

Transitional Justice Strategy for Bosnia and Herzegovina: an overview

Dr Goran Šimić looks at the recently adopted Transitional Justice Strategy for Bosnia and Herzegovina. The strategy is a comprehensive framework for dealing with the legacy of human rights violations and war crimes, to build the foundations of a peaceful future.



Ethnic and conflicting interpretations of the legacy of human rights violations and war crimes that happened from 1992 – 1995 continue to burden political development in Bosnia and Herzegovina (BiH), poisoning at the same time inter-ethnic relations between Bosnian communities.

Understanding that dealing with the past is a key precondition for conflict prevention and the creation of the stable future for the country, the government of BiH has started the process of creating a state-level Transitional Justice Strategy.

The purpose of the Strategy is to form a sustainable platform for establishing facts about the past, providing redress for injustice and war related trauma, protecting individual and collective memory, reforming and regaining trust in institutions. All together the goal is to develop a “never again” mentality and conflict prevention.

A guiding principle in creation of the Strategy **was openness for active participation of all interested citizens**, civil society and institutions from all levels of governance, through an open and inclusive consultation process.

The goal of the Strategy is to develop a “never again” mentality and conflict prevention.

The Strategy covers non-judicial transitional justice mechanisms - truth seeking and truth telling, reparations, memorialization and institutional reforms. Together with related strategies - such as the War Crimes Strategy, the Gender Action Plan, and the Dayton Agreement - the Strategy represents a comprehensive plan to combat impunity, provide redress for injustice, establish facts about the past, regain trust of citizens towards institutions and deter future human rights violations.

Recommendations provided in the Transitional Justice Strategy are based on an analysis of transitional justice development in BiH, comparative practice, domestic legislation, international obligations and standards, as well as conclusions from consultations.

1. Truth seeking and truth telling

In this section, the Strategy defines solutions regarding pressing issues such as solving the fate of the missing persons, forming an investigative institutional mechanism for establishing facts about the past or establishing a credible database of victims of human rights violations and war crimes. At the end, the Strategy recognizes efforts of civil society in this field, and suggests measures for institutionalization of their activities and creation of coalition of civil society organisations for the purposes of advocacy work and continuing the dialogue process.

Solving the fate of missing persons

The Strategy recommends various activities that will contribute to **speeding up the process of solving the fate of the missing persons**, but which will also contribute to improving the status of the family of the missing persons

Some of the proposed activities are signing bilateral or multilateral agreements with neighbouring states, amending the Law on Missing Persons - particularly in relation to functioning of the Missing Persons Fund, institutional obligation to provide information on missing persons, method of exchange of information, and prevalence in application of the Law on Missing Persons - and amending internal regulations of the Missing Persons Institute (MPI) which will contribute to smoother functioning of the MPI.

A set of specific activities in this area relates to criminal justice, more precisely on amending of the BiH Criminal Procedure Code. For example conditioning plea bargaining with disclosing information about the missing persons and securing testifying of indicted in other process. The Strategy also recommends amending the BiH Criminal Code with the purpose of prescribing enforced disappearance as an independent criminal act. At the end, the Strategy calls on providing support and building capacity of families of the missing persons and missing persons' associations.

Investigative institutional mechanism for establishing facts about the past

The Strategy recommends **establishing an investigative institutional mechanism for establishing facts about the past**, but leaves exactly how it

should function, powers it has, or its mandate, open for further consultation. However, participants in consultations for the creation of the S reached consensus that the future investigative body needs to:

- establish facts about the past and provide full descriptions of human rights violations;
- give findings on social, cultural, political and historical causes which led to human rights violations and their consequences;
- establish pattern of crimes;
- establish findings on institutional responsibility;
- establish a credible register on killed people;
- create a platform for public hearings of the victims and other participants in the conflict; and
- publish a public report with recommendations for reparations, memorialization, and institutional reforms.

2. Reparations

When looking at the issue of reparations, the Strategy had two distinct approaches:

- **Victims centred approach** through activities that consider recognition of victims' suffering, regaining of their dignity and re-socialization through redress for past injustice; and
- **Development approach** embodied in providing measures for the creation of new legislation, or amending existing laws, establishment of new institutions and building capacity of the current institutions which are mandated to provide services to victims but, also, to people in need in general.

The Strategy, in **this segment, deals particularly with compensations and rehabilitation** - psychosocial support, employment and organising socio-cultural and sport activities. Similar to the truth seeking and truth telling part, the Strategy recognizes efforts of civil society in this field and also suggests measures for institutionalization of their programs, the creation of a coalition of civil society organisations which are active in the area and defines recommendations in relation to providing support for the implementation of activities of this kind.

Compensations

By supporting the adoption of the Framework Law on Victims of Torture and Civilian Victims of War, **the Strategy tries to overcome existing discriminatory practices, and lack of sustainability**, embodied in different legislative approaches to civilian victims of war and war veterans

The proposed law, which is in line with recommendations of different human rights bodies, defines crucial notions such as civilian victims of war or victims of torture. It also outlines basic rights that victims should enjoy, as well how these rights should be attained.

Rehabilitation

In terms of rehabilitation, the Strategy develops measures regarding:

- **Psychosocial support to victims and people in need** through creating a sustainable referral system and strengthening existing institutions mandated to provide services of this kind, as well as amendment of relevant laws and policies;
- **Employment of victims and disabled people** for the purpose of achieving their economic independence and self-sufficiency;
- Creating programs for **psychological strengthening and re-socialization of victims and disabled people** through their inclusion in various social, cultural and sport activities.

A very important measure here is connecting a recommended referral system with existing mechanisms for providing psychosocial support to victims and witnesses in (pre)judicial activities and processes.

3. Memorialization

The Strategy **recommends a creative approach regarding protection of individual and collective memory**. Namely, it proposes creation of “[sites of conscience](#)”, through which emotional and pedagogical aspects of memorials will be secured and strengthened.

The key objectives of the proposed approach are citizens’ participation, pluralism of ideas, protection of democratic values, and fostering culture of dialogue for the purpose of developing societal, institutional and legislative potential for human rights protection, as well as for conflict prevention.

However, in order to define an appropriate approach for BiH the Strategy proposes initiating an open and inclusive consultation process to get recommendations on how to organize such projects. At the end, the Strategy recognizes the efforts of civil society in this field and suggests measures for institutionalization of their programs.

4. Institutional reforms

With the purpose of regaining trust towards institutions and conflict prevention, the Strategy **defines solutions which refer to vetting public officials and broad institutional transformation**.

In terms of vetting, the Strategy calls for adoption of specific framework legislation that would regulate standards and approaches to the whole screening process. However, the Strategy defines neither the scope of vetting

nor institutions where this administrative process should be organized, but instead calls for initiating an open and inclusive consultation process.

When it comes to broad institutional transformation, the Strategy specifically provides measures for:

- **Building accountability of institutions** through redeveloping internal and external monitoring mechanisms and census and identification;
- **Institutional independence**; and
- **Building institutions which will be responsive to citizens' needs.**

The Strategy develops recommendations in respect of application process, the relationship between relevant institutions and BiH Ombudsman (or others) which, according to the Strategy, should *ex officio* monitor their work, then institutional codes of conduct as well as civil servants' training programs for the purpose of providing service in more professional way. The Strategy also proposes measures for providing information to citizens on civil servants which also citizens to deliver their opinion on civil servants' professional and moral suitability for implementing institutional mandate. In order to create more responsive institutions, the Strategy recommends creation of a coalition of civil society organisations which would monitor functioning of institutions and vetting process, but also build closer relations between institutions and citizens.