



**Citizens Perspective on a Future Strategy for  
Transitional Justice in Kosovo**



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**Gëzim Visoka and Besart Lumi**

## Colophon

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# 1. Introduction and key findings

While Kosovo society continues to suffer from the unresolved legacies of the 1998–99 violent conflict, so far both international and national actors have failed to devise a national strategy on transitional justice that would genuinely and comprehensively engage with contentious and divisive issue from the past. Instead, the efforts for dealing with the past have taken place through side-by-side initiatives which have often lacked coordination, sustainable engagement, and omitted important and pressing issues for the victims and survivors of the conflict (affected communities). As outlined in a separate study, past initiatives are characterised by insufficient interest on the side of the international community to include transitional justice issues in peacemaking and normalization talks between Serbia and Kosovo<sup>1</sup>. Similarly, past efforts of Kosovo institutions are characterized by incomplete, politicised and personalised agendas of national political leaders who have only selectively and sporadically tackled certain transitional justice issues. To a certain degree, civil society initiatives and organizations representing affected communities have been the most active stakeholders in promoting transitional justice and dealing with the past in Kosovo despite facing many limitations and challenges.

Transitional justice measures are increasingly criticized for being understood and implemented as a template or as part of a toolkit, namely a narrow set of measures to be applied uniformly wherever widespread violations of human rights have occurred, without much consideration of diverse needs and perspectives of affected communities. In particular, national strategies tend to be generated through top-down and expert-centred processes, often omitting the direct involvement of affected communities. This study aims to bring forth Kosovo citizens perspective on transitional justice and dealing with the past, which will hopefully be taken into account when a future national strategy on transitional justice is devised. While the study does not offer a template on how the future strategy on transitional justice should look like, it offers a summary of goals, priorities, and the most salient issues that citizens in Kosovo consider crucial to be addressed and included in the future. The study should be read as a supplement to the previously published study entitled “Democratizing Transitional Justice in Kosovo”, which offers a detailed review of past transitional justice in Kosovo and proposed a four-step approach to developing an institutional infrastructure for dealing with the past in Kosovo.<sup>2</sup>

In understanding the needs of citizens, as well as the expectations from a future strategy, ten focus group discussions as well as interviews with were organized between August and November 2020 with 156 participants from all ethnic communities in Kosovo. Participants were chosen from diverse backgrounds, coming from all regions of Kosovo, and representing all ethnic groups. Several focus groups were organized with specific groups such as women, youth and family members of missing persons. Notwithstanding this broad inclusion approach, the study does not claim to give a full picture of perspectives and needs of all Kosovo citizens, but gives insights into the main pressing issues and needs of Kosovo citizens. Participants were given the opportunity to provide their inputs on the purpose, key principles, and elements that an eventual strategy on transitional justice would need to take into account. Furthermore, a consultative meeting with core civil society organiza-

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<sup>1</sup> Gëzim Visoka and Besart Lumi, *Democratizing Transitional Justice: Towards a Deliberative Infrastructure for Dealing with the Past*, Integra, NSI, PAX, 2020, Prishtina, Kosovo. Available at: <https://www.paxforpeace.nl/publications/all-publications/democratizing-transitional-justice-in-kosovo>. <sup>2</sup> Ibid.

tions working on transitional justice in Kosovo was held in November 2020 to discuss the preliminary findings and incorporate their perspective as well.<sup>3</sup>

Overall, this study finds that citizens believe that it is long overdue for Kosovo to have a national and comprehensive approach on transitional justice and dealing with the past. The majority of participants described the need for a comprehensive strategy which takes into account the concerns and needs of all individuals and groups affected by the violent conflict regardless of their ethnic or social background. While the need for a comprehensive strategy for dealing with the past and transitional justice is clearly raised among all the participants of focus group discussions, there is a persisting scepticism among them on the likelihood for successful implementation in practice. There is widespread suspicion that similar to other strategies and policies in Kosovo and due to limited institutional capacities and resources, future efforts might fall short from achieving their desired goals, missing thus another opportunity to address the legacies of the past through strategic, comprehensive, and inclusive measures.

Beyond institutional willingness and capacity to design and implement such a strategy, the findings of this study show that the meaning of transitional justice in Kosovo is deeply intertwined with ethnic identity, which has serious implications for designing an inclusive and comprehensive strategy on dealing with the past in the country. Dealing with the past in Kosovo is extremely problematic as there is no consensus and little empathy among the ethnic groups on how to tackle the legacies of the past, on how to engage with and accept the stories, experiences, and perspectives of other ethnic communities, as well as on how to move on and envisage a shared future. There is a predisposition to reduce transitional justice to only mono-ethnic and one-dimensional justice. For Kosovo Albanians, dealing with the past entails resolving outstanding issues, such as missing persons, prosecution of war crimes perpetrators, claiming reparations and compensation for war damages, as well as solidifying the independent statehood by persuading Serbia to recognize Kosovo's independence and local Serbian community to accept Kosovo statehood. Especially, among Kosovo Albanians, peace with Serbia will be impossible until all outstanding issues from the past are resolved, namely until truth, justice, and reparations for war crimes have been brought forth and at the satisfaction of the affected communities.<sup>4</sup>

For Kosovo Serbs, on the other hand, dealing with the past is seen as problematic as it is unlikely to bring justice to their victims, and contribute positively to the present and future ethnic relations in Kosovo and wider region. For them, dealing with the past entails problematizing the Albanians' armed resistance and justifying Serbia's actions to defend the order imposed by the Milosevic regime.<sup>5</sup> Instead, there is a tendency among Kosovo Serbs to move the discussion in dealing only with post-conflict and present issues. Namely, focus the attention on the post-conflict period and treat the perceived injustices and limited space for Serb community in Kosovo to exercise their political, socio-economic, and language rights, including the right to free movement and return to pre-war settlements. For other smaller ethnic communities, transitional justice remains aspirational as there is a sense that their communities have neither received the deserved attention and support in seeking truth and justice for past war crimes nor have received benefit from different post-war socio-economic schemes as other dominant communities did.

As transitional justice and dealing with the past has a different meaning to different ethnic communities in Kosovo, the future strategy needs to take this into account and ensure that

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<sup>3</sup> The Civil Society Core Group consisted of: Nora Ahmetaj, Igballe Rogova (Kosovo Women's Network), Shukrije Gashi (Partners Kosova), Dejan Radivojević (FDMC Gracanica), Mehmet Musaj (KRCT), Lazar Rakić (ADRC), Marigona Shabiu (YIHR Kosovo), Nemanja Nestorović (CBM) and Sara Salihu (MPRC). <sup>4</sup> Focus Group 2, 12 August 2020, Prishtina region, Kosovo. <sup>5</sup> Focus Group 9, 20 August 2020, Mitrovica region, Kosovo.



it is designed from the bottom-up and ensure that it includes all affected communities. This is a precondition for comprehensively tackling the outstanding disputes and overcoming the lingering legacies of the violent conflict. In short, credibility of any future strategy will lie on its ability to ensure an impartial, principled, rights-based, and people-centred approach to designing, implementing and evaluating future actions in the area of transitional justice and dealing with the past.<sup>6</sup> This study is structured as follows. First, a brief overview of the existing situation is provided to set the extent of the problem and the pressing need for a strategy on transitional justice. Second, citizens perspective on the purpose and principles guiding the future strategy is offered to highlight their needs and expectations broadly defined. Third, the study offers an overview of key issues that citizens would want to appear in a future strategy on transitional justice in Kosovo. Finally, the study offers a number of broad recommendations and observations that could be beneficial for those responsible for devising the future strategy in Kosovo.

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<sup>6</sup> While dealing with the past is a concept which covers a broad range of issues and legacies emerging from the conflict, transitional justice entail a much narrower set of measures and actions to bring justice to the victims and survivors of the conflict. In this report, we will use the joint and sometimes separately, as appropriately required.

## 2. The Case for a National Strategy on Transitional Justice

Unresolved issues and legacies of the 1998–99 violent conflict in Kosovo continue to dominate political discourse in Kosovo and Serbia per se. These unresolved issues continue to impede the possibility of Kosovo citizens to reconcile with the past and move on towards the future. Citizens have entrenched a negative perception about the willingness and the capacity of the international community, Serbian authorities, and the Government of Kosovo to promote justice and combat impunity for past war crimes and serious human rights abuses. Most importantly, lingering legacies of the latest conflict in Kosovo continue to serve as a triggering factor and source of contention between and among ethnic groups in Kosovo, and are often utilized for political and electoral agendas. This section offers a brief overview of the extent of the problem with transitional justice in Kosovo and outlines citizens perception on the pressing need for a comprehensive engagement with this matter.

In the last two decades, efforts for dealing with the past and transitional justice have taken place without a comprehensive strategy. We have mostly witnessed sector-specific and side-by-side initiatives and institutional and legal pathways to address separately different issues related to the conflict (see Annex 6.1). Initially, the opportunity to devise a comprehensive and sustainable strategy for transitional justice was missed during the UN interim administration of Kosovo (1999–2008). During this period, the efforts of international community were focused in addressing other pressing issues in Kosovo, such as: humanitarian assistance, security, and governance. However, Kosovo's unresolved political status and prioritization of short-term stabilization and statebuilding agenda have played a major role in overlooking the pressing need for dealing with the past. Most importantly, the lack of a peace agreement between Serbia and Kosovo has set a negative trajectory which has significantly impacted the politics of transitional justice in Kosovo and in the wider region. Since then, cases of war crimes have been dealt mostly by international and hybrid courts, while the fate of missing persons and truth-seeking initiatives are delegated to specialized agencies and civil society groups. So far, most of the attention has gone to war crimes trials run by internationalized, hybrid and national courts in Kosovo. Justice for war crimes and other serious human rights abuses is sought through separate judicial mechanisms and under different international and national authorities. However, the track-record of war crimes investigations and indictments in Kosovo undertaken by international and national courts remain unsatisfactory. Between 1999 and 2020, only 117 individuals were indicted for war crimes and serious human rights abuses in Kosovo, of whom 62 have been Albanians, 49 Serbs, 5 Montenegrin, and one from Roma community.<sup>7</sup> The current Specialist Court for Kosovo, which made their first indictment public in September 2020, remain widely contested among Kosovo political establishment and majoritarian Albanian community.<sup>8</sup>

The predominant focus on war crimes trials has affected other important aspects of dealing with the past, such as: truth-seeking and documentation, commemoration, reparations and compensation, as well as recognition and support for all the victims and survivors of the

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<sup>7</sup> Sabina Pergega, Mirvet Thaqi and Medina Kadriu, 'The Amnesty of War Crimes in Kosovo', Kosovo Law Institute, Prishtina, Kosovo 2020. Available at: <https://kli-ks.org/ammistia-e-krimeve-te-luftes-ne-kosove/>

<sup>8</sup> The KSC was established under Kosovo law in 2015 with "a specific mandate and jurisdiction over crimes against humanity, war crimes and other crimes under Kosovo law, which were commenced or committed in Kosovo between 1 January 1998, and 31 December 2000, by or against citizens of Kosovo or the Federal Republic of Yugoslavia". See also: Gëzim Visoka, 'Assessing the Potential Impact of Specialist Court', Visoka, Assessing the Potential Impact of the Kosovo Specialist Court, Utrecht and Hague, NL: PAX and Impunity Watch, 2017. Available at: <https://www.paxforpeace.nl/publications/all-publications/assessing-the-potential-impact-of-the-kosovo-specialist-court>.

conflict regardless of their identity and status. Efforts for identifying the bodies of missing persons have been handled by multiple international and local agencies. The Government of Kosovo has established the legal and institutional infrastructure for missing persons, but challenges remain in identifying the remains of over 1,600 missing persons, including misidentification of bodies as well as the political commitment in Serbia for credible and transparent investigation of the fate of all missing persons.<sup>9</sup> It remains to be seen if the current EU-led dialogue between Kosovo and Serbia will contribute in resolving the fate of missing persons. Efforts to remembrance and documenting the conflict events, perspectives and experiences have been mostly dominated by mono-ethnic narratives and short-sighted interests of political elites. To compensate for these deficiencies, a small number of civil society organizations have been at the forefront of promoting civic and inclusive approaches to truth-telling, documenting and supporting victims and survivors, and advocating for ethnic reconciliation. Short of political consensus at the regional and national level, the fate of initiatives, such as RECOM or former Kosovo President's Truth and Reconciliation Commission, remain uncertain and limited impact.

During the international administration of Kosovo, the question of reparation for war crimes and other damages was largely overlooked and the focus instead has been on responding to more pressing problems with the return of refugees, resolving contested property, and other security concerns of ethnic minorities. Since then, Kosovo institutions have designed a broad scheme of social assistance to 12 different social categories affected by the conflict.<sup>10</sup> Only after a group of Kosovo-based NGOs<sup>11</sup> with the support of British government mobilized to seek reparation for women civilian victims and survivors, the Government of Kosovo has responded and devised the legal and institutional infrastructure to identify and support victims of sexual violence during the conflict. Serbia, on the other hand, has so far provided compensation for a small number of individual cases. Between 2006 and 2010, the Belgrade-based Humanitarian Law Center has filed 52 lawsuits against Serbia, seeing compensation for 188 war victims in Kosovo.<sup>12</sup> Despite these limited efforts, Serbia has no plans in sight to offer broad and comprehensive compensation for war-time damages caused in Kosovo.

As a result of these dynamics, efforts for establishing institutional guarantees for nonrecurrence of conflict have been symbolic, one-sided, and have largely gone unnoticed despite significant legislative and institutional investment on peacebuilding, minority rights, and power-sharing. A major effort for devising a national strategy on transitional justice took place after Kosovo's independence in 2008, supported by UNDP, but ended unsuccessful. In 2012, an Inter-Ministerial Working Group on Dealing with the Past and Reconciliation (IMWG-DwPR) was established whose role was to take "into consideration the views of victims of all communities in Kosovo" which would feed into a National Strategy on Transitional Justice.<sup>13</sup> The IMWG-DwPR comprised government and civil society representatives, including from minority communities. However, in 2018, the IMWG-DwPR officially ceased to function after failing to develop a national strategy on transitional

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<sup>9</sup> Kathrynne Boomerger and Matthew Holliday, 'Serbia, Kosovo, Must Commit to Credible Missing Persons Investigations', 09 September 2020, BIRN, Sarajevo, Bosnia and Herzegovina. Available at: <https://balkaninsight.com/2020/09/09/serbia-kosovo-must-commit-to-credible-missing-persons-investigations/?fbclid=IwARIAy-mZsBjzDw931oU-WKVEolq8YvccbFp8brrCXn2NF7bMQnlEu3Mr3yWA>.

<sup>10</sup> The beneficiary categories include: families of martyrs; missing persons of KLA families; war invalids; Invalids with a caretaker; families of war invalids after death; families of civilian victims; families of missing persons; civilian invalids of war; families of civilian invalids after death; veterans; and victims of sexual violence.

<sup>11</sup> The initiative was led by the Kosova Rehabilitation Centre for Torture Victims (KRCT), Center for Promotion of Women's Rights, and Medica Kosova.

<sup>12</sup> Dardan Hoti, 'Can Kosovo get payback for war time devastation?', BIRN, 6. November 2019. Prishtina, Kosovo. Available at: <https://balkaninsight.com/2019/11/06/can-kosovo-get-payback-for-wartime-devastation/>

<sup>13</sup> Government of Kosovo, 'Draft Decision on the Establishment of Inter-Ministerial Working Group on Dealing with the Past and Reconciliation', Doc. No. 03/77, 04 June 2012, p. 3.

justice. This initiative failed as a result of two inter-related factors: a) the lack of political will among the Government of Kosovo and the absence of pressure from the international community to deliver on this initiative; and b) the lack of adequate capacities, resources, and representation within the IMWG–DwPR which undermined the preparatory and operational aspects.<sup>14</sup> Recently, in an effort to tackle the overlooked issue of transitional justice in Kosovo, the Ministry of Justice of Kosovo has established the Department for Transitional Justice and Support of Crime Victims, whose main function is to propose policies and normative acts related to the area of transitional justice.<sup>15</sup> It remains to be seen if this new institutional body will be able to overcome the lack of political will and capacity among all stakeholders to engage comprehensively and systematically with the legacies of the past, which continue to significantly undermine efforts for bring justice to all the victims, resolve and reconcile outstanding issues, and create structures to support sustainable peace and moving forward as a society.

The lack of a serious and comprehensive approach to dealing with the past risks prolonging further ad hoc and selective initiatives, which tend to suit specific social and ethnic groups and exclude other affected communities in Kosovo. So far, various studies have shown that efforts for dealing with the past in Kosovo are seen as one-dimensional, namely each ethnic group perceive the work of war crimes courts, truth-seeking initiatives, and reparations for victims, as measures directed for the benefit of one ethnic group and not the others.<sup>16</sup> Public opinion in Kosovo remains highly divided along ethnic lines when it comes to transitional justice and there is a significant gap of perceptions among all ethnic groups on the history and events of the conflict, on the responsibility for war crimes and the constitution of victimhood, on the entitlements for victims, survivors and affected communities, as well as opposing views on how to dealing with the past and move forward. Accordingly, the proceeding sections of this study offer an overview of citizens perspective and highlight why a strategy on transitional justice in Kosovo is long overdue.

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<sup>14</sup> Nora Ahmetaj and Thomas Unger, *Kosovo's Framework for Dealing with the Past at a turning point: Civil society review of progress towards National Strategy on Transitional Justice*, PAX, Integra, Impunity Watch, CPT, 2017, Prishtina, Kosovo. <sup>15</sup> Government of Kosovo, 'Regulation GRK - No. 12/2018 On Amending and Supplementing Regulation GRK-No. 31/2013 on the Internal Organization of the Ministry of Justice', 31 July 2018. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=17792>. <sup>16</sup> Visoka and Lumi, *Democratizing Transitional Justice*.

### 3. The purpose and principles of a future strategy on transitional justice

Central to the future strategy on transitional justice is to define the purpose, scope and principles that will guide the drafting, implementation, and evaluation process. Findings from this research show that there is no consensus among all ethnic groups in Kosovo what transitional justice means and what the purpose and scope of a future strategy should be. The geographical location, ethnic background, and personal background of participants have exposed a wide range of preferences and perceptions on what should be the purpose, principles, and priorities of a future transitional justice strategy in Kosovo. Each community define themselves as victims of the conflict. Kosovo Albanians want to deal with the past whereas Kosovo Serbs mostly want to deal with the post-conflict period. Other ethnic groups similarly want their voice and perspectives to be heard and included in transitional justice processes in Kosovo.<sup>17</sup> This identity-based attitude towards the conflict and its legacies has far-reaching implications on what constitutes as victims and who are the affected communities, what are the priorities and pressing issues that need to be addressed, and how likely it is to find common grounds for peacebuilding and reconciliation through diverse perspectives on transitional justice.

Among Kosovo Albanian participants there is a wide consensus on what a future strategy should cover. They have widely shared the view that criminal prosecution of war crimes suspects should remain central to future efforts for transitional justice, followed then by addressing pressing needs of the families of missing persons, survivors of sexual violence during the conflict, and the wounded and disabled people during the conflict. The overwhelming majority of Kosovo Albanian participants, especially young people, have argued that the identification of the remains of abducted and disappeared persons is the most important matter that the future strategy on transitional justice should focus on.<sup>18</sup> Similarly, participants have raised the importance of enhancing the support for survivors of sexual violence during the conflict in Kosovo in dealing with their psychological and health problems, while their economic empowerment is seen as key for overcoming social stigma and exclusion. In addition to these issues, Kosovo Albanian participants have brought up the importance of tackling property ownership disputes and the internal return of internally displaced persons as well as reparations for war-time damages as a measure of material justice.<sup>19</sup>

Yet, there is scepticism on the capacity and willingness of the Government of Kosovo to deal with the past through a national strategy as well as there are fears that discorded operation of international community through hybrid courts and the lack of cooperation from Serbia will undermine future efforts for dealing with the past. Kosovo Albanian participants have raised as a concern the relativisation of attribution of responsibility for war crimes in Kosovo, stating that over the years the identity, intent and the role of responsible actors for war crimes and atrocities in Kosovo has been twisted out whereby perpetrators often have emerged as victims and vice versa.<sup>20</sup> An official apology from Serbia for war crimes committed in Kosovo during the war is described by Kosovo Albanians as a contributing factor for peace and reconciliation in the region. Thus, for them the goals of a future strategy should be to uncover truth and attribute the responsibility for war crimes in Kosovo as a precondition for setting the account clear about the conflict and its legacies.

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<sup>17</sup> Interview B, 17. November 2020, Prishtina, Kosovo. <sup>18</sup> Focus Group 2, 12 August 2020, Prishtina region, Kosovo. <sup>19</sup> Ibid. <sup>20</sup> Focus Group 4, 17. August 2020, Peja region, Kosovo.

Among Kosovo Albanians the need and importance of a strategy on transitional justice is unquestionable. However, among Kosovo Serbs there is extensive scepticism, reluctance, and conditional support for such a strategy. Serb participants have little faith in transitional justice processes and often associate them with great power politics and see them as targeted campaigns of Western states.<sup>21</sup> For them, transitional justice is not associated with truth, justice, and peace but with attribution of blame, power politics, and strategic interests. In this context, Kosovo Serb participants have indicated that acceptance of such a strategy depends primarily on the political will and the extent to which the Serbian perspective about the war, attribution of responsibility, and victimhood is recognized and taken into account.<sup>22</sup> There is also reluctance to engage with the past due to possibility of attribution of guilt and responsibility for past injustices, which can result in undermining their present status and delegitimize their demands and undermine political priorities. Moreover, for Kosovo Serb community accepting to come into terms with the past is linked to socio-economic and linguistic recognition in the present.<sup>23</sup> In other words, Kosovo Serb community is reluctant to dealing with the past without ensuring that their political, economic, and socio-linguistic rights are safeguarded and implemented in Kosovo.<sup>24</sup> Instead, among them there is a greater emphasis in seeking justice for present issues than tackling war-time events and legacies of the conflict. There is more preoccupation with everyday life and challenges that impact their community and no sense of shared history, suffering, or experiences of the past with other ethnic communities.<sup>25</sup>

These divergent views and dilemmas notwithstanding, a majority of participants across all ethnic communities, have highlighted that a future strategy on transitional justice and dealing with the past needs to be developed through a comprehensive and non-discriminatory approach and must consider the needs of all affected communities in Kosovo despite their ethnic status. One respondent highlighted transparency and fairness as key guiding principles:

*"One of the basic values that I think that the institutions should follow and be based on is transparency and then it should be fairness and avoidance of favouring certain groups over others."*<sup>26</sup>

Respondents have also brought up the importance of promoting equality among all affected communities, which entails respect and adequate consideration for their needs and interests. As one participant from the Kosovo Albanian missing persons families stated:

*"Equality means equality for all...it means offering equal solutions for everyone without distinctions."*<sup>27</sup>

A cry for inclusion and equality is also prevalent among non-dominant ethnic minorities in Kosovo. As a Kosovo Roma activist stated:

*"It's very important to include all ethnic minorities in any transitional justice process. Unfortunately, until now, the focus was only on Albanians and Serbs, while other ethnic minorities have been left out of the conversation, even from donors and institutions. There is no narrative from the war about Roma, Ashkalis, and Egyptians, nobody looks at them as victims. Victims of these communities need to be heard."*<sup>28</sup>

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<sup>21</sup> Focus Group 8, 18. August 2020, Kosovo wide. <sup>22</sup> Focus Group 7, 12 August 2020, Gjilan region, Kosovo. <sup>23</sup> Focus Group 9, 01 September 2020, North Mitrovica, Kosovo.

<sup>24</sup> Focus Group 7, 12 August 2020, Gjilan region, Kosovo. <sup>25</sup> Focus Group 9, 01 September 2020, Peja region, Kosovo. <sup>26</sup> Focus Group 2, 12 August 2020, Prishtina region, Kosovo.

<sup>27</sup> Focus Group 3, 13 August 2020, Kosovo wide. <sup>28</sup> Interview B, 17 November 2020, Prishtina, Kosovo.

Similarly, a Bosniak participant added:

*"The strategy should focus on aspects that have not been explored and that are directly or indirectly related to the victims of the Bosniak community in the period from 1998 to 2000. Priorities should be justice for victims."*<sup>29</sup>

The majority of respondents have argued that a future strategy on transitional justice should be designed with the participation of affected communities and oriented towards addressing the needs and concerns of victims and survivors. A Kosovo Turk stated: "all minorities in Kosovo should be supported when it comes to direct or indirect forms of participation such as consultation and monitoring stages in the future strategy for transitional justice in Kosovo".<sup>30</sup> In particular, there is consensus across the board that a future strategy should aim to improve the lives of citizens with a focus on victims and survivors, and pave the way for a future in which incidents of the past do not happen again. As one Kosovo Albanian participant stated:

*"Ultimately, the end goal of this strategy should be the improvement of physical and mental wellbeing of all affected communities regardless of their socio-economic status and ethnic background."*<sup>31</sup>

Moreover, citizens have highlighted the importance that a future strategy should bring to an end the disbalanced focus and entitlements for past suffering offered to only a narrow group of ethnic and societal categories in Kosovo. The future agenda for transitional justice should go hand in hand with socio-economic justice for all ethnic communities in Kosovo.<sup>32</sup> Thus, a future strategy should be designed in such a manner that it promotes inclusion and ensures that the voice and needs of all affected communities is taken into account and translated into institutional support. Participants have argued that the most suitable approach in addressing issues and legacies of the past in Kosovo should be a bottom-up one starting from families of victims and survivors, to village councils, the municipalities, to the central level and courts. There is reluctance among citizens that if a future strategy is dominated by top-down processes and is solely written to suit the political leaders' agenda in Kosovo it is likely to produce limited effects. For this reason, they called for a combined bottom-up and top-down approach in developing and implementing such a strategy. In particular, affected communities should be directly involved and benefit from the future strategy and directly represented in future endeavours rather than through other structures who have often been unable to represent the affected communities. The diversity of perceptions is a testimony that only a bottom-up, inclusive, and comprehensive approach for designing the future strategy is likely to offer equal opportunity to all affected communities and thus enhance the legitimacy of such an overdue process.

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<sup>29</sup> Interview F, 24.II.2020, Mitrovica, Kosovo. <sup>28</sup> Interview B, 17 November 2020, Prishtina, Kosovo. <sup>29</sup> Interview F, 24.II.2020, Mitrovica, Kosovo. <sup>31</sup> Focus Group 2, 11 August 2020, Prishtina region, Kosovo. <sup>32</sup> Interview E, 23.II.2020, Gracanica, Kosovo.

## 4. The main pillars of a future strategy on transitional justice

Citizens perspectives on what must be the key issues and priorities under a comprehensive approach for dealing with the past are grouped into four main pillars, as outlined below, all of which are considered equally important for addressing the legacies of the past in Kosovo.

### 4.1 Truth-seeking

Uncovering the truth about the war-time crimes and other serious human rights abuses, as well as documenting and commemorating adequately events and experiences of all affected communities are considered essential by the participants in this study for dealing with the past and transitional justice. So far, in Kosovo, truth-seeking efforts have taken place in ad hoc basis and mostly through civil society projects. There hasn't been any systematic, coordinated, and strategic approach for documenting and disseminating events, evidence, and experiences of affected communities. Knowledge of citizens who were engaged in this research about the events of the past was largely anecdotal, often with inaccurate and overblown figures of casualties and types of war crimes committed. We noted a wide range of incongruent opinions about the efforts of Kosovo institutions and civil society in tackling the legacies of the conflict in Kosovo. What the focus group discussions reveal is that there is very little empathy and understanding of one another's perspectives and experiences of the conflict and the pressing issues that affect their lives and ability to move on and reconcile with the past. Instead, the evidence is clear that across all ethnic communities there is an almost scripted narrative about the past and what are the pressing issues which need to be tackled in the future strategy. Such a limited knowledge of the truth about past events leaves open the opportunity for misrecognising valuable facts about the past which could lead to the construction of inaccurate, inward-looking narratives, with far-reaching consequences for affected communities and prospects for peacebuilding and reconciliation.

Most citizens stressed the importance of seeking the truth, but also recognized that truth is perceived differently among each ethnic group. Each community is predisposed to push for mono-ethnic truth seeking, commemoration, and documentation of the past. There is little space for searching for common grounds or for creating shared civic spaces for dealing with the past. Some of the participants have shared the view that agreeing on a common truth about the past is very difficult if not impossible highlighting that a different truth is being confessed by each community. Among some of the Serb participants there were opinions that the disclosure of truth about the conflict is problematic as it could result in attributing and collectivizing guilt for past war crimes and serious human rights abuses to the entire ethnic groups.<sup>33</sup> In particular, among Kosovo Serbs there is a prevailing perception to consider all ethnic communities in Kosovo as victims of the conflict, thus bringing pre-conflict, conflict, and post-conflict events, experiences, and legacies into a level playing field. As one Kosovo Serb young adult stated:

*"I think that total chaos would arise if the total truth were brought to light, because I think that both nations live in misconceptions about the many crimes they committed."<sup>34</sup>*

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<sup>33</sup> Focus Group 8, 17 August 2020, Kosovo wide. <sup>34</sup> Ibid.



Other ethnic communities have brought up different challenges they face in documenting past human rights abuses and seeking justice for their victims, including fear of revenge and repercussions for their communities. As an Ashkali participant stated:

*"Minorities hesitate to report violations against them because they don't trust the institutions, and do not report past crimes due to fear of revenge against them... Minorities have tried in the years 1999–2000 to report certain crimes, but since there was nothing done, they lost faith in the process."*

Similarly, a Roma participant added that:

*"Fear is a key factor in the hesitation by the minorities to go forward to tell their story. The state has failed them in many cases in pursuing justice, so they have lost faith in the state and in justice."<sup>35</sup>*

Another contentious issue among dominant communities is the definition of the period of time of the conflict and the scope of crimes committed. In particular, there is a tendency among Albanian and Serb community to identify issues and timeframes which portray one community as victims and the other as perpetrators and vice versa. We noted that among Serbian participants there was a notable absence of comments on crimes committed by the Serbian police, military and paramilitary forces against the civilian Kosovo Albanians and predominantly the discussion focused on the post-conflict period and prevailing sense of injustice against their community. Similarly, among Kosovo Albanian participants the emphasis of discussion was on the legacies and unresolved issues from the war-time period and not so much on post-conflict period or experienced injustices by other ethnic communities. Moreover, both communities have normalized totalizing narratives about the past. Among Kosovo Albanian there is no mentioning of Serbian or minority victims of the conflict, whereas Serb community tends to contest or minimize the crimes committed against civilian Albanians. Among Serb participants there was a significant resistance and unwillingness to recognize Kosovo Albanians as victims of crimes committed by the Serbian police and military forces during the conflict. On the contrary, there is a widespread perception among the Kosovo Serb participants that "the victims are Serbs and other ethnic minorities...", and not Kosovo Albanians.<sup>36</sup>

Among other community there is a strong perception that their narrative about the past, their experiences and needs are entirely silenced by the dominant communities and widely disregarded by the international community. In particular, they brought up the right to know about the fate of missing persons among minority communities. A Kosovo Roma activist stated that "transitional justice currently is non-existent" for their community, adding that:

*"There is a lack of information sharing with the families of missing persons, lack of access to mechanisms for provision of transitional justice as well as the overall discrimination which is encountered by the families of missing persons and/or families who are still waiting the fate of their loved one."<sup>37</sup>*

Documenting war-time events and revealing the fate of missing persons was brought up almost in every focus group discussion and conversation with individual community activists. Although there is a common agreement that seeking and finding the truth is a very difficult task, most of the participants emphasised the need for the victims to be heard and

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<sup>35</sup> Interview B, 17 November 2020, Prishtina, Kosovo. <sup>36</sup> Focus Group 10, 02 September 2020, Mitrovica region, Kosovo. <sup>37</sup> Interview E, 23 November 2020, Gracanica, Kosovo.

their memories to be documented properly by governmental institutions. While most of the bodies of missing persons during the conflict are identified, the fate of over 1,600 missing persons still remains unknown. The main challenge in identifying the bodies of persons missing since the end of the conflict remains the political will of all involved to collaborate in good faith to address existing obstacles. Among the families of Albanian missing persons there is huge frustration with the slow and inefficient process of identifying the bodies of disappeared persons during and after the war as well as lack of political will among political leaders in Serbia, the EU and other third countries, as well as the Government of Kosovo to seriously and decisively address this protracted and lingering problem in Kosovo.<sup>38</sup> A Roma participant echoed the same concern: "truth seeking is highly important, most families who are still awaiting for justice are living in a bubble of still not knowing what happened to their loved ones".<sup>39</sup> Kosovo Albanian participants, in particular, have pressed that provisions on missing persons should be taken into account during the EU-facilitated talks with Serbia and should be an essential feature of an eventual peace settlement.<sup>40</sup>

Majority of participants have listed issues such as narratives, archives, museums about the war, and history school books and lessons as important tools to promote the truth about the war. Specifically, they highlighted the need to discuss more in-depth about the war and the legacies of the past in schools across the country. As a Kosovo Albanian participant stated:

*"The focus should be on education, in teaching a fact-based history, one which would enhance the awareness of pupils and students on what has really happened in Kosovo."*<sup>41</sup>

An Ashkali participant added that for their community a key problem remains "lack of knowledge on their rights and on the existing legal framework protecting minority rights", considering it "a consequence of the lack of adequate education and lack of awareness".<sup>42</sup>

Participants have also highlighted the importance of designing and implementing special testimonial programmes where affected communities can share and document through audio-visual tools their experiences of the conflict and leave evidence for future generations to learn about the past.<sup>43</sup> As one Kosovo Albanian participant stated:

*"I think it would be beneficial for the people who have suffered the most from the war to be given a safe space where they can share their experiences and make sure future generations do not forget about their past."*<sup>44</sup>

In addition to the importance of documenting war-time human casualties, participants have raised the overlooked issue of documenting cultural and material damages occurred during the conflict and thus estimating the economic cost of war.<sup>45</sup> At an individual level, Serbian and Albanian participants have expressed their willingness to engage and know more about the other sides' experiences and perspectives about the war. As a Kosovo Serb participant reflected:

*"It is very important to acknowledge the truth and to know ... I mean, I personally do not know what ... What are the victims on the other side, I have not heard or seen, so I can't even talk ... I don't know about most of the victims from our side."*<sup>46</sup>

Participants from all communities have expressed their desire that a future strategy serves as a platform for their stories, experiences and events symbolizing suffering, victimhood, and

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<sup>38</sup> Focus Group 1, 11 August 2020, Prishtina region, Kosovo. <sup>39</sup> Interview E, 23 November 2020, Gracanica, Kosovo. <sup>40</sup> Focus Group 2, 12 August 2020, Prishtina region, Kosovo. <sup>41</sup> Focus Group 4, 17 August 2020, Peja region, Kosovo. <sup>42</sup> Interview A, 16 November 2020, Prishtina, Kosovo. <sup>43</sup> Ibid. <sup>44</sup> Ibid. <sup>45</sup> Focus Group 1, 11 August 2020, Prishtina region, Kosovo. <sup>46</sup> Focus Group 6, 07 August 2020, Prishtina region, Kosovo.

sacrifice to be recognized by the other side as a precondition for properly dealing with the past and building a more prosperous future. As a Gorani participant stated: "the real truth needs to be known, no matter how difficult it may be".<sup>47</sup> Yet, participants have highlighted various political and structural barriers that could prevent such engagement, including disputes at the highest political level as well as numerous unresolved issues affecting differently each community. Especially, among Kosovo Serb youth participants, recognition of victimhood and discharge of collective guilt and responsibility for past wrongdoings is seen as crucial for moving forward and restarting relations with Kosovo Albanians.<sup>48</sup> Among Kosovo Albanians, it was noted that proper documentation of war crimes that happened in Kosovo is a responsibility of state institutions, whereas Kosovo Serbs were more reluctant as they still do not fully recognize and trust Kosovo institutions.<sup>49</sup>

## 4.2 War crimes courts

Seeking justice for war crimes through courts and judicial processes is considered crucial for setting the record straight and attributing the responsibility for such serious crimes as well as offering closure and a measure of justice to the victims, survivors and other affected communities. While there is consensus that that justice should be served to the victims there are doubts if the criminal justice system is a viable solution. Each ethnic community have negative perception of war crimes courts and trials on Kosovo and consider them inefficient and selectively targeting members of their ethnic community. Among Kosovo Albanian participants, war crimes trials are seen as the most important approach for dealing with the past in Kosovo and bringing justice to the victims and survivors. There is a strong consensus that those who have committed war crimes should be prosecuted and brought to justice. Such trials are seen as the most viable strategy also for ensuring that perpetrators (in this instance, Serbian state institutions and individuals) will come to terms with the truth, accept the responsibility and apologize for such serious crimes, and pay reparations for human and material damages.<sup>50</sup>

Though among Kosovo Albanians there is fear that the low number of investigated cases and prolonged judicial procedures are delaying justice for the victims and survivors.<sup>51</sup> There is fear that the more time passes and war crimes are mishandled the higher the chances that evidence, testimonies, witnesses, and other sources will vanish and thus more difficult to bring perpetrators to justice. In short, there is fear that by delaying justice, war crimes courts are contributing to a culture of impunity with serious consequences for collective memory and legacies for justice, peace and reconciliation. There is also widespread dissatisfaction with the prosecutorial strategy of international and hybrid courts which have focused in trying mostly senior political and military leaders and ignoring lower ranking perpetrators. Notably, there is little confidence in the work of Kosovo Specialist Court because it is seen as biased and unfair, targeting only Kosovo Albanians while ignoring many other alleged war crimes cases committed by Serbian forces.<sup>52</sup> Some of the Kosovo Albanian participants have highlighted that the future prosecutorial strategy should focus on bringing to justice not only senior military and police suspects but also those individuals and groups who have directly executed war crimes against Albanian civilian population and are currently free at large and residing in Serbia.<sup>53</sup> As one participant stated:

*"I think that the alleged perpetrator that we know for sure they have committed crimes should be brought to justice, as the only way to ease the pain of victims and their families."*<sup>54</sup>

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<sup>47</sup> Interview D, 19 November 2020, Mitrovica, Kosovo. <sup>48</sup> Focus Group 8, 17 August 2020, Kosovo wide <sup>49</sup> Focus Group 2, 12 August 2020, Prishtina region, Kosovo. <sup>50</sup> Focus Group 2, 12 August 2020, Prishtina region, Kosovo. <sup>51</sup> Focus Group 3, 13 August 2020, Kosovo wide. <sup>52</sup> Focus Group 2, 12 August 2020, Prishtina region, Kosovo. <sup>53</sup> Focus Group 3, 13 August 2020, Kosovo wide. <sup>54</sup> Focus Group 4, 17 August 2020, Peja region, Kosovo.

Other Kosovo Albanian participants have highlighted that failure to try local Serbian police and military officers who were the alleged perpetrators of war crimes and where known to the survivors is directly impacting the unwillingness of Albanian communities to accept the return of Serbian refugees in their pre-conflict settlements and residences. Co-existence and reconciliation are seen as unrealistic without justice and closure about past crimes. As such families of Kosovo Albanian missing persons have raised the need for establishing a Special Court in Serbia (similar to the Specialist Court for Kosovo) which would exclusively deal with war crimes committed by the Serbian military and paramilitary forces in Kosovo.<sup>55</sup>

Among Kosovo Serb participants, a widely expressed perception is that it will be difficult to bring perpetrators to justice. Both international and national courts are seen as inefficient and compromised. Whilst international courts are criticised for their lack of credibility and prolonged trials, national courts, especially those in Kosovo, are perceived as untrustworthy.<sup>56</sup> Some of the Serbian participants openly expressed reluctance on the judicial justice for the victims of various crimes after the year 1999, and expressed distrust in the Kosovo judiciary, mostly due to the perception that war crimes trials against Serbs were false and fabricated.<sup>57</sup> As one Kosovo Serb citizen stated: "we no longer believe in transitional justice as justice".<sup>58</sup> The purpose of internationalized courts was "only to judge Serbs and no one else".<sup>59</sup> Similarly, there are not many expectations that the Kosovo Specialist Court will deliver justice to the victims.<sup>60</sup> This is congruent with previous research and opinion polls conducted on citizens expectations and perception on this court.<sup>61</sup> The prevailing perception is that Kosovo as a deeply polarized society suffers from the lack of rule of law, where members of non-majority communities are not able to exercise their rights fully.<sup>62</sup> Smaller ethnic communities have highlighted that international and national war crimes trials have not brought justice for their victims and survivors. There is a sense that impunity for crimes against small ethnic communities is normalized by the non-action of state institutions and silence of civil society groups in Kosovo. Thus, a Roma participant added that: "as a consequence of impunity in the past, smaller ethnic groups have lost faith and trust in judiciary that can bring justice".<sup>63</sup> Similarly, a Gorani participant added: "the failure of the judiciary has led to greater separation and hatred between communities".<sup>64</sup>

#### 4.3 Reparations and support for the victims and survivors

The issue of war reparations and compensation to the affected communities as well as socio-economic support for the survivors of the conflict was brought up by participants. Though, similar to other aspects of transitional justice, there are different opinions, especially among Kosovo Albanians and Serbs, on who should pay reparations and who should benefit from such schemes. Since the end of the conflict, Kosovo institutions have offered socio-economic assistance mostly to Kosovo Albanians groups as a form of acknowledgement of their suffering during the conflict. While the predominant assistance goes to the KLA war veterans (38,218), there are 8,713 beneficiaries among the families of civilian victims and missing persons, including 88 from Serb community.<sup>65</sup> So far, Serbian government has rejected to tackle the question of war reparations and compensations for wartime damages. Compensation for war-time damages to the victims of the Kosovo conflict brought forth in Serbian courts have been granted only to a very limited number of cases.<sup>66</sup> Instead, the focus of Serbian government has been on seeking access to and

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<sup>48</sup> Focus Group 8, 17 August 2020, Kosovo wide <sup>49</sup> Focus Group 2, 12 August 2020, Prishtina region, Kosovo. <sup>57</sup> Focus Group 6, 07 August 2020, Prishtina region, Kosovo. <sup>58</sup> Focus Group 3, 13 August 2020, Kosovo wide. <sup>59</sup> Ibid. <sup>60</sup> Focus Group 6, 07 August 2020, Prishtina region, Kosovo. <sup>61</sup> Visoka, *Assessing the Potential Impact of the Kosovo Specialist Court*; Ahmetaj and Unger, *Kosovo's Framework for Dealing with the Past at a turning point*.

<sup>62</sup> Focus Group 3, 13 August 2020, Kosovo wide. <sup>63</sup> Interview B, 17.11.2020, Prishtina, Kosovo. <sup>64</sup> Interview D, 19 November 2020, Mitrovica, Kosovo.

<sup>65</sup> Data from June 2020 show that there are 785 Kosovo Albanian victims of sexual violence who receive a monthly pension from the Government of Kosovo.

<sup>66</sup> See: HLC, *The first judgment on the responsibility of the state for the crimes in Kosovo: Compensation to families of victims of the crime in Podujevo*, 2016, Belgrade. Available at: <http://www.hlc-rdc.org/?p=31649&lang=de>.

claiming ownership of socially owned property and companies in Kosovo as well as enhancing the living conditions of Serbian returnees.

Kosovo Albanians have highlighted that until reparations for war-time damages are brought forth – in particular by the Serbian state – it is unlikely that there will be peace, closure, and willingness to move on.<sup>67</sup> Similar view is shared by the Ashkali community too.<sup>68</sup> Though, up to now, accurate estimation of wartime damages remains one of the most overlooked aspects for dealing with the past in Kosovo. There is a wide consensus that a future strategy on transitional justice must prioritize the return of pension contributions of Kosovo Albanians that are held hostage for over two decades by the Serbian authorities. This is seen as crucial to address many socio-economic injustices that are affecting the wellbeing of elderly people in Kosovo.<sup>69</sup> Some of the Albanian participants have brought up the importance of using European Court of Human Rights as a possible avenue for seeking compensation for war crimes and other damages occurred during the conflict in Kosovo.<sup>70</sup> For Kosovo Serbs, offering reparations for war damages to the victims are not seen as a way to solve the problems, rather they are seen as a strategy for admitting mistakes for past wrongdoing and repenting.<sup>71</sup> Moreover, Kosovo Serb participants believe that Serbia should not pay reparation for wartime damages because it was an internal conflict and the reparations are only applicable to inter-state conflicts and between two internationally recognized states. Others have argued that if Serbia is asked to pay reparations for damages in Kosovo, so should NATO pay for the damages caused on Serbia and civilian victims.<sup>72</sup>

Among Kosovo Albanians, missing persons and their relatives, survivors of sexual violence during the war, and war veterans were listed as groups predominantly affected by the war in Kosovo, while the need for future psychological (post-traumatic disorder) treatment and economic support to those victims and survivors was considered crucial in dealing with the past. There is some recognition of the positive work done by Kosovo institutions but still the prevalence of social and institutional constraints in recognising and supporting these victims is seen as a major obstacle for offering a measure of justice and support to these affected communities.<sup>73</sup> In addition to reparations, participants from all ethnic groups have argued that providing employment opportunities for the victims and survivors of the conflict is essential to deliver to them socio-economic justice, which is equally important as knowing the truth about the past or bringing perpetrators to justice. In particular, Kosovo Albanian participants have highlighted that affected communities should be granted enhanced rights and privileges to access education, healthcare, and other public services.<sup>74</sup> The importance of setting up rehabilitation and psycho-social centres for those who still experience war traumas was brought up regularly by Kosovo Albanians.<sup>75</sup> Initiatives to fight stigma, psychotherapies (including therapies for families of victims and survivors), releasing victims and survivors from payments in areas such as health, and education were listed as additional forms to support victims and survivors of the war. Though, non-dominant ethnic groups have brought up institutional and bureaucratic impediments which have prevented and still continue to prevent, for example Roma women victims and survivors seeking assistance and recognition.<sup>76</sup>

Thus, all ethnic groups in Kosovo have emphasized that a future strategy should not only address the need and concerns of affected communities, but also envisage assistance and capacity building for those who assist, live with, and support directly or indirectly affected communities.<sup>77</sup> In particular, among young people there is a perception that they are indirect

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<sup>67</sup> Focus Group 1, 11 August 2020, Prishtina region, Kosovo. <sup>68</sup> Interview A, 16 November 2020, Prishtina, Kosovo. <sup>69</sup> Ibid. <sup>70</sup> Focus Group 5, 20 August 2020, Mitrovica region, Kosovo. <sup>71</sup> Focus Group 8, 17 August 2020, Kosovo wide. <sup>72</sup> Focus Group 10, 02 September 2020, Kosovo wide. <sup>73</sup> Focus Group 2, 12 August 2020, Prishtina region, Kosovo. <sup>74</sup> Focus Group 2, 12 August 2020, Prishtina region, Kosovo. <sup>75</sup> Focus Group 1, 11 August 2020, Prishtina region, Kosovo. <sup>76</sup> Interview B, 17 November 2020, Prishtina, Kosovo. <sup>77</sup> Focus Group 1, 11 August 2020, Prishtina region, Kosovo.

victims of the conflict as they have grown in a post-conflict environment and have grown up with the stories and embody the experiences of their families and loved ones who have directly been affected by the conflict. They see themselves as second-generation victims of the war and as such entitled to engage in debates and play a role in dealing with the past. Young people in both communities are more open minded to engage in inter-ethnic dialogue and emphasized the need for reconciliation for the sake of a more promising future. Yet, younger generations in both communities have limited knowledge of the facts about the conflict. Their attitudes are largely impacted by the narrative and experience of their families and communities, as well as broader public and ethnic discourse.<sup>78</sup>

#### 4.4 Guarantees of nonrecurrence

As part of transitional justice processes, institutional and political guarantees of nonrecurrence of past war crimes and serious human rights abuses play a vital role in rebuilding trust and restoring relations among groups in conflict. Without a mutually agreed peace settlement, measures to guarantee nonrecurrence of past crimes in Kosovo have taken place through internationally-imposed institutional and political arrangements. The lack of political settlement between Kosovo and Serbia and the absence of a political reconciliation process is directly manifested in citizens perspectives on the willingness and ability of state authorities on both sides of the border to bring justice to the victims and build peace for the future. Among Kosovo Albanian participants there is a wide perception that Serbia first must recognize Kosovo as a sovereign and independent state and then work together in addressing the legacies of the past.<sup>79</sup> Without such a mutual recognition, any effort to resolve other outstanding issues risks failing to succeed. As part of measures to bring justice to past human rights abuses, the question of official apology is brought up as an issue which needs to be sought in the future strategy. For Kosovo Albanian participants, official apology is seen as crucial to dissociating present state institutions from past war crimes and undertake commitments to fight hate speech and remove from public office individuals implicated in past war crimes. However, for them, guarantees of nonrecurrence of past injustice are seen as non-existent as long as in Serbia the ruling elite has direct inheritance with the Milosevic regime, actively endorses and rehabilitates war criminals in public life, and promotes a warmongering discourse towards Kosovo. In particular, the nationalistic and anti-Albanian narrative promoted by Serbian Government and their ministers are seen as blatant examples that Serbia is not ready to deal with the past and offers no guarantee that past crimes and injustices will not reoccur again.<sup>80</sup> Similarly, for Kosovo Serbs the domination of Kosovo's political scenery with former KLA military and political leadership is seen as a blockage to ethnic peace and reconciliation.<sup>81</sup>

Thus, among the Serbian community, there is a reluctance to engage with the past (especially the pre-1999 and war time events) and instead the focus of concerns was on the present situation in Kosovo where the prevailing perception is that "Kosovo Albanians do not recognize the problems of non-majority communities, that they cannot show solidarity with topics of general importance, such as the right to use the language, they ignore the needs of other communities, especially Serbs".<sup>82</sup> Serb participants have highlighted the resentment that they feel rejected by the Kosovo Albanian community while simultaneously have rejected to recognize the experiences and perspectives of Albanians with regard to the past injustice.<sup>83</sup> In particular, there is a perception among Serbs that the Government of Kosovo should do more to address the needs of Serbian community while at the same

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<sup>78</sup> Focus Group 3, 13 August 2020, Kosovo wide. <sup>79</sup> Focus Group 3, 13 August 2020, Kosovo wide. <sup>80</sup> Focus Group 2, 12 August 2020, Prishtina region, Kosovo. <sup>81</sup> Focus Group 8, 17 August 2020, Kosovo wide. <sup>82</sup> Conclusions from Focus Group 6, 07 August 2020, Prishtina region, Kosovo. <sup>83</sup> Focus Group 5, 20 August 2020, Mitrovica region, Kosovo.

time there is a tendency to reject recognising the Government of Kosovo as the legitimate authority in the country.<sup>84</sup> However, they state that divergent views on the status of Kosovo is “the key element that hinders the political leaders of the Kosovo Albanians to treat the problems of the Serbian community more completely and with better quality”.<sup>85</sup> Yet, among Serbs there is also resentment for Belgrade’s control of their political fate in Kosovo, pointing out the intra-ethnic tensions and dynamics that play a key role in preventing reconciliation and truth-telling.<sup>86</sup> For example, in relation to the viability of a future strategy on transitional justice, a Kosovo Serb participant highlighted the fear that “Belgrade would put its paw on the Serbs again and say - you can’t do as the Albanians wrote it. [So]... I am not optimistic about any strategy”.<sup>87</sup>

For other smaller ethnic communities in Kosovo, guarantees of nonrecurrence have different meanings but there is an overwhelming consensus that efforts should focus on improving governance and promoting peace, justice, equality and respect at the state and societal level. An Ashkali participant stated that “we should work with children from a young age, but also with their parents”.<sup>88</sup> Of similar view is a Gorani participant who considers social and linguistic integration crucial for peaceful co-existence among communities.<sup>89</sup> A Roma participant added that, inclusion of all affected communities in transitional justice processes is a crucial approach for ensuring that the past is not forgotten and a different future is built.<sup>90</sup> For them the prevalence of nationalism among the dominant communities in Kosovo represents a threat to their community.<sup>91</sup> A Kosovo Turk participant though had a different view, stating that “if we want to build sustainable peace it’s important to strengthen the local capacities and institutions at all levels in order to address the root causes of instability. We have to set aside our past and to focus on the future all together”.<sup>92</sup>

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<sup>84</sup> Ibid. <sup>85</sup> Ibid. <sup>86</sup> Focus Group 8, 17 August 2020, Kosovo wide. <sup>87</sup> Focus Group 9, 01 September 2020, North Mitrovica, Kosovo.

<sup>88</sup> Interview A, 16 November 2020, Prishtina, Kosovo. <sup>89</sup> Interview D, 19 November 2020, Mitrovica, Kosovo. <sup>90</sup> Interview B, 17 November 2020, Prishtina, Kosovo.

<sup>91</sup> Interview E, 23 November 2020, Gracanica, Kosovo. <sup>92</sup> Interview C, 18 November 2020, Prishtina, Kosovo.

<b>INFRASTRUCTURE FOR DEALING WITH THE PAST IN KOSOVO (I4DWP)<sup>93</sup></b>	
<b>1. Strategic Vision and National Understanding on DwP</b>	Considerations
Core: Principles <sup>94</sup> and ethics for TJ/DwP in Kosovo, promoting three elements:	*Ensure wide popular and political engagement + ownership for legitimacy and consensus among all segments of society
1) Primacy of victim-centred and survivor-centred approaches	
2) Greater gender equality and sensitivity	
3) De-ethnicization, depoliticization and de-personalisation of TJ/DwP initiatives	
To be developed through wide consultative and inclusive process involving all segments of society	
<b>2. Collective Repository of knowledge and data on TJ/DwP in Kosovo</b>	Considerations
Core: centralized, interactive, and accessible knowledge base on transitional justice in Kosovo, with these functions:	*available to all citizens and affected communities in all official languages in Kosovo *management by an adequate and politically independent authority
- Documenting the work of existing mechanisms and initiatives, incl: laws, reports and data of state institutions, court cases, studies by think-tanks, NGOs and academic community, oral histories, stories from citizens, and other content that captures the experiences of all ethnic groups in Kosovo	
- Informing policy making by publicly available data and knowledge	
- Publicly accessible and understandable to all citizens to obtain information on all TJ matters	
To be managed by adequate and politically independent authority.	
<b>3. Bottom-up and victims-centred National Strategy for DwP/TJ</b>	Considerations
Core: Strategic vision and comprehensive framework for coordination, harmonisation and long-term view for institutions and non-governmental organisations.	*requires <b>transformative participation</b> of affected communities through direct involvement in all stages of the process
Important for this to be designed deliberative; this means that the needs and interests of all affected citizens (incl. victims, survivors, veterans, women, youth) are put at the centre of decision making before policies and mechanisms are being designed. This way, culturally appropriate and context specific initiatives can be developed	
Need to be domestically driven: no capture by international institutions or 'external templates	
<b>4. Institutional Infrastructure for DwP</b>	Considerations
Core: Umbrella infrastructure for coordination of institutional and non-governmental initiatives and resources that promote TJ. Functions:	*management by an adequate and politically independent authority *transparent *open to public
- Information sharing and regular consultative meetings;	
- Support interactive, cooperative and deliberative problem-solving to specific TJ issues;	
- Provide a space for affected communities to channel their needs, lobby for their rights and interests;	
- Offer advisory services and consultation for the affected communities and relevant stakeholders;	
- Monitor the compliance with the TJ principles and implementation of the national strategy on TJ by diverse stakeholders;	
- Serve as a platform for production, documentation and sharing of knowledge on TJ;	
- Connect TJ processes with peacebuilding and development activities to promote peace, justice, and a common future.	

<sup>93</sup> Graphic summary of the report 'Democratizing Transitional Justice: Towards a Deliberative Infrastructure for Dealing with the Past in Kosovo', May 2020, by same authors.

<sup>94</sup> There is an ongoing initiative by Kosovo civil society that aims to develop principles "that will inform and guide political and public actors on how to engage with victims, survivors, painful pasts and historical narratives" and aims "to prevent harmful discourse and actions related to the legacy of the conflict": 'Principles on Dealing with the Past for the Kosovo Context', internal draft document, November 2020.



## MAIN ELEMENTS OF A NATIONAL STRATEGY FOR DWP/TJ IN KOSOVO

[Note: this overview is based on findings in this study; a more comprehensive consultation could find additional needs among the affected communities]

Pillar	Issue(s)	What
<b>Truth seeking</b>	<ul style="list-style-type: none"> <li>- Truth is perceived differently among each ethnic group; all are predisposed to push for mono-ethnic truth seeking, commemoration, and documentation of the past;</li> <li>- Huge lack of reliable data on pre-war, war- and post-war crimes/ serious human rights abuses;</li> <li>- Disregard/ exclusion of experiences and needs of other minorities;</li> <li>- Very little empathy and understanding of one another's perspectives and experiences of the conflict.</li> </ul>	<ul style="list-style-type: none"> <li>- Truth and documentation about pre-war and war-time crimes and other serious human rights abuses;</li> <li>- Truth and documentation about post-war and recent serious crimes;</li> <li>- Truth about missing persons;</li> <li>- Deconstruction of dominant (one-sided/ ethno-national) narratives and education on factual data the conflict through narratives, archives, museums about the war, and history school books.</li> </ul>
<b>War crimes trials</b>	<ul style="list-style-type: none"> <li>- Generally considered important for DWP, but overall negative perception of war crimes courts and trials on Kosovo;</li> <li>- Perception that 'own ethnic group' is selectively targeted;</li> <li>- Dissatisfaction that only high ranking individuals are prosecuted while many alleged perpetrators remain free.</li> </ul>	<ul style="list-style-type: none"> <li>- Justice for pre-war and war-time crimes;</li> <li>- Justice for post-war and recent serious crimes.</li> </ul>
<b>Reparations/ compensation and support</b>	<ul style="list-style-type: none"> <li>- Many socio-economic injustices related to the war-time have not been addressed; eg: pension contributions in Serb system not returned to elderly K-Albanians;</li> <li>- Lack or limited compensation/ support by Kosovo government to affected communities – apart from veterans.</li> </ul>	<ul style="list-style-type: none"> <li>- Need for reparations and compensation from Serbia for war-time damages;</li> <li>- Psychosocial, rehabilitation and financial/ support for all affected communities (incl. for survivors of sexual-based violence);</li> <li>- Assistance and capacity building for those who assist, live with, and support directly or indirectly affected communities + second-generation (youth).</li> </ul>
<b>Guarantees of non-recurrence</b>	<ul style="list-style-type: none"> <li>- Lack of peace agreement between Serbia and Kosovo and non-recognition of Serbia of Kosovo is huge stumbling block for the dominant communities in Kosovo to live peacefully;</li> <li>- Political scenes in Serbia and Kosovo dominated by war-time fighters/ politicians; perpetuating one-sided ethno-nationalist narratives.</li> </ul>	<ul style="list-style-type: none"> <li>- Official apology from Serbia (domination and rehabilitation of Milosevic-regime politicians in Serbia harmful to peace and justice prospects);</li> <li>- Domination KLA-associated politicians in Kosovo harmful to peace and justice prospects;</li> <li>- Improving governance and promoting peace, justice, equality and respect at the state and societal level;</li> <li>- Protection of minority rights.</li> </ul>

## 5. Conclusions and recommendations

This study offered an overview of citizens' perspectives on what should be the guiding principles and thematic focus of a future strategy on transitional justice in Kosovo. Drawing on the observations from all focus group discussions and individual conversations, this concluding section offers five recommendations which could be useful to all those involved in devising a future strategy. Overall, citizens of Kosovo expect that the Government of Kosovo should take a comprehensive and victim and survivor-centred approach when devising a national strategy on transitional justice in the future. A future comprehensive approach is more likely to succeed if it enjoys procedural legitimacy among the beneficiary communities, namely it is designed through a participatory and citizen-centred process, which ensures local ownership and inclusion in the entire transitional justice process. Victims associations should be included to ensure wider participation in this process, but there should also be direct involvement of victims and their family members who have less opportunities to express their needs. Similarly, civil society organizations in Kosovo can launch a campaign to promote such an approach and from the ground-up build political and multi-ethnic consensus on the principles, purpose, scope, and functions of the future strategy on transitional justice.

**Recommendation 1:** *A future strategy on transitional justice must take place through a bottom-up process, where all the affected communities are closely consulted and involved in determining their needs, in offering the space and support for contributing to the design of institutional and practical modalities in fulfilling their needs, and are closely and regularly consulted during the implementation and evaluation stage.*

Citizens have highlighted that a future strategy should have a comprehensive approach, which brings together and integrates different pillars of transitional justice to ensure that the needs of affected communities are addressed in a holistic and inclusive manner. While comprehensiveness and inclusivity are crucial to ensuring that an eventual strategy addresses the needs of all affected communities and thus enjoys wide local legitimacy, the prevalence of identity-based perceptions about the conflict and its legacies can be a major obstacle in itself for moving forward. Yet, a major challenge remains how to ensure that truth, justice, and reconciliation are promoted simultaneously and comprehensively taking into account divergent views and positions of ethnic communities. In particular, comprehensiveness should not be mistaken with balance of guilt or responsibility for past wrongdoings. On the contrary, the future strategy should serve as a platform for many sides of truth to come forth, the justice is brought to the victims in a non-selective and non-ethnic basis, and that entitlements are distributed in a just, fair, and inclusive process.

**Recommendation 2:** *A future strategy must have a comprehensive approach, thus assembling together and integrating different pillars of transitional justice so that the needs of affected communities are addressed in a holistic and inclusive manner.*

Among all participants there is reluctance that regardless how well a future strategy on transitional justice is written, it could fail to be implemented in practice.<sup>95</sup> This springs from a limited trust in the governmental bodies in general and in particular in enforcing laws and policies. To address this concern there is a need for an institutional mech-

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<sup>95</sup> Focus Group 5, 20 August 2020, Mitrovica region, Kosovo.

anism which brings together existing international and national war crimes prosecution strategies, the laws and mechanisms on missing persons, social assistance to different affected communities, and research, documentation and commemoration. Moreover, the likelihood of a future strategy to succeed depends on a nation-wide consensus on the importance of prioritizing policy-making and implementation on transitional justice, which entails political will among all political parties, ethnic groups, civil society groups and associations representing affected communities, as well as international missions and donors in Kosovo.

**Recommendation 3:** *A future strategy must envisage an institutional infrastructure for dealing with the past in Kosovo, which would coordinate, monitor, and support existing and future sector-specific laws, strategy, policies and mechanisms on different pillars of transitional justice and dealing with the past.*

General knowledge among participants about the work of international, hybrid and national war crimes courts appears to be limited. Public knowledge on war crimes is dominated by online media and televisions as well as a handful protagonists and opinion-makers. There is a need to move the public discourse from speculative and loaded jargon to more evidence-based, accurate and balanced reporting on transitional justice. State institutions and judicial bodies need to work closely with the civil society community and media to promote accurate and fact-based reporting on war crimes trials to tackle the derogatory and negative framing of transitional justice processes in Kosovo. In particular, there is a pressing need to design educational and outreach programmes which enhance the general public's knowledge on transitional justice. Civil society seminars, workshops, lectures of participants from different communities seem to have had a positive impact in the past, therefore, promoting more cooperation, especially among youth, could benefit largely transitional justice processes. Oral history interviews and gathering of personal stories could also contribute towards documenting the past.

**Recommendation 4:** *A future strategy must envisage educational and informative programmes that could be implemented in conjunction with public schools, media and civil society groups to raise public awareness on the importance of dealing with the past in Kosovo, addressing legacies of the war, and delivering justice to the victims.*

Finally, resolving the issue of war reparation and guarantees of nonrecurrence in the future will most likely depend on an eventual agreement for normalization of relations between Serbia and Kosovo. While a future strategy on transitional justice is likely to experience many obstacles, it is the only pathway to ensure that the past is not avoided and that a measure of justice is served to all affected communities, the truth comes forth, and that younger generations are not held hostage of the past, but move towards a more justice and peaceful society. Pending such an outcome, there are grounds for authorities and civil society groups in Kosovo with the assistance of the EU and other donors to work together in mapping out and bring together evidence facts of the true human, material, and socio-economic cost of the conflict and damages caused to all ethnic groups in Kosovo. There is also pressing need to verify and come to a common agreement on the figures of conflict-related causalities, victims and other affected by the conflict. Similarly, confidence-building measures and institutional assurances on both sides are essential to demonstrate affirmatively the commitment to peacebuilding, co-existence, and moving forward.

**Recommendation 5:** *The EU-facilitated dialogue for normalization of relations between Serbia and Kosovo must address the pressing and outstanding issues for dealing with the past and an eventual agreement should take into account the needs and perspectives of all affected communities.*

In conclusion, the case for a comprehensive approach for transitional justice and dealing with the past is strong and only through a bottom-up, citizen-centred, and inclusive process a future strategy and institutional action is likely to enjoy wide public legitimacy and make an impact in closing the chapters of the past and opening new ones hopefully for a better future.

## 6. Annexes

### 6.1 Kosovo Legal Framework for Dealing with the Past and Transitional Justice in Kosovo

Law no. 04/L-172 on Amending and Supplementing the Law no 04/L-054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Sexual Violence Victims of the War, Civilian Victims and their families.  
[<https://gzk.rks-gov.net/ActDetail.aspx?ActID=9436>].

Law no. 04/L-023 on Missing Persons.  
[<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2765>].

Law no. 06/L-054 on Courts.  
[<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18302>].

Law no. 03/L-052 on The Special Prosecution Office of the Republic of Kosovo:  
[<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2526>].

Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office.  
[<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=11036/>].

Law no. 04/L-015 on Witness Protection.  
[<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2758>].

Law no. 04/L-31 on International Legal Cooperation in Criminal Matters.  
[<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2769>].

Code no. 06/L-074 Criminal Code of the Republic of Kosovo.  
[<https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>].

Law no. 06/L-091 on Amending and supplementing the Criminal Procedure.  
[<https://gzk.rks-gov.net/ActDetail.aspx?ActID=20500>].

Law no. 05/L-060 on Forensic Medicine.  
[<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=12325>].

Law no. 03/L-178 on Classification of Information and Security Clearances.  
[<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2690>].

Low no. 05/L -021on the Protection from Discrimination.  
[<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=10924>].

Law no. 03/L-053 on the Jurisdiction, Case Selection, and Case Allocation of EULEX Judges and Prosecutors in Kosovo.  
[<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2527>].

Law no. 03/L-040 on Local Self Governance.  
[<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2530>].

Law no. 02/L-37 on the Use of Languages.  
[<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2440>].

Law no. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo.  
[<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2531>].

Law no. 03/L-068 on Education in the Municipalities of the Republic of Kosovo.  
[<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2543>].

Law no. 03/L-95 on the Rights of Former Politically Convicted and Persecuted.  
[<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2738>].

Law no. 06/L-059 on the Memorial Complex Adem Jashari in Prekaz.  
[<https://gzk.rks-gov.net/ActDetail.aspx?ActID=18130>].

Law no. 06/L-073 on the Status of Albanian Education Employees of the Republic of Kosovo from Academic Year 1990/91 up to the Academic Year 1998/99.  
[<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18857>].

Law no. 04/L-146 on Agency for the Management of Memorial Complexes in Kosovo.  
[<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=8657>].

Law no. 04/L-174 on Spatial Planning.  
[<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=8865>].

Law no. 05/L-010 on Kosovo Property Comparison and Verification Agency.  
[<https://gzk.rks-gov.net/ActDetail.aspx?ActID=13023>].

Law no. 04/L -261 on Kosovo Liberation Army War Veterans.  
[<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=9435>].

## 6.2 List of Focus Group Discussions and Interviews

No.	Category	Number of Participants	Date	Location	Method
Focus Group 1	Women (Kosovo Albanian)	14	11.08.2020.	Prishtina region	Online (via Zoom)
Focus Group 2	Youth (Albanian community)	14	12.08.2020.	Prishtina region	Online (via Zoom)
Focus Group 3	Missing persons family members (Albanian community)	13	13.08.2020.	Kosovo wide	Online (via Zoom)
Focus Group 4	Mixed group (Albanian community)	17	17.08.2020.	Peja region	In person
Focus Group 5	Mixed group (Albanian community)	15	20.08.2020.	Mitrovica region	In person
Focus Group 6	Women (Serbian community)	15	07.08.2020.	Prishtina region	Online (via Zoom)
Focus Group 7	Mixed group (Serbian community)	15	12.08.2020.	Gjilan region	Online (via Zoom)
Focus Group 8	Youth (Serbian community)	15	17.08.2020.	Kosov wide	Online (via Zoom)
Focus Group 9	Mixed group (Serbian community)	15	01.09.2020.	North Mitrovica	Online (via Zoom)
Focus Group 10	Mixed group (Serbian community)	15	02.09.2020.	Kosovo wide	Online (via Zoom)

Code	Category	Date	Location	Method
Interview A	Ashkali civil society activist	16.11.2020.	Prishtina	Online (via Zoom)
Interview B	Roma civil society activist	17.11.2020.	Gjakove	Online (via Zoom)
Interview C	Turkish civil society activist	18.11.2020.	Prizren	Phone
Interview D	Gorani civil society activist	19.11.2020.	Mitrovica	In person
Interview E	Roma civil society activist	23.11.2020.	Gracanica	Email
Interview F	Bosniak civil society activist	24.11.2020.	Mitrovica	In person







December  
2020

**PAX** inTegra

