciary in addressing war crimes and conflict-related violence, and a range of work to support better early warning and response systems.<sup>15</sup>

The legacy of war crimes is an especially important area for the UN, cutting across the work of the UN's International Criminal Tribunal for the former Yugoslavia (ICTY) and a range of programming in-country. As the ICTY closed down in 2017, the transition to domestic trials as the exclusive jurisdiction for war crimes required significant support from the UN, including national outreach and sensitization campaigns.

A particular strength of the UN's programming in BiH is its adoption of a gender-specific UN Development Assistance Framework (UNDAF) outcome entitled Gender Equality and Empowerment of Women, with two dedicated output areas that can be measured over time.<sup>16</sup> This has given the UN a strong basis for interface with various government institutions and with civil society organizations focused on gender issues.



Support to governance capacities in BiH is a complex and at times confusing enterprise for the UN, given the multiple governing institutions established under the Dayton Accords. For example, while a typical UN-led legal aid programme would work with a single government institution (e.g. a ministry of justice), in BiH, the UN partners with up to 14 institutions, reflecting the fragmentation of governance across jurisdictions and communities. Here, it is worth noting the continuing impact of the international community's intrusive approach to the Balkans from the 1990s war to present: many international programmes are seen as impositions on local governments, exercising the kind of authority more typical of host States than international partners. While this in part reflects the nascent status of many government institutions in BiH, it also tends to

rankle BiH leaders looking to demonstrate the independence of their own country. According to several UN experts in-country, this dynamic has led the UN family to adopt an explicitly collaborative and supportive stance, avoiding any perception of a political or security role and focusing instead on socioeconomic support. "We are careful to speak of our work in terms of the SDGs and the leave no one behind framework," one expert noted, "in order to keep the host government clearly in the driver's seat."<sup>17</sup> At the same time, BiH represents a setting where the UN tends to implement its own projects directly, far more often than is typical for a middle-income country. Balancing the issues of national ownership and effective UN programming is a challenge across much of the UN's rule of law work, as discussed below.

**FIGURE 1:** Top 10 donors – programme expenditure 2015-2019 (Million USD)



Source: Atlas Power BI tool (2020), from UNDP Independent Evaluation Office, "Independent Country Programme Evaluation for the United Nations Development Programme in Bosnia and Herzegovina".

.....

**TABLE 1:** Country programmes outcomes and initiative resources (2015-2019)

Country programme outcome		Indicative resources (USD)	Expenditures to date (million USD)
UNDAF Outcome 3	Effective management of war remnants and strengthened prevention and responsiveness for man-made and natural disasters	29,200,000	71,488,278.52
UNDAF Outcome 4	Economic, social and territorial disparities are decreased through coordinated approach by national and subnational actors	56,250,000	66,842,203.22
UNDAF Outcome 5	Legal and strategic frameworks are enhanced and operationalized to ensure sustainable management of natural, cultural and energy resources	20,400,000	33,689,770.40
UNDAF Outcome 9	Targeted legislation, policies, budget allocations and inclusive social protection systems are strengthened to proactively protect the vulnerable	19,350,000	19,958,267.59
<b>Total</b>		<b>125,200,000</b>	<b>200,799,262</b>

Source: From UNDP Independent Evaluation Office, "Independent Country Programme Evaluation for the United Nations Development Programme in Bosnia and Herzegovina".

.....



## 4. Rule of law impact

This section explores the extent to which the UN's rule of law interventions may have reduced the risks of violent conflict in the 2015-2020 period. It does not attempt to capture the full range of UN programming in-country, but rather relies on the available data and a range of expert interviews to identify the most impactful and relevant work in the rule of law area. It is also worth noting at the outset that the majority of interviewees noted the very low

likelihood of a return to large-scale violence in BiH, due in large part to the significant presence of international actors in-country. Rather than examine such immediate risks of escalation, this section focuses more on the extent to which the UN's rule of law interventions may have helped address deeper structural causes of violence, the legacy of war crimes, and the risks posed by the proliferation of weapons across the region.<sup>18</sup>

### Access to justice

One of the most important areas of UN support has been in victim/witness support, as part of the Regional War Crimes Project. Some of the key achievements in this area include:

- **16 Victim/Witness Support (VWS) Offices were established and fully integrated** in the government system at cantonal/district courts and prosecutors' offices in Sarajevo, Banja Luka, East Sarajevo, Bihac, Novi Travnik, Mostar, Brčko, Trebinje and Zenica. This contributed to cover 50 per cent of jurisdictions and 70 per cent of territory, thus increasing the efficiency of the proceedings as well as the number of victims and witnesses who received adequate emotional, psychological and logistical support.
- **Professional capacities of judges and prosecutors were strengthened.** More than 800 justice sector practitioners were trained in the field of war

crimes processing, support to victims/witnesses, and in the area of investigative techniques. Innovative judicial and prosecutorial colleges were set up and institutionalized at the Court of BiH and Prosecutor's Office. A database of more than 25 trainings curricula was transferred to Judicial and Training Centres.

While access to justice is a national issue that cuts across different communities, an acute need was identified for women survivors of sexual violence during the war. In response, a joint IOM, UNDP, UNFPA and UN Women project entitled "Seeking Care, Support, and Justice for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina" ran from 2014-2017, focused on the legacy of the 1992-1995 war. The programme, adopting a transitional justice and survivor-centred approach, achieved a "lasting impact"<sup>19</sup> in three areas: (1) empowerment of victims by improving access to public institutions; (2) capacity-building of survivor support organizations; and

(3) passage of non-discriminatory policies to avoid stigmatization and improve community mobilization. Concretely, the programme contributed to the passage of new laws to protect and provide restitution for victims of torture in Republika Srpska, documented access to free legal aid to roughly 80 victims and nearly 2,000 vulnerable beneficiaries, trained more than 140 prosecutors and judges in the area of survivors' rights, and anti-stigmatization programmes for several hundred participants.

More broadly, access to justice has remained a priority area for the 2015-2020 period. With UNDP support, the number of free legal aid agencies increased to 17 in BiH, with an emphasis on services for women and people with disabilities, enabling roughly 900,000 people to access legal assistance. Additional achievements in the area of legal assistance, done with the support of the UN, include:

- A law guaranteeing free legal assistance before BiH institutions was developed and adopted with the support of UNDP;
- Five new cantonal laws (Sarajevo, Mostar, Bihac, Gorazde, Livno) were developed and adopted, and respective governmental agencies were established and fully integrated in the government systems.
- In four regions where free legal assistance was not provided by governmental agencies, UNDP supported NGOs to extend services through mobile teams, reaching more than 500 users in 15 more rural municipalities.
- The first BiH network of free legal assistance providers was established

and strengthened to improve practices and professional standards, exchange experiences and promote the development of an efficient free legal aid system, stretching across nine government agencies and six NGOs.

- A two-year training programme for free legal assistance providers was completed (including gender-based violence, criminal, property and labour law) and follow-up trainings are regularly delivered to free legal assistance providers through the Network until the adoption of the State law.

UN programming has clearly increased the ability of hundreds of thousands in BiH to receive free legal assistance, and it has made important contributions to the ability of survivors of sexual violence to access support and legal aid. "The UN has helped to put sexual violence and the need for adequate access for women on the map in BiH," one interviewee noted.<sup>20</sup> Despite these accomplishments, interviewees suggested that the scale of access issues far outstripped progress. "Roughly half of the women in much of Bosnia and Herzegovina have experienced some kind of sexual violence in the war, but we are only helping a very small percentage of those," one expert noted.<sup>21</sup> Redress for victims of sexual violence is also complicated by the multiple jurisdictions across BiH, the criminal codes of which have varying (and often quite constrained) options for victims of sexual violence.<sup>22</sup> And a 2019 UN report on access to legal aid suggested that large populations in some cantons remained deeply restricted due to a combination of legal impediments, lack of capacities amongst the NGO community, and shortfalls in funding.<sup>23</sup>

## Weapons control

One of the major threats to human security in BiH and the broader region is the large and poorly controlled stockpile of weapons and ammunition. One of the UN's key priorities over the past five years has been to assist the authorities in BiH to reduce the number of war remnants and surplus ammunition stockpiles by more than 50 per cent.<sup>24</sup> This set of programmes

achieved a 45 per cent reduction within the first two years (2015-2017) and upgraded the security of the five main storage sites in the country. The UN also assisted the Coordination Board for the Control of Small Arms and Light Weapons to produce a weapons control strategy for 2016-2020, which formed a multi-institutional body to oversee the destruction of small arms and light

weapons (SALW) and landmines. UNDP's South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC) has helped to destroy tens of thousands of weapons, upgrade storage facilities, train thousands of State officials, and improve regional cooperation in combating arms flows through and beyond BiH.<sup>25</sup> Senior BiH government officials have expressed appreciation for this work, which has fed the broader Reform Agenda for the country.<sup>26</sup>

Importantly, SEESAC has adopted a gender-sensitive approach to arms control, gathering gender-disaggregated data and promoting tailored policy and legal responses across the region.<sup>27</sup> While it is difficult to assess the impact of these programmes in terms of conflict reduction, the gender-sensitive approach offers positive practices in the areas of police training, data-gathering, and advocacy around the legislative framework.<sup>28</sup> There is some evidence too that

SEESAC has positively impacted the recruitment of police personnel, though more systematic changes are more difficult to ascertain.<sup>29</sup>

A related project called Combating Illicit Arms Trade, led by UNDP, has aimed at harmonizing security regulations and practices amongst BiH and leading EU countries. Funded by France and Germany, this project has put in place a roadmap for preventing SALW trafficking across the region, resulting in the training of 1,500 police on arms detection.<sup>30</sup> Specific accomplishments under this project include: (1) the development of standard operating procedures for 16 border police agencies; (2) the development of a SALW database to track weapons flows in the region; and (3) procurement of equipment for border police. The latest official data indicates significant progress on arms control, including 3,817 pieces of illicit SALW seized over the past two years, while nearly 8,000 weapons were destroyed by BiH authorities.<sup>31</sup>

## Transitional justice and war crimes

Addressing the legacy of war crimes and crimes against humanity in BiH and the broader region is considered one of the key priorities for the country to achieve long-term stability. In this context, the UN-led ICTY was one of the most high-profile and important venues for trying those allegedly responsible for serious crimes. The work of the ICTY itself is not the focus of this report, though it is worth noting the important work that the UN has done within BiH in terms of raising awareness about the ICTY, supporting the transition of outstanding criminal cases from The Hague to BiH, and in supporting domestic trials.

A revised National War Crimes Processing Strategy remained pending approval by the Council of Ministers between 2018 and 2020 (though eventually adopted in 2021), significantly slowing the rate at which war crimes were able to be prosecuted in BiH.<sup>32</sup> Nonetheless, some progress has been made in domestic trials, with the support of the UN: for example, in 2019, BiH courts rendered judgments in 26 war crimes cases, convicting 23 of 38 defendants, of an

overall caseload of more than 250 war crimes cases against 512 defendants.<sup>33</sup> According to several experts, this reaffirmation of a war crimes charge sent a public message that the domestic court system was capable in some instances of dispensing justice.

Importantly, the UN International Residual Mechanism for Criminal Tribunal (IRMCT or Mechanism), a legal successor of the ICTY, ruled against the appeal of Radovan Karadzic, the former President of the Republika Srpska and Supreme Commander of the armed forces of Republika Srpska, confirming the 2016 conviction against him for genocide and other crimes and extending his prison sentence from 40 years to a life term. This sent a clear message that there is no space for impunity for war crimes in BiH. Following the closure of the ICTY, the Mechanism continued to play an important role in assisting national jurisdictions in investigating and prosecuting cases involving alleged war crimes and other violations of international law.

Here, it is worth noting a distinction between IRMCT's direct support to trials and UNDP's indirect support to governance, capacity-building, and training. UNDP described this work as facilitating regional cooperation and improving the capacity of national authorities to conduct war crimes trials.

Awareness-raising about transitional justice in BiH is one of most important roles for the UN following the closure of the ICTY in 2017. In order to improve the knowledge and understanding of citizens and communities not only in BiH, but also other countries of the former Yugoslavia about the crimes committed in the region during the conflicts of the 1990s, the UN IRMCT established Mechanism Information Programme for Affected Communities (MIP). The aim of the MIP is to contribute to the processes of transitional justice and strengthening the rule of law in the Western Balkans region. MIP initiatives use the archives of the ICTY and Mechanism, as well as their overall legacies, to present fact-based accounts of crimes committed during the conflicts – in particular through the adjudicated cases of these institutions.

In this regard, the UN IRMCT's social media outreach campaigns in BiH have been extremely successful, for example reaching more than 2 million people in its messaging on Srebrenica and building an overall reach of more than 5 million people in its overall campaigns.<sup>34</sup> Other programmes, including the Inter-University Lecture Programme, which brings together law students from nine universities across the region, have focused on improving the knowledge of young people about the crimes committed during the Balkan wars. It also serves as a platform for discussion about these events in an unbiased manner and promotes basic concepts of transitional justice. In the same vein, the UN has brought chief prosecutors and judges from several Yugoslav states together, removing them from their country context and working to depoliticize the transitional justice processes in BiH and its neighbours.

While the achievements in this area may appear modest – e.g. the inclusion of educational material produced by the UN IRMCT MIP related to the Srebrenica genocide in the official school curriculum in Sarajevo Canton – they point to incremental progress to combat the more worrying narratives in BiH that deny the established facts of the war and reject calls for transitional justice. Unfortunately, the trends in BiH appear to show a slide towards more ethnonationalist politics, with large segments of the population and political leadership continuing to deny the genocide and other war crimes of the 1990s,<sup>35</sup> and the glorification of convicted war criminals on the rise. "If there is one area where more could be done, it would be in combating the dangerous narratives of political leadership in BiH, which continues to pose the most direct impediment to a transition away from war," one expert summarized.<sup>36</sup>

Other indicators of progress in the areas of transitional justice and war crimes include:

- There has been an acceleration in filing requests for cross-border assistance (access to information, evidence, witnesses, etc.) following the UN-supported regional meetings between Serbia, BiH and Croatia. Serbia sent 107 requests in 2020 alone (compared to 43 in 2018).
- The processing of requests for assistance has dramatically sped up, reducing the backlog of case processing overall from more than 70 cases to now less than a 15 per cent backlog.
- With UN support, the Serbian prosecution office has, for the first time, taken over two complex cases ("Samardžija" and "Kušić") from BiH as part of cross-regional cooperation.



## Conclusion

Across the expert interviews, there was a general understanding that the UN's role in limiting the risks of a relapse into violence in BiH was quite small. Far more important in the short term is the continued presence of European forces and the strong leverage of the EU and major bilateral partners in the country. "BiH doesn't go back to war mainly because Europe wouldn't allow it to," one expert noted. However, interviewees also expressed concern at the deeper structural trends in BiH, many of which indicated a slide towards ethnonationalism, exclusionary politics, and poor socioeconomic growth. If they continue, these trends could undermine the gains of the Dayton Accords and eventually

contribute to an escalatory dynamic in the coming period. In this context, the UN's work to build judicial capacity, promote cross-border cooperation on war crimes, improve access to justice, and help to address the legacy of war crimes in BiH are important mitigation against more extreme politics. Indeed, one of the most salient findings was that the role of the UN as a relatively unbiased actor in a context of very low public trust in State institutions continued to reduce some of the more immediate risks of social unrest. "The UN is a small player," one expert stated. "But it stands between the more extreme elements in BiH politics, and that in itself has preventive value."



© UN Women Europe and Central Asia/Rena Effendi

# 5. Enabling and inhibiting factors

The UN's work in BiH takes place in an extraordinarily complex and challenging environment, including the constitutional framework established under the Dayton Accords, a dominant role by the EU and its constituent members,

and a political landscape that has continued to drift rightwards over the past five years. This section identifies the most important enabling and inhibiting factors for the UN's rule of law work in BiH, many of which are well beyond the UN's control.

## Dwindling interest/investment

On the one hand, BiH has received an extraordinary amount of international support and dedicated interest, including from the EU in the context of the country's potential accession and a substantial amount of military assistance in the security sector. But UN officials suggested that the levels of support by donors had dropped in the past five years and were currently far short of the kinds of transformational changes envisaged in the Dayton Accords and subsequent programming. This lack

of investment has combined with poor economic growth to contribute to large-scale emigration away from BiH: rising youth unemployment and low wages meant that more than 40,000 people left the country in 2019.<sup>37</sup> The result is low levels of trust between the population and the State, driven by poor economic growth and a widespread sense that the State is more reflective of ethnic divisions than a solution to intercommunal tensions.

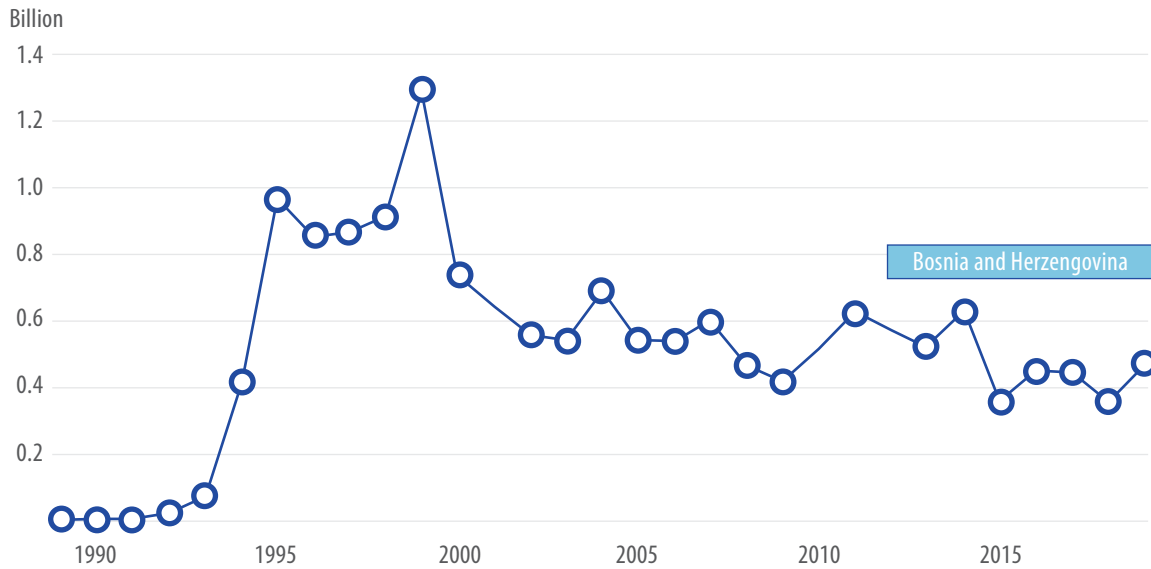
## UN-led programmatic implementation

Typically, UN programming in middle-income countries like BiH would be done almost exclusively through national implementers, such as State institutions or other organizations. UNDP and several other UN programmes in BiH operate in contrast to this model, with up to 90 per cent of programmatic expenditures taking place through

direct UN implementation. This preponderance of direct implementation is the result of the unique governance arrangements in BiH, in particular the complexities of dealing with up to 14 institutions in any given area. While perhaps more efficient in some respects, the large proportion of funds implemented by the UN itself, rather than by national

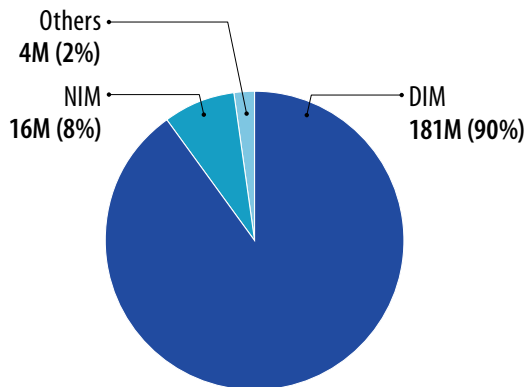


**FIGURE 2: ODA investment in BiH (USD billions)**



Source: Organisation for Economic Co-operation and Development Statistics

**FIGURE 3: Implementation modality – programme expenditure (USD)**



Source: Atlas Power BI tool (2020), UNDP Independent Evaluation Office, "Independent Country Programme Evaluation for the United Nations Development Programme in Bosnia and Herzegovina".

actors, has given rise to concern that the UN may be substituting for domestic systems rather than enabling them.<sup>38</sup> One expert suggested that the UN "isn't really building national capacity, it's just filling in for a dozen governments who can't agree on anything."<sup>39</sup> The extent to which this lack of direct support to national governments may impact longer-term capacities in-country is unclear, but several experts suggested that national leaders have few incentives to invest meaningfully in much of the UN's rule of law programming.

## Corruption

The complex multi-institutional set-up in BiH renders the country particularly susceptible to corruption, and a common complaint of UN experts concerned the lack of transparency in how programmatic funds were distributed.<sup>40</sup> “This is meant to be a middle-income country but it feels more like a war zone without any accountability,” one expert noted while describing the routine misallocation of programmatic funds. Indeed, the UN’s 2020

assessment of UNDP’s anti-corruption work noted that “no anecdotal or concrete evidence was provided that corruption has been reduced as a result” of the UN’s programming.<sup>41</sup> This does not mean that the UN’s work has failed to curb corruption at all, only that the mechanisms to track progress are not fully in place, and that perhaps more direct programming on anti-corruption could be helpful in the future (see below).

## Ethnonationalist politics

One of the most insidious elements of social and political life in BiH has been the rise of ethnonationalist politicians, individuals who have fed off the institutional divisions created by the Dayton Accords and the deeply rooted divisions in the country. “The politicians don’t care about justice or rule of law,” one expert noted. “They just pander to their narrow constituency and drive divisions even deeper.”<sup>42</sup> Examples of this dynamic include politicians glorifying convicted war criminals, denying genocide and war crimes and supporting organizations that explicitly deny genocide.<sup>43</sup> Indeed, the political leadership has

refused to respond to rulings by the European Court of Human Rights about the discriminatory nature of the BiH constitution on a number of occasions.<sup>44</sup> To date, negative portrayal of the ICTY and glorification of convicted war criminals in the BiH by people and organizations who do not support judicial accountability for war crimes and the strengthening of the rule of law has remained a significant obstacle for transitional justice initiatives. This lack of unifying political leadership has significantly inhibited the more system-wide kinds of rule of law reforms proposed by the UN and its partners.

# 6. Lessons and recommendations

Drawing from the above analysis, this section provides some broader lessons and recommendations that can be applied across the UN system.

- **Multi-generational change.** Though the Balkan war was nearly 30 years ago, experts frequently described the country as still emerging from conflict, struggling to overcome some of the fundamental legacies of the war. This has created a disconnect between some of the rule of law programming – which identifies outcomes in one- or two-year terms – and the kind of multi-generational change required in the country. Re-establishing a penal code that functions across 14 different jurisdictions is not something that can realistically be accomplished within the timeframes envisaged in many of the international programmes. Instead, BiH offers an example of the kind of transformational change described in the 2018 World Bank/UN *Pathways for Peace* report, requiring decades of investment in the kinds of socially- and politically-inclusive programming that can gradually change deeper structural inequalities and divisions in BiH. This point was captured by a UN official in BiH, who said, “we need to get out of the two-year programming lens and shift donor expectations towards the question of how BiH’s society needs to change in the longer term.”
- **Changing narratives – putting transitional justice first.** Related to the multi-generational time period in BiH is the issue of deeply embedded narratives about the war and its continuing effects in-country. A common challenge identified by UN officials was the starkly different stories that each community told themselves, while politicians frequently used their public platforms to foment inter-ethnic divisions. Here, the experience of the ICTY offers an example: there was a six-year gap between the creation of the ICTY and the establishment of an in-country outreach programme. According to several UN officials, this gap meant that valuable time was lost in that domestic narratives about the role of transitional justice in addressing the needs of all communities in BiH could have been bolstered. “Transitional justice should be present at the outset of all our work, not something that is brought in later,” one expert suggested.
- **Gender-sensitive programming.** The SEESAC programme on SALW flows through the region has adopted a gender-sensitive approach, gathering gender-disaggregated data and advocating for gender-specific policy responses by BiH and its neighbours.<sup>45</sup> This has not only led to important tracking of the links between small arms

use and issues like domestic violence, but has also highlighted broader cultural issues around masculinity, violence, and weapons possession that have impacted BiH's society in the post-war period. As such, the SEESAC programme offers a range of good practices in the gender arena for the broader UN system.<sup>46</sup>

- **The dilemma of national ownership.** BiH presents a challenging context for the concept of national ownership. On one hand, in a setting with such deep inter-ethnic divides and complex inter-institutional arrangements, strong local support for rule of law is fundamentally important. But there is also a recognition that simply leaving matters to national authorities is not feasible, given the divisive approach taken by the political leadership of the country and the perceptions of bias by the judiciary and other rule of law institutions. "We need to do two things," a UN official said. "We need to take over some of the rule of law tasks that the national actors can't do now because of bias or lack of capacity, but we also need to gradually begin building more of a sense across institutions that they are responsible to the whole population."<sup>47</sup>
- **Accession as leverage: the EU as a carrot and a stick.** Across much of the UN's work in BiH, BiH's declared goal of acceding to the EU was the major driving force behind any meaningful change. Passage of legislation around legal accountability for war crimes, or the rights of women, or anti-corruption was all linked to the hope for BiH to become an EU member. "The most important tool in the UN's toolbox is actually the EU," one expert said, noting that good cooperation and alignment of UN planning with EU strategic goals was a key factor in success.

- **The corruption blindspot.** On the one hand, corruption was cited as the dominant impediment to progress on rule of law in BiH, a way in which a broad range of efforts by the international community were undermined. And while corruption levels have been dropping according to most metrics over the past five years,<sup>48</sup> the perceptions of continued corruption at all levels undermines public confidence in the rule of law in-country.<sup>49</sup> In this context, UN experts pointed to the need for more programming in the anti-corruption arena and greater emphasis on tracking of programmatic funds. "Corruption is the elephant in the room," one interviewee pointed out. "We need more of a willingness in the UN system to speak directly about it, and to tackling it head on."<sup>50</sup>

# References

1. It is important to note that this study does not cover earlier UN interventions in BiH, including important engagements like the peacekeeping mission UNMIBH, which had a significant rule of law mandate, particularly in the areas of police reform. The UN system also worked with the OSCE and OHCHR on a comprehensive post-conflict property restitution process dealing with over 200,000 claims before the period in question.
2. United Nations Security Council, "The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General," United Nations, 23 August 2004, [S/2004/616](#).
3. This approach of contribution rather than direct attribution is laid out in Adam Day, *Assessment Framework for Preventive Diplomacy: An Approach for UN Mediators and Policymakers* (Tokyo: United Nations University Centre for Policy Research, 2018); see also, United Nations Department of Political and Peacebuilding Affairs, *Three-Year Strategic Plan: 2020-2022* (New York: UNDPPA, 2020), [https://dppa.un.org/sites/default/files/undppa\\_strategic\\_plan\\_2020-2022.pdf](https://dppa.un.org/sites/default/files/undppa_strategic_plan_2020-2022.pdf).
4. This is often referred to as an "adaptive" form of impact assessments. See, Ian Wadley, *Valuing Peace: Delivering and Demonstrating Mediation Results* (Geneva: HD Centre, 2017).
5. See, e.g. European Commission, "Key findings on the 2020 Report on Bosnia and Herzegovina," 6 October 2020, [https://ec.europa.eu/commission/presscorner/detail/en/COUNTRY\\_20\\_1793](https://ec.europa.eu/commission/presscorner/detail/en/COUNTRY_20_1793); In 2020, the World Justice Project reported that BiH had again dropped in global rule of law rankings, a finding that aligned with broader assessments of the stagnation and backsliding of rule of law institutions and processes within the country. World Justice Project, *Rule of Law Index 2020* (Washington DC: World Justice Project, 2020).
6. See, e.g. Ifimes, "2020 Bosnia and Herzegovina: There will be no rule of law without the comprehensive reform of the BiH judiciary – Fadil Novalić case illustrates the state of the BiH judiciary," 9 December 2020, <https://www.ifimes.org/en/9942>; European Commission, "Key findings on the 2020 Report on Bosnia and Herzegovina," 6 October 2020, [https://ec.europa.eu/commission/presscorner/detail/en/COUNTRY\\_20\\_1793](https://ec.europa.eu/commission/presscorner/detail/en/COUNTRY_20_1793); OSCE, "Mission to Bosnia and Herzegovina: Rule of law," last accessed 6 August 2021, <https://www.osce.org/mission-to-bosnia-and-herzegovina/rule-of-law>.
7. See, International Crisis Group, "Bosnia's Future," *Europe Report* 232 (2014) <https://d2071andvip0wj.cloudfront.net/bosnia-s-future.pdf>.
8. World Bank, "GDP growth (annual %) - Bosnia and Herzegovina," last accessed 6 August 2021, <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=BA>.
9. European Commission, "Revised Indicative Strategy Paper for Bosnia and Herzegovina," 8 March 2018, C(2018) 5021, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180817-revised-indicative-strategy-paper-2014-2020-for-bosnia-and-herzegovina.pdf>.
10. Bosnia and Herzegovina subsequently revised its NAP in 2014 and 2018, with its current NAP set to expire in 2022. See, Women's International League for Peace & Freedom, "Bosnia and Herzegovina," last accessed 6 August 2021, <http://1325naps.peacewomen.org/index.php/bosnia-and-herzegovina/>.
11. Ministry of Human Rights and Refugees of BiH, "Gender action plan of Bosnia and Herzegovina," 13 February 2014, <https://arsbih.gov.ba/project/gender-action-plan-of-bosnia-and-herzegovina/>.
12. The timeframes of Gender Action Plans in BiH (GAP BiH - as the overall strategy for gender mainstreaming are: First GAP: 2006-2011 (the first GAP in the Region); second: 2013-2017; third: 2018-2022. The timeframes of Action Plans for implementation of UN Security Council Resolution 1325 on Women, Peace and Security in BiH as follows: the first Action Plan: 2010-2013 (the first AP in the Region); second: 2014-2017; third: 2018-2022.
13. See, e.g. Isabelle Ioannides, *An evaluation of EU peacebuilding in the Western Balkans* (Brussels: European Parliamentary Research Service, 2018), PE 621.816, [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/621816/EPRS\\_STU\(2018\)621816\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/621816/EPRS_STU(2018)621816_EN.pdf).
14. See, e.g. OSCE, "Mission to Bosnia and Herzegovina: Rule of law," last accessed 6 August 2021, <https://www.osce.org/mission-to-bosnia-and-herzegovina/rule-of-law>; American Bar Association, "Bosnia & Herzegovina Programs," last accessed 6 August 2021, [https://www.americanbar.org/advocacy/rule\\_of\\_law/where\\_we\\_work/europe\\_eurasia/bosnia/programs](https://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/bosnia/programs).
15. United Nations Development Assistance Framework, *One United Nations Programme and Common Budgetary Framework Bosnia and Herzegovina 2015-2020* (New York: United Nations, 2020), [https://bosniaherzegovina.un.org/sites/default/files/2020-11/2019\\_UN\\_Country\\_Results\\_Report\\_engl.pdf](https://bosniaherzegovina.un.org/sites/default/files/2020-11/2019_UN_Country_Results_Report_engl.pdf).

16. See, Marina Hughson, *Gender Scorecard: UNDAF Bosnia and Herzegovina* (New York: UNSDG, 2016), <https://unsdg.un.org/resources/bosnia-and-herzegovina-gender-scorecard-report>.
17. Interview, March 2021.
18. NB: these areas were identified in interviews as the key contributions of the UN to the prevention agenda.
19. See final narrative report on programme. UNDP, "Joint Programme Seeking Care, Support and Justice for Survivors of Conflict Related Sexual Violence," last accessed 6 August 2021, <http://mptf.undp.org/factsheet/fund/JBA00>.
20. Interview, March 2021.
21. Interview, March 2021. See also, UN Women, "Global Database on Violence against Women: Bosnia and Herzegovina," last accessed 6 August 2021, <https://evaw-global-database.unwomen.org/es/countries/europe/bosnia-and-herzegovina>; Amnesty International, "Bosnia and Herzegovina: Last chance for justice for over 20,000 wartime sexual violence survivors," 12 September 2017, <https://www.amnesty.org/en/latest/news/2017/09/bosnia-and-herzegovina-last-chance-for-justice-for-over-20000-wartime-sexual-violence-survivors/>.
22. See, Amnesty International, "Criminalization and Prosecution of Rape in Bosnia and Herzegovina," Submission to the UN Special Rapporteur on Violence Against Women, its Causes and Consequences, 1 June 2020, <https://www.amnesty.org/download/Documents/EUR6324572020ENGLISH.pdf>.
23. UN Women, *UN Women Analysis of the Capacities for Implementation of Council of Europe Convention of Preventing and Combating Domestic Violence and Violence Against Women in Police and Free Legal Aid Sector in Bosnia and Herzegovina* (Sarajevo: UN Women, 2019), <https://www2.unwomen.org/-/media/field%20office%20eca/attachments/publications/2019/05/bosnia%20and%20herzegovina%20domestic%20violence/3%20analysis%20of%20fla%20and%20policeengfinal%20bosniacompressed.pdf?la=en&vs=5617>.
24. See, Akvo, "EXPLODE – a strategic project of B&HI," 28 July 2013, <https://rsr.akvo.org/fr/project/931/update/3394/>; South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, "Bosnia and Herzegovina," last accessed 6 August 2021, <https://www.seesac.org/Bosnia-and-Herzegovina/>; United Nations Development Assistance Framework, *One United Nations Programme and Common Budgetary Framework Bosnia and Herzegovina 2015-2020* (New York: United Nations, 2020),
25. UNDP Independent Evaluation Office, *Independent Country Programme Evaluation: Bosnia and Herzegovina* (New York: UNDP, 2020): 15.
26. See, Council of Ministers of Bosnia and Herzegovina, "Reform Agenda for Bosnia and Herzegovina 2015 - 2018," 9 September 2015, <http://europa.ba/wp-content/uploads/2015/09/Reform-Agenda-BiH.pdf>.
27. See, South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, *Gender and SALW in South East Europe* (Belgrade: SEESAC, 2016), [https://www.seesac.org/f/docs/Armed-Violence/Gender\\_and\\_SALW\\_publication\\_eng-web.pdf](https://www.seesac.org/f/docs/Armed-Violence/Gender_and_SALW_publication_eng-web.pdf).
28. See, South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, "Western Balkans as an Exporter of Good Practices in the Security Sector," 5 February 2021, <https://www.seesac.org/News-Gender-in-Security-Sector/Western-Balkans-as-an-Exporter-of-Good-Practices-in-the-Security-Sector/>.
29. Ibid.
30. South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, "Roadmap for a sustainable solution to the illegal possession, misuse and trafficking of Small Arms and Light Weapons (SALW) and their ammunition in the Western Balkans by 2024," Outcome of a High-Level Regional Meeting on SALW in Podgorica, Montenegro, 1 February 2018, <https://www.seesac.org/f/docs/News-SALW/Roadmap-for-sustainable-solution.pdf>.
31. BiH Government (provided by UNDP).
32. Human Rights Watch, "Events of 2019: Bosnia and Herzegovina," *World Report 2020* (New York: Human Rights Watch, 2020) <https://www.hrw.org/world-report/2020/country-chapters/bosnia-and-herzegovina#>.
33. Ibid.
34. Interview with UN official, March 2021.
35. See, e.g. Talha Ozturk, "Bosnia publishes report on Srebrenica genocide denial," *Andalou Agency*, 11 May 2020, <https://www.aa.com.tr/en/europe/bosnia-publishes-report-on-srebrenica-genocide-denial/1836671>.
36. Interview, March 2021.
37. "Massive brain drain threatens Bosnia's labour force," *TRTWorld*, 3 April 2019,
38. UNDP Independent Evaluation Office, *Independent Country Programme Evaluation: Bosnia and Herzegovina* (New York: UNDP, 2020): 10.



- <sup>39</sup>. Interview, March 2021.
- <sup>40</sup>. For background, see, UNODC, *Corruption in Bosnia and Herzegovina: Bribery as Experienced by the Population* (Vienna: UNODC, 2011) [https://www.unodc.org/documents/data-and-analysis/statistics/corruption/Bosnia\\_corruption\\_report\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/statistics/corruption/Bosnia_corruption_report_web.pdf).
- <sup>41</sup>. UNDP Independent Evaluation Office, *Independent Country Programme Evaluation: Bosnia and Herzegovina* (New York: UNDP, 2020): 16.
- <sup>42</sup>. Interview, March 2021.
- <sup>43</sup>. "Bosnia and Herzegovina: Some politicians still ignore 'core European values' 25 years after peace deal," *UN News*, 5 November 2020, <https://news.un.org/en/story/2020/11/1076922>.
- <sup>44</sup>. See, e.g. Rodolfo Toè, "European Court Rules Bosnian Constitution Discriminatory," *Balkan Insights*, 9 June 2016, <https://balkaninsight.com/2016/06/09/strasbourg-court-rules-bosnian-constitution-discriminatory-06-09-2016/>.
- <sup>45</sup>. South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, *Gender and SALW in South East Europe* (Belgrade: SEESAC, 2016), [https://www.seesac.org/f/docs/Armed-Violence/Gender\\_and\\_SALW\\_publication\\_eng-web.pdf](https://www.seesac.org/f/docs/Armed-Violence/Gender_and_SALW_publication_eng-web.pdf).
- <sup>46</sup>. South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, "Western Balkans as an Exporter of Good Practices in the Security Sector," 5 February 2021, <https://www.seesac.org/News-Gender-in-Security-Sector/Western-Balkans-as-an-Exporter-of-Good-Practices-in-the-Security-Sector/>.
- <sup>47</sup>. Interview, March 2021.
- <sup>48</sup>. See, e.g. Trading Economics, "Corruption Index in Bosnia and Herzegovina decreased to 35 Points in 2020 from 36 Points in 2019," last accessed 6 August 2021, <https://tradingeconomics.com/bosnia-and-herzegovina/corruption-index>.
- <sup>49</sup>. National Democratic Institute, "Public Opinion Poll: Bosnia and Herzegovina," 15 October 2019, <https://www.ndi.org/publications/public-opinion-poll-bosnia-and-herzegovina>.
- <sup>50</sup>. Interview, March 2021.



© Photo: UNFICYP





UNITED NATIONS  
UNIVERSITY  
Centre for Policy Research

United Nations University  
Centre for Policy Research

cpr.unu.edu  
@UNUCPR

767 Third Avenue, Suite 35B  
New York, NY 10017, USA