

# Transitional Justice as Recognition: An Analysis of the Women's Court in Sarajevo

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## ABSTRACT<sup>1</sup>

In May 2015, a women's court was held in Sarajevo over a four-day period. It was the first such court on European soil in over 40 years and reflected a growing awareness within the former Yugoslavia of the limitations of international and national criminal trials. I attended the Women's Court, and this article draws on both my experiences as a participant observer and my interviews with some of the organizers and witnesses. Although it is too soon to know whether the Court will produce any substantive results or have any lasting impact, I offer an early analysis. While the organizers of the Court theorized it as feminist justice, I regard feminist justice as part of what Frank Haldemann terms 'justice as recognition.' Analyzing and assessing the Court within this conceptual framework, I argue that it successfully delivered justice as recognition at a symbolic level. The challenge now is to translate this symbolic justice as recognition into a more tangible and practical form.

**KEYWORDS:** Women's Court, former Yugoslavia, justice as recognition, feminist justice, holistic approach

## INTRODUCTION

In *The Memoirs of Sherlock Holmes*, Sir Arthur Conan Doyle wrote that, 'It is every man's business to see justice done.'<sup>2</sup> These words take on a particular resonance in postconflict societies torn apart by violence and bloodshed. The international community insists on justice; the incoming regime promises justice; victims demand justice. In lieu of much-needed debates pertaining to the multiperspectival meanings of, and possibilities for achieving, justice in such societies, however, 'justice' is most often viewed through a narrow judicial lens and reduced to the holding of criminal trials. While few would disagree that 'individuals who play a prominent role during wartime must be held accountable for their actions and what they bring about,'<sup>3</sup> the

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- 2 See, [http://www.pagebypagebooks.Arthur\\_Conan\\_Doyle/Memoirs\\_of\\_Sherlock\\_Holmes/Adventure\\_VII\\_The\\_Crooked\\_Man\\_p10.html](http://www.pagebypagebooks.Arthur_Conan_Doyle/Memoirs_of_Sherlock_Holmes/Adventure_VII_The_Crooked_Man_p10.html) (accessed 2 June 2015).
- 3 Brian Orend, 'Justice after War,' *Ethics and International Affairs* 16(1) (2002): 53.

importance of criminal justice should not detract from diverse complementary forms of justice – such as restorative, reparative and socioeconomic. Rather than understanding transitional justice as ‘characterized by legal responses to confront the wrongdoings of repressive predecessor regimes,’<sup>4</sup> it is more helpful to conceptualize it as a ‘toolbox’ containing multiple elements and parts.<sup>5</sup> That the latter can be used and combined in different ways highlights the fact that transitional justice represents ‘an ongoing experiment.’<sup>6</sup> Dealing with a legacy of human rights abuses and war crimes requires creativity and innovation, as part of a holistic approach that extends beyond criminal trials and dispensing formalized criminal justice.

This article focuses on a recent example of such creativity and innovation within the former Yugoslavia. In May 2015, a women’s court – the first in Europe for nearly 40 years – was held in Sarajevo in Bosnia and Herzegovina (BiH). The culmination of five years of hard work, extensive organization and tireless commitment on the part of more than 200 nongovernmental organizations (NGOs) across the former Yugoslavia, the Women’s Court reflected a growing awareness of the limitations of criminal trials, both at the International Criminal Tribunal for the former Yugoslavia (ICTY) and in national courts. The aim of the Women’s Court – which involved neither perpetrators nor judges – was precisely to offer something different. Approaching justice through a feminist rather than a legal lens, the Court sought to create a safe space that would empower women from across the former Yugoslavia to tell their stories of suffering, courage and resistance. In the words of Staša Zajović, the co-founder and coordinator of the Women in Black in Belgrade, ‘women are not only a source of information, but agents and interpreters of history.’<sup>7</sup> I attended the Court and this article constitutes an early analysis of this recent experiment in transitional justice.

It is too soon to know whether the Women’s Court will lead to any concrete results and positive change. How, then, are we to assess the Court? I begin by reflecting on the importance of justice. Hence, a logical starting point might be to ask whether the Women’s Court delivered justice, specifically to the 36 women who told their stories. Yet such a question is too broad and abstract, unless the meaning of ‘justice’ is more clearly specified. I accordingly take as my theoretical starting point Frank Haldemann’s concept of *justice as recognition*, ‘the kind of justice that is involved in giving due recognition to the pain and humiliation experienced by victims of collective violence.’<sup>8</sup> Analyzing the Women’s Court within this conceptual framework, I argue that it successfully delivered justice as recognition. As the latter is largely symbolic, however, the challenge now is to turn this recognition into a more practical and substantive form.

4 Ruti Teitel, ‘Transitional Justice Genealogy,’ *Harvard Human Rights Journal* 16 (2003): 69.

5 Katherine Franke, ‘Gendered Subjects of Transitional Justice,’ *Columbia Journal of Gender and Law* 15(3) (2006): 813–828.

6 *Ibid.*, 825.

7 Staša Zajović, ‘The Women’s Court: A Feminist Approach to Justice – Review of the Process of Organizing the Women’s Court,’ in *Women’s Court: About the Process*, ed. Staša Zajović (Belgrade: Women in Black, 2015), 40.

8 Frank Haldemann, ‘Another Kind of Justice: Transitional Justice as Recognition,’ *Cornell International Law Journal* 41(2) (2008): 678.

The article is divided into three sections. The first sets out the notion of justice as recognition and explores its utility, particularly as a counterbalance to the perpetrator-centric focus of criminal courts. While arguing that the concepts of justice as recognition and feminist justice closely overlap, both sharing the same normative starting point, it also seeks to demonstrate that the former has certain strengths over the latter, making it an appropriate framework within which to analyze the Women's Court. The second, more empirical, section examines whether and how the Women's Court provided justice as recognition. The third section discusses possible ways of further building on the Court's work and developing its legacy.

This article draws heavily on my personal observations and experience of attending the Women's Court. Semi-structured interviews with 14 individuals who were involved in the Women's Court process further inform this research. In Belgrade, the three interviewees were all from the Women in Black. In Zagreb, I interviewed a member of the Judicial Council of the Women's Court, a human rights activist who led the Women's Court process in Croatia and a psychologist–psychotherapist who worked closely with the women who testified at the Court. In Zagreb, I additionally interviewed a potential witness at the Women's Court and two actual witnesses. In Tivat in Montenegro, during a four-day evaluation of the Women's Court, I interviewed a further three witnesses (from BiH, Croatia and Slovenia, respectively). Finally, a Bosnian Muslim woman who spoke at the Court about her experience of being raped during the Bosnian war, and a Macedonian woman (also raped during the Bosnian war) who attended the Women's Court, shared with me their views of the Court.

## DIMENSIONS OF JUSTICE

### Three Vignettes and the Limitations of Criminal Justice

I recently spent a year in BiH researching the long-term consequences of the mass rapes committed during the 1992–1995 Bosnian war.<sup>9</sup> While rape survivors consistently emphasized the need for perpetrators to be held accountable and punished, their stories also highlighted the *limitations* of criminal justice – and it is precisely these limitations that furnished an important rationale for the Women's Court.

X was raped in a camp in Konjic municipality during the Bosnian war. She was in her 40s. She has testified at the ICTY on two occasions. The man who raped her was convicted of grave breaches of the Geneva Conventions and sentenced to 18 years' imprisonment. Today, she lives alone in a small flat in Republika Srpska, having previously spent eight years in a collective centre. She takes tablets to help her sleep and always leaves the light on at night. Her back constantly hurts, which she attributes to sleeping on the floor in the camp. She would like to be able to go to a spa but her monthly pension is just 240 Bosnian marks (approximately £85). A year after her rapist was granted early release, he called her and threatened to rape her again. Bosnian police confirmed that the call came from her assailant. The latter was

9 Between August 2014 and September 2015, as part of a Leverhulme Research Fellowship, I interviewed 79 survivors (men and women) of war rape and sexual violence in BiH. The Humanities and Social Sciences Ethical Review Committee at the University of Birmingham granted full ethical approval for this research on 28 July 2014.

questioned but no action was taken. X described her life as no longer having any purpose. She feels forgotten.<sup>10</sup>

Y was raped in 1993 by a neighbour in central BiH who had joined the Croatian Defence Council. She was 26 years old. Her rapist stood trial in Sarajevo and received a nine-year sentence, later reduced to eight years. She has had numerous gynaecological problems and cervical cancer. Her husband left her after she had a hysterectomy. He started to change towards her after she told him that she had been raped. Her war trauma never fades and is always with her. She cries frequently, cannot sleep and is depressed. She no longer has any desire to fight for herself and worries that her trauma has affected her children. The fact that she has a job keeps her sane. She feels humiliated, as though she has 'raped woman' written across her forehead, and takes several showers a day because she feels dirty.<sup>11</sup>

Z was effectively imprisoned in her own home in Herzegovina for a month in 1992 and raped. She was in her mid-30s. She testified against one of the perpetrators in Sarajevo in 2008. He got a nine-year sentence. The second man who raped her is still free. She feels that the court forgot about her after she gave her testimony. She relocated to another part of BiH in 1995, following the signing of the Dayton Peace Accords, but does not feel at home there. She misses the mountains where she grew up. She lives alone and no longer feels any sense of security. She is distrustful of men and needs tablets to sleep. She is not the same person that she was before she was raped. She used to laugh all the time.<sup>12</sup>

All three women have received some degree of legal justice through the courts. What is clear, however, is that criminal justice alone is seldom enough. Indeed, three particularly salient points stand out from the above vignettes in this regard. The first is that crime, and not just the crime of war rape, has major 'ripple effects.'<sup>13</sup> This term is most commonly utilized to convey the fact that crime impacts horizontally on individuals close to the victim and on the wider community. However, it is also appropriate to use the term in a more vertical and temporal way, in recognition of the reality that the commission of a crime – and in particular highly intimate crimes such as rape and sexual violence<sup>14</sup> – often continues to impact on the victim's life many years later. In other words, the injustice committed against the victim is not a one-time event but rather an unfolding and multilayered process. This is the context in which the work of criminal courts, whether international or local, should be critiqued and assessed. As Tazreena Sajjad remarks, 'Ultimately, seeking justice in courts of law does not overcome many of the socio-political circumstances that

10 Personal interview, rape survivor, Višegrad, BiH, 9 October 2014.

11 Personal interview, rape survivor, Vitez, BiH, 5 February 2015.

12 Personal interview, rape survivor, Trebinje, BiH, 23 April 2015.

13 South West Scotland Community Justice Authority, 'The Ripple Effect: A Victim Awareness Toolkit', <http://www.swsca.org.uk/the-ripple-effect.html> (accessed 13 September 2015).

14 I use the terms 'rape' and 'sexual violence' consistent with the definitions provided in the Elements of Crimes of the Rome Statute (specifically arts. 7(1)(g)-1, 7(1)(g)-6, 8(2)(b)(xxii)-1 and 8(2)(b)(xxii)-6). See, <http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf> (accessed 13 September 2015).

define the realities of survivors.’<sup>15</sup> Criminal trials, in other words, are only one of the multiple fabrics constituting the complex mosaic of justice.

The second point is that all three women talked about the affective legacy of the crimes committed against them. They expressed feelings of insecurity, humiliation and uncleanness, drawing attention to the fact that the perpetration of a crime is not only about facts and details. It is also about the intangibles of sentiments and emotions. How did the crime make the victim feel? How did it impact on his/her self-image and views of others? The criminal trial process, concerned with establishing the hard facts, affords little space for victims to express these responses. They must tell their stories in a way that enables the court to ascertain a perpetrator’s guilt or innocence, rather than in a way that reflects their own needs. As Katherine Franke argues, ‘The translation of human suffering into the language of law and rights will always satisfy the interests of legal authorities more than those who are called to narrate their pain.’<sup>16</sup>

Thirdly, more than 20 years on, it seems that X, Y and Z are still trapped in the role of victims. Feeling helpless, alone and abandoned, they continue to view themselves as such. An important factor that has arguably contributed to this victimological entrenchment is the women’s experiences of the criminal justice process. Not only did they express a sense of having been forgotten by the legal institutions from which they expected justice, but they told their stories in court as victim-witnesses. In different ways, X, Y and Z all evince remarkable courage and strength. They are not simply victims of rape but women who have *survived* rape and who, despite all the challenges and obstacles, are trying to live their lives. Within the restrictive confines of the criminal trial process, however, victim-witnesses are simply there to recount the crimes committed against them. There are thus few opportunities for them to become cognizant of their own resilience and fortitude. Fundamentally, criminal justice procedures ‘tend to entrench the war meta-narrative, which in turn provides a gendered script in which women’s many different experiences are neglected and muted into a scripted position as “women-as-victims”’.<sup>17</sup>

The limitations of criminal trials are such that, notwithstanding their importance in postconflict societies, we should not overrely on them. Dealing with the legacy of the past necessarily demands a more diversified and holistic approach.<sup>18</sup> The remainder of this section focuses on the concept of justice as recognition, maintaining that this is a vital complement to legal justice – and hence a valuable starting point for theorizing and developing a more comprehensive approach to justice.

15 Tazreena Sajjad, ‘Rape on Trial: Promises of International Jurisprudence, Perils of Retributive Justice, and the Realities of Impunity,’ in *Rape: Weapon of War and Genocide*, ed. Carol Rittner and John Roth (St. Paul, MN: Paragon House, 2012), 75.

16 Franke, *supra* n 5 at 821.

17 Annika Björkdahl and Johanna Mannergren Selimović, ‘Gendering Agency in Transitional Justice,’ *Security Dialogue* 46(2) (2015): 172.

18 Alexander Boraine, ‘Transitional Justice: A Holistic Interpretation,’ *Journal of International Affairs* 60(1) (2006): 17–27; Wendy Lambourne, ‘Transitional Justice and Peacebuilding after Mass Violence,’ *International Journal of Transitional Justice* 3(1) (2009): 28–48; Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge: Polity Press, 2002).

### Conceptualizing Justice as Recognition

Atrocities and war crimes generate powerful calls for justice. According to Judith Shklar, however, ‘One misses a great deal by looking only at justice,’<sup>19</sup> and we may lose sight of the very entity that gave rise to calls for justice – namely injustice. More specifically, a macro approach to justice, through a focus on holding war criminals accountable, can easily eclipse the micro dimensions of injustice. Within a normative framework of ‘no impunity,’ we demand that perpetrators face justice. But what about the survivors and the families of the dead? How much do we think about the injustice done to them and what it actually means in the context of their everyday postwar lives? Hence, it is the notion of injustice that lies at the heart of Haldemann’s theorization of justice as recognition. Concretely, the latter has its conceptual origins in the idea of negative morality (as developed in the work of Alex Honneth and Avishai Margalit),<sup>20</sup> according to which ‘the primary goal of politics is to give a voice to the victimized and marginalized, to see and respond to their experiences of suffering and cruelty.’<sup>21</sup> Underscoring the crucial relationship between justice as recognition and negative morality, the core of Haldemann’s argument is that:

If we think of the most extreme and radical forms of evil – genocides, massacres, mass rape and death camps – as efforts to undermine the very idea of shared humanity (the foundation of morality itself), then it seems adequate to put negative phenomena [such as injustice, cruelty and humiliation] at the start of our moral reflection. Without this change in perspective, we might miss the ‘negative essence’ of those nightmarish episodes from which transitional societies try to recover.<sup>22</sup>

What does it mean in more substantive terms, however, to theorize justice as recognition and to foreground negative phenomena? According to Haldemann, the defining feature of justice as recognition is the fact that in contrast to criminal justice, it is quintessentially victim-centred. ‘It involves extending to victims the concern and respect due to them in virtue of what they have suffered and of what they are.’<sup>23</sup> This focus on victims entails far more than a recognition of what was done to them. The consequences of a criminal act are both tangible and intangible, and Haldemann is specifically concerned with the latter. He contends that the commission of a crime involves a symbolic devaluation: the victim is not only harmed but is also shown a fundamental lack of respect and concern. To reverse this ‘misrecognition,’ defined as ‘a specific attitude of treating others as inferior, minor, negligible or simply invisible,’<sup>24</sup> it is essential to recognize the victims’ perspective and ‘the reality of their

19 Judith Shklar, ‘Giving Injustice Its Due,’ *Yale Law Journal* 98(6) (1989): 1135.

20 See, Axel Honneth and Avishai Margalit, ‘Recognition,’ *Aristotelian Society Supplementary Volume* 75 (2001): 111–139.

21 Haldemann, *supra* n 8 at 682.

22 *Ibid.*, 690.

23 *Ibid.*, 679.

24 *Ibid.*, 693.

individual experiences of suffering and harm.<sup>25</sup> This focus on victims and their lived experiences of injustice and 'misrecognition' means that Haldemann's conceptualization of justice as recognition is sensitive to both the ripple effects and the affective dimension of crimes in a way that criminal justice is not.<sup>26</sup> It is also a more empowering approach to justice. While it recognizes the suffering of victims, the fact that it privileges their perspective is a crucial acknowledgement of their agency.

In addition, rather than assuming to know what victims need, it is an approach that allows *them* – in the context of discussing their objective and subjective experiences of crime – to express what they need.<sup>27</sup> This is an important difference between justice as recognition and truth and reconciliation commissions (TRCs) at the micro level. Although TRCs are ostensibly victim-centred, they primarily provide a space for storytelling rather than for articulating individual needs.<sup>28</sup> As Simon Robins asserts vis-à-vis the Commission for Reception, Truth and Reconciliation in East Timor, 'The cathartic metaphor of a truth commission lacks meaning for a family confronted daily with the unmet basic needs that arise from the loss of a breadwinning husband or a son.'<sup>29</sup> This is not, however, to diminish the importance of TRCs. Maintaining that recognition operates at two levels, individual and collective, Haldemann argues that TRCs constitute a collective form of justice as recognition.<sup>30</sup> They are state-led processes, and it is precisely through the intervention of a third party (i.e., the state as a representative of society) that 'the relatively private, dyadic offender-offended relation is transformed into a public event, now subject to the censure of the wider community.'<sup>31</sup>

More problematic is Haldemann's assertion – and hope – that criminal trials can also play a part in dispensing justice as recognition. To sustain this, he maintains that the basic rationale for seeking punitive justice needs to change. That is to say, 'we should pursue punishment not primarily in terms of deterrence or moral improvement, but rather as a way of validating and vindicating the victim of wrongdoing.'<sup>32</sup> Punishment serves multiple functions, but to suggest that the main purpose of a quintessentially perpetrator-focused criminal process should be recognition of the victim's suffering is discordant. By providing a forum in which some victims are able to tell their stories, albeit in a rather 'chopped' way that suits the needs of the court,<sup>33</sup> and by establishing an official record of the facts, criminal courts do constitute a form of acknowledgement. The extent to which they can deliver justice as recognition in the sense elaborated by Haldemann, however, is necessarily limited. Indeed,

25 Ibid., 680. See also, Jonathan Allen, 'The Place of Negative Morality in Political Theory,' *Political Theory* 29(3) (2001): 337–363.

26 Haldemann, *supra* n 8 at 681, maintains that, 'Only by directing our attention to negative symbolism can we gain a more detailed view of misrecognition and its impact on victims' lives.'

27 Ibid., 678.

28 Ibid., 710.

29 Simon Robins, 'Challenging the Therapeutic Ethic: A Victim-Centred Evaluation of Transitional Justice Process in Timor-Leste,' *International Journal of Transitional Justice* 6(1) (2012): 101.

30 Haldemann, *supra* n 8.

31 Ibid., 701–702.

32 Ibid., 713.

33 Julie Mertus, 'Shouting from the Bottom of the Well: The Impact of International Trials for Wartime Rape on Women's Agency,' *International Feminist Journal of Politics* 6(1) (2004): 112.

Haldemann notes that ‘formal justice of this sort, cool and cognitive, may fail to properly recognize the injured and their experience of uncomprehending suffering.’<sup>34</sup>

Emphasizing that justice as recognition is a vital complement to retributive justice and criminal courts, I analyze the recent Women’s Court in Sarajevo within this conceptual framework. Before proceeding to the next section, however, it is necessary to note two important points. The first is that at the collective level, Haldemann theorizes recognition as

a process of triadic interaction in which the state or ‘collective other’ emerges as a kind of moral stand-in, or authority figure, whose role consists of initiating and monitoring the appropriate behavioral procedures that are conducive to recognizing the victim’s moral injuries.<sup>35</sup>

At the Women’s Court, although the process was collective, the process of interaction was primarily dyadic. Yet it was not a dyadic interaction between individual perpetrators and victims because the process did not include the former. Rather, the main interaction was between the women who ‘testified’ and the public audience who came to hear their stories.<sup>36</sup> The audience and the organizers of the Women’s Court were the ‘collective other.’ And it was the audience and its interactive role in the process, not the state, that demonstrated ‘the community’s solidarity’ with the victims.<sup>37</sup> The fact, however, that the Court’s Judicial Council will be making a series of official recommendations means that it can also be viewed as a triadic interaction between victims, the audience and the various governments across the former Yugoslavia.

The second point is that the organizers of the Court, led by the Women in Black, conceptualized the Court as a feminist approach to justice. Some readers may question why I use justice as recognition, rather than feminist theory, as my meta framework. To preempt such queries, I theorize the Court’s feminist approach to justice as an important dimension of justice as recognition. That the two are closely intertwined is highlighted by the fact that both feminist justice and justice as recognition proceed from the same conceptual starting point. Rather than using an abstract concept of justice, women’s courts – like Haldemann’s justice as recognition – are ‘grounded in addressing (concrete) injustice.’<sup>38</sup> For Haldemann, it is crucial to give victims a voice in order to understand how they personally experience injustice and negative morality. Part of this process necessarily includes ‘the frequency and depths of the harms women experience.’<sup>39</sup> Yet despite the important similarities between Haldemann’s justice as recognition and feminist theories of transitional justice,

34 Haldemann, *supra* n 8 at 734.

35 *Ibid.*, 702.

36 This audience consisted mainly of women, although a small number of men were also present. During all four days of the Women’s Court, the seats inside the Bosnian Cultural Centre in Sarajevo were full.

37 Haldemann, *supra* n 8 at 702.

38 Daša Duhaček, ‘Women’s Court: A Feminist Approach to In/Justice,’ in *Women’s Court: About the Process*, ed. Staša Zajović (Belgrade: Women in Black, 2015), 79.

39 Fionnuala Ní Aoláin, ‘Advancing Feminist Positioning in the Field of Transitional Justice,’ *International Journal of Transitional Justice* 6(2) (2012): 227.

I specifically focus on the former, maintaining that justice as recognition is a corrective to some of the more problematic elements of feminist theories.

Firstly, focusing on an act of injustice and how it makes the victim feel is arguably a more constructive approach than focusing on harms done to women *as* women. The emphasis on a meta 'woman's experience' potentially detracts from and dilutes the micro specifics of women's individual experiences. In the case of the Women's Court, moreover, to overemphasize the common factor of gender is deeply discordant with the heterogeneity (in terms of ethnic belonging, religious convictions, socio-economic backgrounds, age, etc.) of the women who testified. Precisely because Haldemann's concept of justice as recognition explicitly acknowledges diversity and individuality,<sup>40</sup> it offers a useful framework within which to analyze and appraise the Women's Court, spotlighting the women's personal stories rather than simply their common identity as women.

Secondly, when we emphasize that women are victims of patriarchy, inequality and structural violence, we contribute to de-individualizing them, depersonalizing their specific stories and essentializing them as victims.<sup>41</sup> To cite Fionnuala Ní Aoláin, 'calling women into view in ways that affirm stereotypes can undercut arguments that mandate treating women as fully engaged actors with independent, cross-cutting and competing needs.'<sup>42</sup> The key point about the Women's Court in Sarajevo is that it sought to portray women not simply as victims. They were actors in their own right who were given the space and the support to articulate and interpret what had happened to them. According to Marijana Senjak, a psychologist-psychotherapist who worked with the witnesses,<sup>43</sup> the women retold their stories several times during the regional meetings that preceded the Women's Court. In the process, and through their interactions with other witnesses, they changed their perspectives on the meanings of their stories and found new meanings in them.<sup>44</sup> Zajović explained that part of the process of preparing women to testify at the Court involved introducing them to the writings of intellectuals such as Hannah Arendt and Primo Levi. 'Giving the women a political education was important,' she underlined, 'for allowing them to reflect on their own experiences and to appreciate that these experiences constitute valuable knowledge.'<sup>45</sup> While justice as recognition is partly about recognizing victimhood, the fact that it is far more than this – treating victimhood as something temporary<sup>46</sup> rather than long term – means that it provides

40 Haldemann, *supra* n 8 at 698, emphasizes that, 'To recognize the victims is to manifest an affirmative attitude to them, directly and specifically, in response to their special situation.'

41 Susan Harris Rimmer, 'Sexing the Subject of Transitional Justice,' *Australian Feminist Law Journal* 32(1) (2010): 123–147.

42 Ní Aoláin, *supra* n 39 at 220.

43 Although the Women's Court was not a court in the legal sense, the women who told their stories were consistently referred to as 'witnesses.' I accordingly use the same terminology.

44 Personal interview, Marijana Senjak, Zagreb, Croatia, 19 June 2015.

45 Personal interview, Staša Zajović, Belgrade, Serbia, 10 June 2015.

46 According to Pablo de Greiff, 'The type of recognition that is relevant is one that acknowledges the victims' status as victims and the abuses to which they were subject, gives public space to their stories, and tries to reverse the marginalisation which they typically suffer. But this is not all. In fact, it is even more important to recognize their status as *rights bearers*, ultimately, as co-participants in a common political project, that is, as *citizens*' (emphasis in original). Pablo de Greiff, 'Transitional Justice and Development,' <http://www.develop>

a fitting framework for analyzing the Women's Court that is consistent with the ethos of the Court.

Finally, Ní Aoláin, a leading scholar on feminist theories of transitional justice, underscores the importance of Haldemann's justice as recognition.<sup>47</sup> Indeed, she goes beyond this, writing:

I challenge feminist scholars to think of the concept of justice as recognition, explore its capacity to address some of the shortcomings that have been identified in the institutions and practices of transitional justice and use it as one possible building block to get us to a more cohesive and positive feminist version of what justice in transition looks like. In doing so, my goal is to drill down to whether harms (the 'things' to be remedied) in transition are in their conceptualization and practice a route to addressing the needs and desires of women.<sup>48</sup>

I submit that justice as recognition can facilitate a greater connection between harms and needs precisely because it does not treat those who have suffered injustice simply as victims. If feminist theories of transitional justice can usefully draw on Haldemann's concept of justice as recognition, it is entirely appropriate to assess the Women's Court – a feminist project – within this theoretical framework.

## ASSESSING THE WOMEN'S COURT

### The Establishment of the Court

The concept of women's courts is not new, and countries as diverse as Nepal, South Africa and New Zealand have established them.<sup>49</sup> The first International Tribunal on Crimes against Women was held in Belgium in March 1976. Organized by feminist activists, it covered a range of themes, from torture and rape to pornography, forced sterilization and economic crimes. Over 2,000 women from 40 different countries took part in the event.<sup>50</sup> More recently, in 2000, a Women's International War Crimes Tribunal was held in Tokyo, to consider issues of responsibility relating to Japanese war crimes committed in the Asia Pacific during the 1930s and 1940s. Despite their name, women's courts – which are temporary bodies – do not have any legal powers. What they do exercise, however, is moral authority.<sup>51</sup> They give a voice to women who have suffered from multiple types of violence, and through

mentideas.info/website/wp-content/uploads/Ch24\_TransitionalJustice\_PablodeGreiff\_2013.pdf (accessed 13 September 2015), 22–23.

47 Ní Aoláin, *supra* n 39.

48 *Ibid.*, 228.

49 Ljupka Kovačević, Marija Perković and Staša Zajović, *Ženski Sud: Feministički Pristup Pravdi* (Belgrade: Women in Black, 2011).

50 See, Diana Russell, 'Report on the International Tribunal on Crimes against Women,' *Frontiers: A Journal of Women Studies* 2(1) (1977): 1–6.

51 Christine Chinkin, 'Women's International Tribunal on Japanese Military Sexual Slavery,' *American Journal of International Law* 95(2) (2001): 335–341.

public hearings they generate a collective moral condemnation of gender-based crimes. These courts thus become important 'sites of solidarity.'<sup>52</sup>

Zarana Papić, a philosopher and feminist activist from Sarajevo, together with the Indian human rights activist Corinne Kumar, first launched the idea of a women's court for the former Yugoslavia in 2000. Although Papić died in 2002, the feminist and antimilitarist Women in Black in Belgrade – with the ever-energetic Zajović at the helm – revived the concept in 2006. Four years later, in December 2010, the Initiative Board of the Women's Court, composed of numerous women's groups from across the former Yugoslavia, formally adopted the initiative to create 'The Women's Court for the Region of former Yugoslavia.' In 2012, the name was officially changed (due to objections from Kosovar Albanian women involved in the process) to 'The Women's Court – A Feminist Approach to Justice.'<sup>53</sup> Some 200 NGOs were involved in organizing the Court over a period of five years. During this process, 10 consultations and trainings took place, as well as 16 regional seminars, 136 public presentations in 100 towns throughout the former Yugoslavia and 16 feminist discussion circles.<sup>54</sup> The first meeting with potential witnesses was in Tivat in Montenegro in September 2013. The final event, the actual Women's Court, was held at the Bosnian Cultural Centre in Sarajevo between 7 and 10 May 2015.

One of the aims of the Court was to underscore the cross-contextual continuity of violence against women during times of both war and peace.<sup>55</sup> Accordingly, the proceedings were structured around five core themes: war against the civilian population (militaristic/ethnic/gender-based violence); woman's body – a battlefield (sexual violence in war zones); militaristic violence and women's resistance; persecution of those who are different – in war and peace (ethnic violence); and an undeclared war (social and economic violence, women's resistance). The witnesses played a significant role in selecting the themes. According to Miloš Urošević from the Women in Black, 'The Women in Black worked with women in Srebrenica and Zvornik [in BiH], and they chose to speak about the war against civilians. And women in Serbia chose to speak about the issue of forced mobilization.'<sup>56</sup>

If, as Franke points out, 'it is rare for criminal tribunals to treat gender-based violence as anything other than sexual violence,'<sup>57</sup> it is noteworthy that many NGOs in BiH wanted the main focus of the Women's Court to be on rape and sexual violence (a reason why some of them ultimately boycotted the Court). The Women in Black, however, were implacably opposed to this. According to Zajović, 'To concentrate only on sexual violence is a very patriarchal approach that treats women as sexual objects.' She further explained that,

There has been a dangerous tendency to 'sexualize' the war in BiH, but you cannot reduce the problems of women to sexual violence. You not only ignore

52 Jill Steans, 'Negotiating the Politics of Difference in the Project of Feminist Solidarity,' *Review of International Studies* 33(4) (2007): 730.

53 Zajović, supra n 7.

54 Ibid.

55 Ibid.

56 Personal interview, Miloš Urošević, Belgrade, Serbia, 10 June 2015.

57 Franke, supra n 5 at 822.

the broader context of structural violence against women, but you also ignore the very practical needs of women.<sup>58</sup>

Moreover, to overemphasize the theme of sexual violence risks de-individualizing women, reducing them to a mere number – a common feminist criticism of international criminal courts.<sup>59</sup>

Ultimately, the Women's Court embodied a rich thematic diversity, and this made it a significant 'enabling space'<sup>60</sup> for women with different experiences of violence and injustice to tell their stories. Furthermore, it allowed them to tell these stories in their own words, as *individuals*, without any questions or interruptions, and to focus on what was personally most important to them. To protect the women, journalists were not permitted to attend the Court, but they were invited to morning press conferences. Although members of the Women in Black filmed the entire event, the positioning of the five cameras ensured that the filming was done in a sensitive and unobtrusive way.

Overwhelmed with emotion, two of the witnesses were unable to finish their stories. Some spoke at considerable length, unable to say everything that they wanted to in the suggested 15 minutes. Some of the stories were extremely difficult to listen to; some highlighted issues that have until now received little attention (like the forced mobilization of men in Serbia during the 1990s). That some of the women were speaking on the anniversary of the crimes committed against them and their families made their stories even more powerful.<sup>61</sup> The audience responded with tears, applause, cheers and 'expressive bodily gestures'<sup>62</sup> that conveyed recognition, support and empathy. At the end of each thematic session, two or three women – academics and/or human rights activists – delivered their insights and thoughts, consistent with the Court's methodology of linking 'a subjective text (a woman's testimony) with the objective analysis of [the] political, social-economic and cultural context of the violence that took place.'<sup>63</sup> More than anything, these reflections provided a 'breathing space,' a brief respite from the intensity and emotion of the witnesses' stories.

58 Personal interview, Staša Zajović, Belgrade, Serbia, 11 June 2015. Nesiiah, discussing the 2005 International Centre for Transitional Justice Bellagio Workshop on Gender and Transitional Justice, notes that, 'One participant recalled that, in the wake of performances of the Vagina Monologues in Afghanistan, one Afghan woman told her that her vagina is concerned with socioeconomic issues regarding food security.' Vasuki Nesiiah, 'Discussion Lines on Gender and Transitional Justice: An Introductory Essay Reflecting on the ICTJ Bellagio Workshop on Gender and Transitional Justice,' *Columbia Journal of Gender and Law* 15(3) (2006): 805.

59 See, e.g., Franke, *supra* n 5.

60 Björkdahl and Selimjović, *supra* n 17 at 173.

61 A woman from Foča explained that it was exactly 23 years ago that she last saw her husband and that his body has never been found. Similarly, a witness from Srebrenica noted that it was 23 years ago to the day that paramilitaries, led by the notorious warlord Željko Ražnatović ('Arkan'), forced their way into her home and murdered her husband.

62 Honneth and Margalit, *supra* n 20 at 119.

63 See, 'Women's Court: Feminist Approach to Justice,' <http://www.zenskisud.org/en/Metodologija.html> (accessed 13 September 2015).

## The Women's Court and the Conferral of Justice as Recognition

According to Haldemann, the essence of justice as recognition is the reversal of the victim's symbolic devaluation.<sup>64</sup> Analyzing the Women's Court within this conceptual framework, I seek to build on Haldemann's analysis by examining in more detail what this 'symbolic devaluation' might entail in practice. I argue that the Court contributed to the process of reversing this devaluation in three key ways. Firstly, by enabling the 36 women to speak not only about what they had experienced but also about the emotional and cognitive effects, the Court recognized the oft-neglected affective dimensions of crime and violence – and specifically the women's 'felt-experience of injustice.'<sup>65</sup> A woman from Zvornik in BiH, for example, described how, in June 1992, Serb forces captured 700 Bosniak men in Zvornik, including her husband. Afraid that her 14-year-old son would also be taken away, she begged one of the Serb soldiers to spare him. To prove her son's age, she showed the soldier his medical card. That day was the last time that she ever saw her husband. Ten years later, the remains of his body were found and she buried him. Her brother was also killed during the Bosnian war. For her, everything disappeared in a day. She now lives alone with her son and daughter, and feels immense guilt that she did not endeavour to save her husband. Her son was more valuable to her, she admitted, and she prays to her husband every night to ask for his understanding and forgiveness.

A woman from Srebrenica, who was imprisoned in a camp in the municipality of Bratunac, described how it made her feel to be subjected to multiple rapes when she was 15 years old. They hurt her body and left a deep scar on her soul, she explained. The first time it happened, 'That's when I experienced an unknown pain, suffering and humiliation.'<sup>66</sup> That the Women's Court gave women a voice with which to speak about the different layers of the violence committed against them is a fundamental part of justice as recognition – the recognition of a person's individual experiences of harm and suffering.<sup>67</sup>

Secondly, and related to the previous point, if, as Ní Aoláin posits, 'a persistent blind spot for transitional justice has been the entrenched habit of zoning in on specific violations to the individual,'<sup>68</sup> the Women's Court recognized the wider impact of these violations and their ripple effects. A Kosovar Albanian woman disclosed that as a result of being raped during the Kosovo war in 1999, she has contemplated committing suicide, she cannot sleep without having the light on and she worries whenever she hears a noise at night. 'This is the trauma that continues,' she said, 'and I have transferred it to my children.'<sup>69</sup> A woman from Bijelovac, in the municipality of

64 Haldemann, *supra* n 8.

65 *Ibid.*, 734.

66 The testimonies of the four women who spoke at the Women's Court specifically about their experiences of war rape support Mertus' argument that, 'In a non-legal setting, a rape survivor would tell a much different story, focusing not on the perpetrator, but on her feelings and fears.' Mertus, *supra* n 33 at 115.

67 Haldemann, *supra* n 8.

68 Ní Aoláin, *supra* n 39 at 227.

69 According to Suarez, intergenerational transmission of trauma is 'an important yet under examined public health problem' that merits serious attention. Eliana Barrios Suarez, 'Two Decades Later: The Resilience and Post-Traumatic Responses of Indigenous Quechua Girls and Adolescents in the Aftermath of the Peruvian Armed Conflict,' *Child Abuse and Neglect* 37(2–3) (2013): 208.

Bratunac, described her two-year struggle to regain possession of the house from which she and her family were expelled in 1992. She eventually succeeded, but the people living in her house – a family from Vareš in central BiH – destroyed it before they left. She and her children spent several years living in a collective centre in Tuzla. Her husband was killed in Srebrenica and his remains have never been found. A woman from Kraljevo in Serbia recounted how one night in 1991, as she and her husband celebrated their second wedding anniversary, two soldiers came to the family home and declared that they were taking her husband away for military training. Two weeks later, she learnt that he had been sent to fight in Vukovar in Croatia. He was subsequently among a group of men who requested to be allowed to go home. The Yugoslav National Army promised to find replacement soldiers but failed to do so and the men were recalled to Vukovar. The men went on strike and the woman's returned home. Yet he returned a changed person. She had to get to know him all over again and he never talked about his experiences in Vukovar. His trauma put pressure on their marriage and they separated five years ago. The women's stories highlighted that injustice is often cumulative rather than a one-off, confined event, and thus spans the contexts of war and peace. Acknowledging this, as the Women's Court did, is a key part of justice as recognition.

Thirdly, if we are to reverse the symbolic devaluation and 'profound lack of concern'<sup>70</sup> that are intrinsic to the commission of violence, it is necessary to recognize both victimhood and agency. 'Victims' are a heterogeneous group of individuals with diverse experiences, and it is a deeply reductionist approach to focus only on what was *done* to them. They are actors in their own right with aims and objectives, and the Women's Court recognized this. It provided the witnesses with a safe and secure space in which to demonstrate that they are not only victims but also survivors – 'architects of change'<sup>71</sup> – who have not given up the fight for truth and justice. A Serb woman from Novska in Croatia, for example, talked about her battle to find out the facts surrounding her husband's murder in 1991; a Roma woman from Niš, Serbia, spoke not only as a victim of discrimination but also as a human rights activist; and a mother from Kruševac, Serbia, whose two sons were forcibly mobilized to fight in Kosovo in 1999, described her struggle to have her youngest son released from the army, her participation in spontaneous popular protests in Kruševac and her postwar activism on the issue of forced mobilization.

As noted, four women spoke at the Women's Court specifically about their experiences of sexual violence (a fifth woman, from Croatia, revealed that she was raped in 1991, although this was not the main focus of her story). Franke notes that

narrating sexual violation according to the strict rules of legal testimony renders it all the more difficult for these victims to script new social possibilities and to claim a self who has a future, and is not tethered to a painful past.<sup>72</sup>

70 Haldemann, *supra* n 8 at 679.

71 Roselyn Costantino, 'Guatemaltecas Have Not Forgotten: From Victims of Sexual Violence to Architects of Empowerment in Guatemala,' in *Rape: Weapon of War and Genocide*, ed. Carol Rittner and John Roth (St. Paul, MN: Paragon House, 2012), 128.

72 Franke, *supra* n 5 at 823.

The Women's Court, in contrast, enabled those who had been raped to demonstrate that notwithstanding their painful pasts, they still have a future – and future goals. A woman from the municipality of Foča disclosed that her life wish is to return to her prewar village, to rebuild her home (which was destroyed during the war) and to call it the 'House of Pride,' thereby reflecting her sense of inner strength as a woman who has survived the physical and psychological trauma of rape. A witness from Srebrenica similarly expressed a sense of pride, describing herself as a strong woman and a heroine who, despite everything that she has been through – from rape to domestic violence, verbal abuse from her neighbours and extreme economic hardship – is still alive and fighting. From now on, she has decided that she will only do things in life that make her happy. To great applause from the audience, she emphasized: 'A part of my childhood was taken away from me, but I will not give up on the present and future.' Ultimately, what the Court recognized was the women's courage and tenacity – and hence their contributions to transitional justice as a process which is both top-down and bottom-up.<sup>73</sup>

If the Women's Court clearly delivered justice as recognition by reversing the witnesses' symbolic devaluation, questions nevertheless arise concerning the ethnic balance of this recognition. As explained, the Court proceedings were divided into five thematic sessions. In the first (war against the civilian population), 11 women testified – a Croat from Vukovar, three Bosniaks from Srebrenica, two Bosniaks from the municipality of Bratunac, two Bosniaks from Zvornik municipality and three Kosovar Albanians. In the second session (sexual violence in war zones), two Bosniaks from Srebrenica and Foča municipality, respectively, and two Kosovar Albanian women told their stories. Seven women spoke during the third session, which focused on militaristic violence and women's resistance: six were ethnic Serbs (five from Serbia and one from Croatia) and one was Macedonian. In the fourth session, centred on ethnic violence and the persecution of those who are different in war and peace, eight women testified: a Roma from Serbia, a Slovene, a Muslim from Montenegro, a Muslim from the Serbian Sandžak, three Serbs from Croatia and one Croat. Six women – a Macedonian, four Montenegrins and a Serb – spoke in the final session on social and economic violence.

Unquestionably, the Women's Court powerfully highlighted the continuity of violence against women in both war and peace, thereby drawing attention to 'the social, political, economic forces which have offered structural support to, and thus led to, injustice.'<sup>74</sup> One potential criticism of the Court, however, is that due to the ethnic composition of the thematic panels, it gave the impression that certain ethnic groups suffered from wartime violence far more than others.<sup>75</sup> Consider the panel on wartime sexual violence. Academic literature on the use of rape during the Bosnian war,

73 Björkdahl and Selimović, *supra* n 17 at 171.

74 Duhaček, *supra* n 38 at 72.

75 The 2011 report of the Women's Court notes that 'some of women (who were from Serbia and did not have the experience of war and extreme violence) told us that they hesitated to testify, because their experiences appeared to be "insignificant" compared with suffering of women from Bosnia and Herzegovina, Kosovo and Croatia during the war.' See, <http://www.zenskisud.org/en/pdf/Report%20on%20implemented%20activities%20January%20-%20December%202011.pdf> (accessed 13 September 2015), 39.

for example, has focused overwhelmingly on the violation of Bosniak women by Bosnian Serb forces.<sup>76</sup> Yet the reality is far more complex; all sides committed rape and the victims were not only Bosniaks. As part of my research in BiH, for example, I interviewed 15 Bosnian Serbs (including one man) who suffered rape and sexual violence in various locations, including the Dretelj camp in Čapljina, the Viktor Buban camp in Sarajevo and the Lora camp in Split. I argue that the Women's Court represented an opportunity for a more nuanced picture to emerge regarding the use of rape during the Bosnian war, but regrettably this opportunity was missed. According to Zajović, one problem was that NGOs in BiH were not as professional and organized as they should have been in finding potential witnesses.<sup>77</sup> Many of the individuals I interviewed, for example, were not even aware of the Women's Court. An interviewee from Macedonia who attended the Court expressed deep regret that she only found out about it at the last minute and was not able to tell her own story of being raped during the Bosnian war.<sup>78</sup>

When asked about the ethnic composition of the panels, however, all interviewees involved in the organization of the Women's Court – including Zajović – underlined that the process was never about equalizing ethnic victimhood. Professor Daša Duhaček underscored that, 'You cannot have representation of every crime committed. This is impossible.'<sup>79</sup> Vesna Teršelić, a member of the Court's Judicial Council and the head of the NGO Documenta, reflected that,

Yes, the Women's Court could have been more ethnically balanced, but how would you achieve this? You work with those women who are prepared to tell their stories. If the organizers had waited until they had a balanced witness set, the Women's Court might never have happened.<sup>80</sup>

While these are valid points, it should be stressed that the Women's Court had the potential to challenge the deeply entrenched ethnic narratives that continue to frame popular discourse on the conflict in the former Yugoslavia.<sup>81</sup> This, however, raises the question of whether the Women's Court was the right forum to tackle these meta narratives. Had it done so, ethnicity might have become the central issue, thereby detracting from the individuality of the women who testified. Moreover, had the Court addressed the issue of ethnicity and victimhood head on, it would have become an overtly political space and may thus have been far less successful in contributing to

76 See, e.g., Catharine MacKinnon, 'Rape, Genocide, and Women's Human Rights,' *Harvard Women's Law Journal* 17 (1994): 5–16; Alexandra Stiglmeier, ed., *Mass Rape: The War against Women in Bosnia-Herzegovina* (Lincoln, NE: University of Nebraska Press, 1994); Beverly Allen, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia* (Minneapolis, MN: University of Minnesota Press, 1996); Todd Salzman, 'Rape Camps as a Means of Ethnic Cleansing: Religious, Cultural and Ethical Responses to Rape Victims in the Former Yugoslavia,' *Human Rights Quarterly* 20(2) (1998): 348–378.

77 Personal interview, Staša Zajović, Belgrade, Serbia, 10 June 2015.

78 Personal interview, rape survivor, east Sarajevo, BiH, 26 June 2015.

79 Personal interview, Daša Duhaček, Belgrade, Serbia, 11 June 2015.

80 Personal interview, Vesna Teršelić, Zagreb, Croatia, 19 June 2015.

81 See, e.g., Janine Natalya Clark, *International Trials and Reconciliation: Assessing the Impact of the International Criminal Tribunal for the Former Yugoslavia* (Oxon: Routledge, 2014).

'the elimination of hierarchies'<sup>82</sup> among the women who took part in the process – both those who told their stories and those who listened to them. By not directly approaching questions of ethnicity, it created an opportunity for women to confront their ethnic prejudices in their own individual ways, without being under any pressure to do so. According to Senjak, the regional workshops that preceded the Women's Court provided a space for 'corrective experiences.' She explained that at one of these workshops, and after listening to the stories of Serb women who fought against the forced mobilization of their sons, a Bosnian Muslim woman from Srebrenica responded: 'I'm very glad that I didn't die and that I've been able to hear from women from Serbia who did not allow their children to kill our children.'<sup>83</sup>

Yet, we also need to look at the wider picture, and a fundamental question is whether in the longer term the Women's Court might have contributed more to the entrenchment than to the elimination of ethnic hierarchies of suffering. While the meta narrative of the Court was the persistence of violence against women in war and peace, it remains to be seen whether and to what extent this narrative will resonate – and be understood – outside a feminist framework.

#### BUILDING ON THE WOMEN'S COURT AND FUTURE DIRECTIONS

One of the interviewees, a Serb woman from Croatia, was a victim of domestic violence and marital rape during the 1990s. She was a potential witness at the Women's Court but ultimately did not testify as there were enough witnesses from Croatia.<sup>84</sup> However, she attended all the regional workshops and stressed that she greatly benefited from the process. She explained that despite the pain and trauma that she suffered during her marriage, she still had to function as a mother to her daughter and go out to work. As a result, 'I could never be myself. But at Lipik [the location of one of the regional workshops], I was finally able to cry and to really be myself.'<sup>85</sup> Another Serb interviewee in Croatia who testified at the Women's Court described what she gained from the experience. She enjoyed meeting and spending time with the other witnesses, she made new friendships and the process helped her both to tell her own story (she fought for 15 years to reclaim her apartment from a Croatian war veteran) and to hear the stories of other women.<sup>86</sup> A third Serb interviewee in Croatia who also testified at the Court told me that it was being involved in this transitional justice process that gave her the courage and strength to reveal, after more than two decades, that she was raped by a Croatian soldier in 1991.<sup>87</sup> For her part, a Bosniak woman who was raped during the Bosnian war emphasized that speaking at the Women's Court was an extremely rewarding experience that empowered her. She reflected that being a witness and retelling her story at the various regional

82 Zajović, *supra* n 7 at 55.

83 Personal interview, Marijana Senjak, Zagreb, Croatia, 19 June 2015.

84 Personal interview, Nela Pamuković, Zagreb, Croatia, 19 June 2015.

85 Personal interview, survivor of marital rape and domestic violence, Zagreb, Croatia, 20 June 2015.

86 Personal interview, Croatian Serb woman, Zagreb, Croatia, 20 June 2015.

87 Personal interview, rape survivor, Zagreb, Croatia, 28 August 2015.

workshops helped to prepare her for subsequently testifying at the circuit court in Bijeljina, BiH, against one of her perpetrators.<sup>88</sup>

That all of these women had positive experiences at the Women's Court supports my contention that the latter successfully delivered justice as recognition, albeit within somewhat constricted ethnic parameters. Whether and to what extent the Court is ultimately judged to have been a success, however, will largely depend on what happens next. Zajović underscored that the women who testified will have significant input in this regard, adding that the Women in Black are continuing to work closely with them.<sup>89</sup> For example, some of the witnesses attended a spa weekend in Vrnjačka Banja in Serbia in June 2015, and a regional evaluation meeting involving many of the witnesses was held in Tivat in Montenegro in late September 2015 to discuss the next steps. What has been agreed upon at this stage is that the women's testimonies will be published (with their consent) as a book, and a documentary film will be made about the Women's Court. The intention is for the book and the film to be released on the first anniversary of the Women's Court.

Given that the Court took place only very recently, its Judicial Council is yet to deliver its final conclusions and recommendations. In preempting these, I assert that the next step should be to consider two fundamental and interlinked questions. Firstly, how can we build on and maintain the solidarity that the Court embodied? Secondly, how can we translate the justice as recognition that it delivered into something more concrete and long-lasting?

Turning to the first question, solidarity is a process rather than a state, 'a project that is forged through political struggle.'<sup>90</sup> The core of this struggle, according to Jill Steans, is 'an effort to secure a basis for unity in the midst of differences.'<sup>91</sup> If the Court's proceedings secured a basis for unity, what is the basis for that unity now that those proceedings have been completed (in the sense that the Court was formally in existence only for four days)? What, in other words, is the long-term basis for the solidarity that the Court embodied? The 'common threads' of women's gendered experiences<sup>92</sup> are not enough. On the final day of the Court, the seven-member Judicial Council presented some preliminary recommendations. Many of these, however, were extremely broad and overly ambitious. They included, for example, demands for an end to militarism and military spending, a reversal of the privatization of public goods and the elimination of patriarchal attitudes that feed violence against women. If the Court is to be more than a limited, one-off expression of cross-ethnic female solidarity, the formulation of more concrete and achievable objectives is essential. Although one of the aims of the Court was to understand the macro context in which violence occurs and is made possible,<sup>93</sup> its final

88 Personal interview, rape survivor, Tuzla, BiH, 30 May 2015.

89 Personal interview, Staša Zajović, Belgrade, Serbia, 11 June 2015.

90 Steans, *supra* n 52 at 736.

91 *Ibid.*, 737.

92 Christina Morus, 'War Rape and the Global Condition of Womanhood: Learning from the Bosnian War,' in *Rape: Weapon of War and Genocide*, ed. Carol Rittner and John Roth (St. Paul, MN: Paragon House, 2012), 57.

93 Zajović, *supra* n 7.

recommendations must not lose sight of the micro context and the multiple needs to which violence gives rise.

It is precisely these needs that potentially provide a basis for a more enduring solidarity. If, as Susan Rimmer argues, 'transitional justice outcomes that benefit women are unattainable unless the full realities of their lives before and after the conflict are understood,'<sup>94</sup> continuing dialogue and exchange are essential, focused not just on the harms suffered but on common cross-ethnic needs such as existential security, employment and opportunities to socialize. This is consistent with Christine Bell and Catherine O'Rourke's emphasis on

the need to approach transitional justice projects from the question of how best to pursue the inevitably internally contested political project of securing material gains for women through periods of transition.<sup>95</sup>

The identification of needs can potentially help to create more practical forms of solidarity. Lia Kent, for example, describes how in East Timor the members of various widows' groups

also assist one another in practical ways by engaging in collective economic activities, such as working in each other's fields and establishing cooperatives to sell products such as cassava and rice.<sup>96</sup>

Haldemann's justice as recognition does not address the question of cross-ethnic or female solidarity. An issue with his conceptualization is precisely that it is somewhat weak in explaining exactly what justice as recognition entails in concrete terms. Indeed, he acknowledges that a 'fuller treatment of the subject . . . would give a much richer account of how such recognition can be achieved in the aftermath of mass atrocity.'<sup>97</sup> Focusing on creating and maintaining solidarity through an emphasis on needs is not only consistent with feminist theories of transitional justice, but also provides the basis for a more practical form of justice as recognition in which the initial harm becomes transformative rather than entrenched.

Turning more directly to the question of how the symbolic justice as recognition which the Women's Court delivered might be developed into a more tangible and substantive form, Haldemann makes it clear that the concept of justice as recognition includes apologies, reparations and positive symbolism.<sup>98</sup> Some of the more specific preliminary recommendations which the Court's Judicial Council expressed include the payment of reparations to survivors of violence and the creation of memorials to

94 Rimmer, *supra* n 41 at 137.

95 Christine Bell and Catherine O'Rourke, 'Does Feminism Need a Theory of Transitional Justice? An Introductory Essay,' *International Journal of Transitional Justice* 1(1) (2007): 43.

96 Lia Kent, 'Local Memory Practices in East Timor: Disrupting Transitional Justice Narratives,' *International Journal of Transitional Justice* 5(3) (2011): 446.

97 Haldemann, *supra* n 8 at 732.

98 *Ibid.*

commemorate the suffering and bravery of women. These recommendations should be included and developed in its final report. I further argue that these recommendations should directly address the fact that some survivors have little awareness of their rights and/or feel unable – due, inter alia, to fear, shame and the persistence of an ethnically based competitive victimhood<sup>99</sup> – to speak out. The solidarity which existed during the four days of the Court’s proceedings was based on the fact, consistent with the Common Ingroup Identity Model,<sup>100</sup> that it fostered a superordinate identity that transcended ethnic differences. Particularly due to the risk that individuals not involved in the Court could potentially interpret its proceedings simply as confirming their group’s ethnic narrative that ‘we suffered the most,’ it is incumbent on the Judicial Council to present in its final report possible ways of reducing competitive victimhood – and thus of drawing attention to shared experiences and goals rather than ethnic differences.

If education is a crucial part of this process, women’s courts can fulfil an important ‘educative role,’<sup>101</sup> and the Council recognizes this. Among its preliminary recommendations, for example, it emphasized that the five years of work that went into the Court and the rich testimonies delivered during the hearings represent a critical history that must be made public – including through teaching in schools – so that it is never forgotten. Furthermore, Teršelić stressed the right of future generations to learn about history based on concrete facts.<sup>102</sup> If one of the tasks of those involved in the Court is to develop its educational legacy, I submit that the Council’s final report should, more broadly, address the important relationship between education and transitional justice and its translation into practice.<sup>103</sup>

Finally, I argue that the Women’s Court can potentially make a significant contribution to the development of transitional justice. According to Haldemann,

the trauma of humiliation can constitute a serious injury, sometimes on par with physical cruelty – and if this is so, then we should make it a central concern of our reflections on transitional justice.<sup>104</sup>

The testimonies delivered at the Women’s Court powerfully conveyed the emotional and psychological consequences of violence and injustice, and the recognition

99 Andrighetto et al. note that ‘people often interpret the impact of the conflict subjectively, viewing their own group as the only legitimate victim and the rivals as the illegitimate perpetrators of unjust and immoral misdeeds.’ Luca Andrighetto, Silvia Mari, Chiara Volpato and Burim Behluli, ‘Reducing Competitive Victimhood in Kosovo: The Role of Extended Contact and Common Ingroup Identity,’ *Political Psychology* 33(4) (2012): 513.

100 Samuel Gaertner, John F. Dovidio, Phyllis A. Anastasio, Betty A. Bachman and Mary C. Rust ‘The Common Ingroup Identity Model: Recategorization and the Reduction of Intergroup Bias,’ *European Review of Social Psychology* 4(1) (1993): 1–26.

101 Christine Chinkin, ‘Peoples’ Tribunals: Legitimate or Rough Justice,’ *Windsor Yearbook of Access to Justice* 24(2) (2006): 220.

102 Personal interview, Vesna Teršelić, Zagreb, Croatia, 29 June 2015.

103 Cole points out that, ‘The connection between transitional justice and history education, or more precisely its reform, is one that, although acknowledged, has hardly been investigated, either theoretically or empirically.’ Elizabeth Cole, ‘Transitional Justice and the Reform of History Education,’ *International Journal of Transitional Justice* 1(1) (2007): 115.

104 Haldemann, supra n 8 at 710.

and redress of these consequences is crucial for advancing a more 'victim-centred transitional justice.'<sup>105</sup> If many questions surrounding the relationship between transitional justice and trauma remain to be explored,<sup>106</sup> the Court's final report should consider the significant issue of how a concern with trauma and humiliation can be directly built into the design of transitional justice mechanisms.

### CONCLUSION

'Never again' has become a well-worn phrase. They are words that are easy to utter but they also invite us to reflect: "The next time you say or hear someone say "never again", ask what she, he, or you have done to be sure that never again means something."<sup>107</sup> The Women's Court was an attempt to *do* something, to give the words 'never again' meaning. Whether or not the Court ultimately has any long-term effects remains to be seen. Much will depend on the recommendations contained in its final report and the activities (e.g., media work, educational activities) that follow on from these. This article, however, has sought to demonstrate that the Court represents a successful example of justice as recognition.

Specifically, the Court recognized the multiple forms of violence committed against women during war and peace, the experiential and affective dimensions of injustice and the crucial fact that yesterday's victims can become today's activists. Perhaps what it highlighted most of all is that all of us should be part of the fight against injustice. The women's stories powerfully conveyed the crucial message that none of us should allow ourselves to become what Shklar terms 'passively unjust' individuals<sup>108</sup> – people who are indifferent to the injustices and violence taking place around us.

105 Simon Robins, 'Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal,' *International Journal of Transitional Justice* 5(1) (2011): 75–98.

106 Judy Barsalou, 'Trauma and Transitional Justice in Divided Societies,' United States Institute of Peace: Special Report, 2005, <http://www.usip.org/sites/default/files/sr135.pdf> (accessed 14 September 2015).

107 Costantino, *supra* n 71 at 131.

108 Shklar, *supra* n 19 at 1142.