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Dealing with the Past in Post-Conflict Societies: Ten Years after the Peace Accords in Guatemala and Bosnia – Herzegovina

swisspeace Annual Conference 2006

Jonathan Sisson, Editor

swisspeace

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The views expressed in this publication are those of the authors and do not necessarily reflect the views of swisspeace.

Table of Contents

Abstract / Zusammenfassung / Résumé	1
1 Introduction – Guatemala, Bosnia – Herzegovina, and a Conceptual Framework for Dealing with the Past	2
Jonathan Sisson	
1.1 Diagram: Conceptual Framework for Dealing with the Past	7
2 The Changing Nature of the Debate on Peace vs. Justice	8
Pierre Hazan	
3 A Twisted Path to Reconciliation? The Historical Clarification Commission in Guatemala	12
Bernardo Arévalo de León	
3.1 Three Initial Definitions	12
3.2 Two General Considerations	14
3.3 Assessing Guatemala’s Historical Clarification Commission	14
3.4 Final Considerations	19
4 ‘Dealing with the Past’ in Bosnia – Obstacles and Challenges for ‘Reconciliation’ in the Region of former Yugoslavia	22
Martina Fischer	
4.1 Introduction	22
4.2 Potential and Limits of Retributive Justice: Ambivalence of the Hague Tribunal	22
4.3 Initiatives for Fact-finding, Documentation and Research	25
4.4 Public Awareness-Raising, Training, and Peace Education	26
4.5 Progress and Backlashes: The Potential and Limits of CSO Approaches	28
4.6 Challenges for Enhancing Future Processes of Healing and Relationship-Building	31
5 The Legacy of Genocide in Guatemala: Memory and Psychosocial Recovery in Affected Communities	34
Carlos Martín Beristain	
5.1 Psychosocial Structural Factors of the Guatemalan Process	34
5.2 The Assimilation of Memory	36
5.3 The Human Rights and Victims’ Movement: Actors and New Violations	37
5.4 Reconciliation with Personal Experiences: Where are the Disappeared?	37

5.5	Exhumations of Clandestine Cemeteries	38
5.6	Community Processes	39
5.7	The Agenda of Justice in a Context of Impunity: The Burden on the Victims	40
5.8	Handling of Reparations	41
5.9	Psychosocial Programs	42
5.10	The Archives of Memory	44
6	Psychosocial Recovery in Bosnia – Herzegovina in the Aftermath of Violence	45
	Irfanka Pasagic	
6.1	Definitions	45
6.2	Real Life is not a Definition	45
6.3	The Importance of Identifying the Dead	46
6.4	Truth and Justice as Preconditions for Psychological Recovery	47
6.5	Dialogue Regarding the Past and the Process of Healing for Society	49
7	The Role of External Actors: Guatemala – A Case Study	51
	Mô Bleeker	
7.1	The Racist Legacy: ‘Us and Them’	53
7.2	Local Ownership of the Process of Dealing with the Past	53
7.3	Participation and Consultation of Local Actors	54
7.4	The Difficulty of Strengthening the Political Will	55
7.5	Concluding Remarks on the Implementation of Peace Agreements	55
7.6	Appendix 1	58
8	Dealing with the Past in Bosnia – Herzegovina: Challenges for the Future and the Role of External Actors	59
	Nena Skopljanac	
8.1	Introduction	59
8.2	Causes of the Conflict	59
8.3	The Dayton Peace Accords and their Main Deficiencies	60
8.4	Achievements in the Post-Dayton Period and Major Current Obstacles	61
8.5	Lessons Learned and Key Challenges for the Future	62

Abstract / Zusammenfassung / Résumé

Dealing with a legacy of human rights violations is one of the most difficult challenges facing any society in the aftermath of violent conflict. A decade after internationally mediated peace agreements ended wars in Guatemala and Bosnia and Herzegovina, both countries continue to struggle with a culture of impunity and violence. What lessons can be learned about the effectiveness of transitional justice mechanisms in dealing with the past? Why set up truth commissions in one context and tribunals in another? How does a society learn to live with the memory of genocide and crimes against humanity? And how can external actors contribute to the process of reconciliation? These are some of the questions which Guatemalan, Bosnian, and Swiss experts addressed at the swisspeace annual conference 2006.

Das Aufarbeiten von Menschenrechtsverletzungen stellt Gesellschaften in der Folge eines gewaltsamen Konfliktes vor grössten Herausforderungen. Zehn Jahre ist es her, seit internationale Friedensverhandlungen in Guatemala und Bosnien die Waffen zum Schweigen brachten – doch noch immer ringen beide Länder mit einer Kultur der Gewalt und Straflosigkeit. Wie wirksam sind die Instrumente der ‚Transitional Justice‘ für die Bewältigung der Vergangenheit? Wieso setzt man in dem einen Umfeld Wahrheitskommissionen ein, in einem anderen aber Gerichte? Wie wirkt sich die Erinnerung an Völkermord und Verbrechen gegen die Menschheit auf das Zusammenleben der Menschen in einer Gesellschaft aus? Und was können externe Akteure zur Versöhnung beitragen? Diese und andere Fragen diskutierten guatemaltekische, bosnische und schweizerische Experten 2006 anlässlich der Jahreskonferenz von swisspeace.

Vivre avec un héritage de violations de droits humains est une épreuve difficile pour toute société qui sort d'un conflit violent. Une décennie après des accords de paix, conclus avec le soutien de la communauté internationale au Guatemala et en Bosnie-Herzégovine, ces deux sociétés doivent encore se confronter à l'héritage de l'impunité et de la violence. Quelles leçons pouvons nous apprendre concernant la pertinence et l'impact des mécanismes de justice transitionnelle et du traitement du passé? Parfois des commissions de vérité voient le jour, parfois des tribunaux; comment se font ces choix? Comment une société vit avec l'héritage d'un génocide ou de crimes contre l'humanité? Comment des acteurs externes peuvent-ils contribuer à des processus de réconciliation? Telles furent quelques unes des questions auxquelles des experts du Guatemala, de Bosnie-Herzégovine et de Suisse ont tenté d'apporter quelques réponses, lors de la conférence annuelle de swisspeace 2006.

1 Introduction – Guatemala, Bosnia – Herzegovina, and a Conceptual Framework for Dealing with the Past

Jonathan Sisson

Dealing with a legacy of past human rights violations is one of the most difficult challenges facing post-conflict societies. Whether this legacy is due to violent conflict and war, to colonial oppression or repressive dictatorship, or to other social, political, and economic factors, there is a need to acknowledge publicly the abuses which have taken place, to hold those responsible who have planned, ordered, and committed such violations, and to rehabilitate and compensate victims as necessary steps in establishing accountability and trust in society. This process of dealing with the past is a necessary precondition for reconciliation.

As the designation for a political process with social and economic dimensions, dealing with the past is a relatively new concept. 'Vergangenheitsbewältigung' – the German term for dealing with the past – was introduced after the Second World War to describe the collective task which post-war Germany faced in 'overcoming' its own dark past. But, as a discipline in its own right, dealing with the past has only become established in recent years in connection with the debate on transitional justice, which has focused on the introduction of different legal mechanisms and instruments to establish the rule of law in post-conflict societies. Yet, dealing with the past encompasses a much broader mandate than transitional justice, both in scope and in time.¹ As a societal process, dealing with the past involves a number of different approaches and instruments, which at times may seem to be based on antithetical, even contradictory principles – the pursuit of 'peace', 'justice', 'truth', and 'clemency', to name the most prominent. The common aim of these different approaches, however, is to end the cycle of violence that perpetuates human rights abuses and to engage different sectors of society in a larger process of conflict transformation, the goal of which is to establish more just power relations within society.

During the past year (November 2005 – November 2006), the Center for Peacebuilding (KOFF) at swisspeace took the occasion of the tenth anniversary of the signing of the peace accords in Guatemala and in Bosnia and Herzegovina (BiH) as an opportunity to explore some of the principles upon which dealing with the past operates and to reflect on the effectiveness of its instruments, taking the two examples of Guatemala and Bosnia and Herzegovina as case studies.

Some might question the reasonableness of attempting such a comparison given the obvious historical and cultural differences between the two contexts. The conditions which fostered the conflicts in Guatemala and BiH *were* different, then as now. And yet, it is of interest to note that the peace settlements in both cases were reached with the help of international mediation and envisioned a longer period of political transition under international supervision. In both cases, instruments of transitional justice were introduced to accompany the transition and to secure the establishment of the rule of law.

¹ Dealing with the past is used here as a technical term to connote a wide range of activities to address serious, past human rights abuses and, in some cases, also root causes of conflict, as explained below. It is used instead of the term 'transitional justice', because transitional justice is often too narrowly identified only with juridical mechanisms and because dealing with the past is a long-term process and not only limited to a transitional period.

The need for a broader definition of transitional justice is noted in the report of the UN Secretary General on the rule of law and transitional justice issued on 3 August 2004. See: Report of the UN Secretary General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies (S/2004/616), p. 9.

In Guatemala, the emphasis has been on truth-seeking. Investigations of human rights violations were conducted by two separate truth commissions, one under the auspices of the UN as part of the settlement and the other an independent initiative under the auspices of the Catholic Church. Programs involving the exhumation of victims and the psychosocial support of survivors are currently in place. In 2003, a commission for victim compensation was set up as part of a national restitution program, but it has, as yet, been unable to fulfil its mandate due to political differences among its members. In addition, despite the successful prosecution of the case of Myrna Mack, a social anthropologist murdered in 1990 by agents of the security forces, at the Inter-American Court of Human Rights², widespread impunity prevails for human rights abuses.

In BiH, the justice approach has prevailed. Since its establishment in 1993, the International Tribunal for the Former Yugoslavia (ICTY) in the Hague has had jurisdiction to indict and prosecute war criminals in the Bosnian war. Yet, despite its many achievements, e.g. in establishing a historical record of the war and in prosecuting key figures, the appraisal of the Tribunal has been mixed. It has been criticized as an instrument of victor's justice and its effect on the regional process of reconciliation, a stated goal of the ICTY, has been limited. Even in the struggle against impunity, the results are circumspect. In spite of indictments issued by the ICTY, two of the most senior persons responsible for the conduct of the war, Radovan Karadic and Ratko Mladic, remain at large. A domestic War Crimes Chamber was established in September 2005 in BiH to try lower level suspects. Here again, there are obstacles to be overcome, for example in the area of witness protection and the extradition of indicted criminals. Finally, despite repeated efforts to set up a Truth and Reconciliation Commission, most recently by a working group made up of representatives of eight leading political parties, there is no consensus in the country about the possible composition of such a commission nor about the scope of its mandate.

Yet, despite the many differences, there are some significant similarities with respect to the circumstances of the transition in the two countries. In both Guatemala and Bosnia and Herzegovina:

- The warring parties (both state and non-state armed actors) committed war crimes and crimes against humanity, including incidences of genocide and mass violence;
- Violence directed against the civilian population resulted in large numbers of refugees and internally displaced persons;
- International intervention, including political mediation (and in the case of BiH, military intervention) was necessary to end to the conflicts;
- The peace agreements not only focussed on immediate issues arising out of the conflicts (e.g. demobilization, refugee return, etc.), but also addressed root causes
- of the conflict (e.g. indigenous rights, rule of law, and institution-building) as part of the settlement

² In December 2003, the Court ruled that Guatemala had violated several provisions of the American Convention on Human Rights in connection with the murder of anthropologist Myrna Mack Chang in 1990, and the subsequent denial of justice in the case.

- A UN presence was established as a part of the peace settlements.³ In BiH, a peacekeeping force was established as well.⁴

The swisspeace annual conference focused on the different initiatives in the field of transitional justice in the two countries, beginning with the simple question: Why set up truth commissions in one context and tribunals in another? What were the determining factors (the political context of transition, power relations, international pressure, etc.) which led to such a choice? And were the results commensurate with the expectations which are placed on such an instrument? Indeed, are such instruments at all adequate to deal with a legacy of mass violence?

These questions were addressed from a variety of perspectives, beginning with the key note address delivered by Pierre Hazan, in which he reflected on the effectiveness of truth commissions and tribunals as instruments of transitional justice, based on a quantitative analysis of the two mechanisms which he recently completed for the United States Institute of Peace. In the panel discussion following his address, the emphasis was on the concrete experience of dealing with the past in Guatemala and BiH since the peace agreements. Bernardo Arévalo de León and Martina Fischer provided an overview of some of the developments in the two countries with regard to dealing with the past, again outgoing from the different approaches of restorative and retributive justice pursued in Guatemala and BiH, respectively.

In the afternoon session, there were two further panel discussions. In the first session, the focus was on memory and psychosocial recovery in communities affected by genocide and mass violence. Irfranka Pasagic and Carlos Martín Beristain explored the complexity of dealing with the past on an individual and a collective level in victim communities, based on their experience as practitioners in the field. The final panel discussion addressed a question which is often left aside and yet is particularly relevant to a conference of this nature in Switzerland, namely the role of external actors in dealing with the past. Mò Bleeker and Nena Skopljanac identified some of the challenges facing external actors from their own perspectives as governmental and civil society representatives working in Guatemala and the West Balkans, respectively.

In the course of the conference, the speakers were able to formulate a number of the lessons learned as well as current and future challenges in dealing with the past in Guatemala and BiH. We are pleased to publish their contributions in the series of swisspeace Conference Papers with the expectation that some of the issues discussed here may be relevant for other contexts as well.

In conclusion, some general remarks about the conceptual framework of dealing with the past are warranted.

Although there is no standard model for dealing with the past, in recent years a number of precedents have been established through the work of Special Rapporteurs and Experts of the

³ In Guatemala, the United Nations Verification Mission in Guatemala (MINUGUA), initially established in 1994, carried on verification activities and institution-building in connection with the peace accords until 2003. In BiH, the United Nations Mission in Bosnia and Herzegovina (UNMBIH) was set up to contribute to the rule of law by reforming and restructuring the local police and the justice system. It was succeeded by the European Police Mission (EUPM) in January 2003. With respect to refugee issues, UNHCR was also active in both countries.

⁴ The United Nations Protection Force (UNPROFOR), was established in BiH in May 1993 to support the delivery of humanitarian assistance and to monitor "no-fly zones" and "safe areas". Its mandate ended and it was succeeded in December 1995 by the NATO-led Implementation Force (IFOR) as part of the Dayton Agreement. IFOR was, in turn, replaced in December 1996 by the multi-national Stabilization Force (SFOR).

United Nations on the issues of reparations, impunity and best practices in transitional justice.⁵ At swisspeace, we have adapted the so called "Joinet Principles", developed by UN Special Rapporteur Louis Joinet to address the issue of impunity, as a theoretical model useful in conceptualizing four areas of activity central to dealing with the past.⁶

A comprehensive framework for dealing with the past comprises the following principles:

- **The Right to Know**

The right to know involves both a right on the part of individual victims to learn the truth about what happened to their loved ones and a collective duty on the part of society to learn lessons from history in order to prevent the recurrence of human rights violations in the future.

To ensure this right, the "Joinet Principles" propose the establishment, in principle, of extra-judicial commissions of inquiry (in practice, often called 'truth' or 'truth and reconciliation' commissions). The commissions themselves serve a twofold purpose: 1) to dismantle the administrative machinery which has led to aberrant behaviour in the past, in order to ensure that it does not recur; and 2) to preserve evidence for the judiciary. The second measure often entails the preservation of archives relating to human rights violations.

- **The Right to Justice**

The right to justice implies that any victim can assert his or her rights and receive a fair and effective remedy, including the expectation that the person or persons responsible will be held accountable by judicial means and that reparations will be forthcoming. The right to justice also entails obligations for the State to investigate violations, to prosecute the perpetrators and, if their guilt is established, to punish them. National, international, and so-called "hybrid" courts and tribunals, involving local and foreign experts, have been established to exercise this right.

- **The Right to Reparation**

The right to reparation entails individual measures for victims, including relatives or dependants, in the following areas:

- restitution, i.e. seeking to restore the victim to his or her previous situation;
- compensation, i.e. for physical or mental injury, including lost opportunities, physical damage, defamation, and legal aid costs;
- rehabilitation, i.e. medical care, including psychological and psychiatric treatment.

In addition to individual measures, collective forms of reparation are also foreseen which involve symbolic acts such as annual homage to the victims or public recognition by the State of its responsibility in order to discharge the duty of remembrance and help to restore victims' dignity.

⁵ See the reports submitted by Theo Van Boven (E/CN.4/Sub.2/1993/8), Louis Joinet (E/CN.4/Sub.2/1997/20/Rev.1), and Cherif Bassiouni (E/CN.4/2000/62). See also the report submitted by the UN Secretary General on "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies" (S/2004/616).

⁶ Professor Louis Joinet, Special Rapporteur to the UN Sub-Commission on the Promotion and Protection of Human Rights, submitted his final report on impunity in 1997. (See above under footnote 4.) An up-date of the principles to combat impunity, reflecting recent developments in international law, was prepared by Diane Orentlicher, an independent expert appointed by the UN Secretary General, and submitted in 2005. See: E/CN.4/2005/102/Add.1 and her commentary on the principles (E/CN.4/2005/102).

- **The Guarantee of Non-Recurrence**

It is important to remember, when developing strategies for dealing with the past in post-conflict societies, that these four principles involve individual rights on the part of victims and collective duties on the part of the state. In order to address adequately the demands derived from these rights and the obligations associated with these duties, it will be necessary to devise a long-term process involving multi-level negotiations with a variety of international, governmental, and civil society actors. The dynamics of the process itself will be determined by political, economic, social, and cultural factors particular to the context.

As a means of visualizing the activities which might be involved in such a process of dealing with the past, KOFF – swisspeace in collaboration with the Dealing with the Past desk at the Swiss Federal Department of Foreign Affairs, Political Division IV has designed a graphic representation which illustrates concrete activities associated with the four principles cited above (see the diagram below). The diagram may be used to identify the activities of international, national, and local actors in the four areas in a specific context and has proven to be an useful mapping tool in this regard.

Outgoing from the innermost circle of individual victims and perpetrators who are the focal groups for specific restorative and retributive measures, the diagram attempts to illustrate dealing with the past as a political and social process of democratization in post-conflict societies, beginning with activities related to the four principles. Progress made in any one of the four areas, such as the realization of war crimes trials in connection with the right to justice or the introduction of security sector reforms in connection with the guarantee of non-recurrence, will in turn serve to combat impunity and strengthen the rule of law. It is on this basis that the longer-term collective project of reconciliation and conflict transformation can be realized.

1.1 Diagram: Conceptual Framework for Dealing with the Past



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2 The Changing Nature of the Debate on Peace vs. Justice

Pierre Hazan

Restorative justice or criminal justice? Truth commissions or criminal proceedings? The debate on peace vs. justice has long been a "hot potato", an issue that has divided human rights advocates, political elites, and all societies confronted with the question of whether or not to grant impunity to the perpetrators of massive human rights violations. Although the approach to this question has gradually become holistic, the debate on the fundamental issues continues. The dividing lines between the two camps have simply shifted, leaving the fundamental questions unanswered.

The origin of the debate pitting so-called restorative justice against international criminal justice can be traced back to a conviction that took hold of certain human rights activists, former prisoners, a section of the political class, and various governments in the mid-1990s. This conviction is as follows: It is argued that despite the great differences that exist between societies – from Sarajevo to Johannesburg and from Buenos Aires to Kigali – all of them have the tools necessary to deal with the most serious human rights violations and to prepare for "reconciliation" by building or rebuilding democratic institutions and the rule of law, while at the same time restoring the citizen's faith in the State. This is the basic assumption underlying the idea of transitional justice.

So what are the new tools available? There are two in particular: truth commissions and international criminal tribunals, as exemplified respectively by South Africa's Truth and Reconciliation Commission (TRC) on the one hand, and the International Criminal Tribunal for the Former Yugoslavia (ICTY) on the other. The debate that took place in the middle and at the end of the 1990s between the partisans of restorative justice and those who favor criminal justice was highly charged. For the partisans of the TRC approach international justice is not workable nor even desirable, the assumption being that priority must be given to restoring the dignity of the victims. They abhor what they see as the abstract nature of international justice, its ethereal quality, "the dream of justice rendered by angels in a world of mortals", in the words of the French philosopher, Alain Finkielkraut.⁷

The partisans of TRC basically feel that a well-run commission can produce results that would be impossible for a tribunal: uncovering information about crimes that the perpetrators would have tried to keep from being aired in a court of law; offering an overall view of society rather than concentrating on just a few cases as happens with criminal proceedings; helping to restore the dignity of the victims, who in a court would be exposed to the rigors of cross-examination by defense lawyers; contributing as well and indeed above all to social reconciliation. Last but not least, a truth commission is not expensive and can "process" thousands of cases, whereas trials that involve major players are extremely complex in legal terms as well as being financially prohibitive for poor countries, lasting years in some cases.

As for the partisans of criminal justice, in their view restorative justice is not justice at all. In an article with the eloquent title "Justice: The First Casualty of Truth", the Deputy Director of Human Rights Watch, Reed Brody, points out that the reconciliation much vaunted by the promoters of truth commissions often turns out to be little more than "a cruel joke" at the expense of victims confronted with torturers who remain unpunished, and that in fact these commissions are "a soft option for abusive governments for avoiding justice"⁸ In the view of the Argentine journalist Horacio Verbitsky, who has campaigned for the abrogation of amnesty laws, "to try to impose reconciliation

⁷ Interview with the author in *Le Temps*, 6 December 1999.

⁸ Reed Brody 2001: Justice : The First Casualty of Truth. In: *The Nation*. April 30. Available at: <http://hrw.org/english/docs/2001/04/30/global12849.htm>

between the families of the victims and their executioners would be sadistic from an individual point of view and irrelevant for society. The only base to build the future is for all citizens to accept the law and its procedures.”⁹ The partisans of criminal justice point to its impartiality, its dissuasive nature, the fact that it contributes to the reestablishment of peace and reconciliation on a healthy and lasting basis with the punishment of criminals, and thus to the establishment of the rule of law and democracy.

David Crane, the prosecutor for the Special Tribunal for Sierra Leone, shares this view. He decided to make public the indictment of Charles Taylor on the very day that the Liberian president finally saw fit to attend the negotiations for peace. Crane has made no attempt to disguise his reason, which was to torpedo the negotiations with immediate effect. The prosecutor did not feel that a man whom he held responsible for the death of hundreds of thousands of individuals had any useful role to play in peace negotiations.

The fact is that restorative justice and criminal justice, and their respective partisans, do not share common ground. Historically, truth commissions and international tribunals are each the product of radically different historical challenges. Truth commissions grew out of a process of accelerated democratization in Latin America and South Africa. The main challenge facing societies in these regions was how to hold agents of the State to account for crimes they had committed during a period of dictatorship, but without threatening the stability of fragile new democracies. The South Africans came up with the ingenious solution of making an amnesty conditional on full disclosure of the crimes committed. Obtaining the facts was particularly important in view of the cloak of secrecy behind which these oppressive regimes operated. Families wanted to find out what had happened to those who had disappeared, the circumstances of their deaths, and if possible to take possession of the remains for decent burial. The aim of the South African TRC was essentially that of participation in the work of national reconstruction and reconciliation. It was the laboratory for the creation of a new identity, sometimes styled the “New South Africa” or the “Rainbow Nation”, and for the establishment of a new national creed around which blacks, whites, and those of mixed blood or Indian origin could rally.

An entirely different dynamic led to the creation of the *ad hoc* tribunals of the United Nations. These were the international community’s response to crimes that had taken place on a large scale, in particular the policy of “ethnic cleansing” in the former Yugoslavia, and the genocide of which the Tutsis were the victims in Rwanda. The objective had its source in the model of Kant, which subordinates politics to international law. Finally, it can be said that whereas the TRC proposed a utopian vision of social reconciliation, the utopia of the International Criminal Tribunal for the former Yugoslavia was one in which violence would be held to account in the name of the law.

What conclusions can be drawn from the reality of truth commissions and *ad hoc* tribunals, as opposed to the ideal? Let us first consider the two UN tribunals. Committed to an *exit strategy*, these are in fact a throwback to an earlier age. At USD 100 million a year in each case, they are too expensive. They are also too slow: The Rwanda tribunal has passed judgment on some 20 persons since 1994 at a cost of hundreds of millions of dollars. Nor do they have the support of the populations directly concerned. More than 70 per cent of Serbs are hostile to the ICTY, while over 80 per cent of the people of Rwanda know little or nothing about the work of the International Criminal Tribunal for Rwanda (ICTR). The opposition of certain States has made it impossible for the relevant tribunals to fulfill their mandates. Thus, more than 10 years after being indicted, the two Bosnian Serb leaders, Radovan Karadzic and Ratko Mladic, both directly implicated in the policy of ethnic cleansing, are still at large. As for the ICTR, the office of the prosecutor has to date been unable to

⁹ Horacio Verbitsky cited in Reed Brody 2001: Ibid.

indict members of the Front patriotique rwandais (FPR) suspected of war crimes, as proposed by Security Council resolution 955.

Despite these failures, the first generation of *ad hoc* special tribunals has been a useful laboratory of international justice. They have created a remarkable body of jurisprudence. And they set in motion the dynamic process which led to the campaign involving 2000 non-governmental organizations from North and South, which succeeded in convincing the international community to agree to the creation of the International Criminal Court, in July 2002. Furthermore, They have served as a blueprint for the hybrid tribunals in operation today in Sierra Leone, Bosnia and Herzegovina, Timor Leste, and Cambodia.

The results of the truth commissions have also been uneven. While the information programs of the *ad hoc* tribunals were one of their main failures, it must also be said that the reports of the various commissions have been distributed with varying levels of success. The report of the commission in Argentina was a best-seller for years, and the public auditions of the TRC in South Africa gained an international audience. In Haiti, on the other hand, only a few people had access to the report of the TRC, and these were often diplomats. Some truth commissions, notably the one created in February 2002 by the Serbian Prime Minister, Vojislav Kostunica, were dismantled before they were able to carry out their mandates.

However, leaving aside the specific results of each tribunal or commission, the two approaches have been successful in unexpected ways. Both types of institution have frequently been set up by governments in a hurry to bring years of bloodshed to an end and start afresh. Their efforts have not always succeeded, however, as the example of Argentina shows clearly. The encouraging fact is that both criminal trials and truth commissions, when able to function more or less efficiently, have been the driving force of change. They have opened new areas of dialogue within the societies concerned. In some cases, they have given the society a new lease on life, breaking through the wall of impunity and providing support for the desire to bring about change and introduce reforms.

This helps to explain why the debate between the partisans of truth commissions and those of tribunals, once so heated, has today lost much of its passion. The two sides have been forced to acknowledge their respective limits, and also the way in which these approaches complement each other. To borrow a concept from economics, the offer on the supply side of persons guilty of crimes against humanity is well in excess of what the systems of justice – national and international – are capable of handling. The examples of the ICTY and the ICTR are proof of this fact. At the same time, the promoters of truth commissions have had to recognize that the impunity allowed to those responsible for the death of dozens, or indeed hundreds of thousands of men, women and children is not acceptable. This is one reason why Timor Leste has both a Special Panel for Serious Crimes and a Commission for Truth, Reception, and Reconciliation, while the truth commission of Peru has a special unit responsible for the gathering of evidence to be transmitted to the prosecutors. Moreover, in Burundi, despite some serious obstacles, the adoption of the principle of a truth commission has gone hand in hand with the organization of trials.

The approach has thus become a holistic one in which truth commissions and criminal proceedings each have a part to play. The question now is how to strike the right balance between commissions and trials. What criteria should determine the sequence of events? The dividing line that once separated the partisans of restorative justice from the partisans of criminal justice has now shifted to the question of sequencing. And it must be admitted that the answers to the fundamental questions are still not forthcoming.

Experience has shown that the approaches taken by the various members of the international community tend to be country specific. In some cases TRCs are created first, in others they are contemporaneous with tribunals, and in yet other cases they come last. In Sierra Leone, the truth commission and the Special Tribunal were created simultaneously. In Argentina, criminal

proceedings preceded the creation of a commission, which then gave rise to new trials. In Chile, the truth commission preceded the first trials.

The fact is that today the mechanisms of transitional justice have become part of the automatic response of many States and of the United Nations, although there are some notable exceptions including Algeria and Mozambique. It is important therefore to recognize the considerable challenges which these mechanisms of truth and justice must face:

The first challenge, at the national level, is to ensure that the society accepts ownership and recognizes itself in the processes that seek accountability for past wrongs. It cannot be denied that this recognition of ownership is often lacking. The NGOs and the international community have without any doubt a crucial role to play here as observers. When the mechanisms of transitional justice serve as an alibi for inertia or dysfunction, these observers must speak out loud and clear.

The second challenge is the erosion of legal norms that has taken place since 11 September 2001. Afghanistan is the classic example of a country in which neither the authorities, nor the United Nations, despite its deep involvement, and still less the United States, have begun even the most rudimentary investigation into war crimes or crimes against humanity and those responsible. The United Nations has itself been an active agent in the process of co-opting warlords into the power structure, in the name of a political stability that has proved illusory. The UN even went so far as to suppress a report scheduled for release in January 2005, which it had itself commissioned and which accused members of the Afghan parliament of responsibility for massacres and tortures.¹⁰ In his report in 2004 to the UN General Assembly, the independent expert on Afghanistan wrote: "Afghan people find it particularly disturbing to see the leaders of such groups (warlords and local commanders) who are known to have committed gross violations of fundamental human rights, war crimes, and crimes against humanity, benefit from impunity, and even become part of what is deemed the legitimate government".¹¹ The only result of this report was the revocation of the mandate of the UN's independent expert.¹² In the view of the Afghan Independent Human Rights Commission, the policy of impunity, far from helping to consolidate the government, has undermined it and jeopardized the future of the country: "We are of the view that a total lack of accountability, and an approach that allows anyone into positions in power, without examination of their tendencies to commit atrocities, is a threat to Afghanistan's long term potential to create a peaceful and stable environment for its citizens".¹³ Ineffective as a strategy, this policy of impunity has also created an unfortunate precedent in violation of the rules of international humanitarian law. This is also the view of the UN expert on Afghanistan, who, when recommending measures to address this "systematic impunity", encouraged the Afghan government "to consider the full array of transitional justice strategies, including investigations and commissions of inquiry, criminal prosecutions, reparations, mechanisms of memorialization and education, non-criminal sanctions against responsible individuals, such as limiting their participation in government and/or military service, and various aspects of broad institutional reform".¹⁴ To date, this recommendation has remained a dead letter.

¹⁰ Declan Walsh 2006: UN Report accuses Afghan MPs of Torture and Massacres. In: The Guardian, June 12. Available at: www.guardian.co.uk/afghanistan/story/0,,1795546,00.html

¹¹ Cherif Bassiouni 2004: Report of the independent expert of the Commission on Human Rights on the situation of human rights in Afghanistan. UN General Assembly, September 21. A/59/370. Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N04/518/00/PDF/N0451800.pdf?OpenElement>

¹² At the request of the United States. The expert, Cherif Bassiouni, is a US citizen and former chair of the committee in charge of drafting the statutes of the International Criminal Court.

¹³ Afghan Independent Human Rights Commission 2005: A Call for Justice. A National Consultation on Past Human Rights Violations in Afghanistan. Available at: http://www.aihrc.org.af/rep_Eng_29_01_05.htm

¹⁴ Cherif Bassiouni 2004: Op.cit. p. 23.

3 A Twisted Path to Reconciliation? The Historical Clarification Commission in Guatemala

Bernardo Arévalo de León

3.1 Three Initial Definitions

On Truth Commissions

Truth commissions are created usually upon the principle that the revelation of truth is an important element in the ability of a society to re-establish its capacity to function. Sometimes, the assumption goes further by stating that without such revelation no stability or prosperity are possible. Others disagree, indicating that the emerging truth is at its best only tentative, and that attempts to establish "one truth" will foster controversy and conflict, or stifle democratic debate, ultimate goals of such efforts.¹⁵

Uruguay and Spain are examples of nations that have been facing their past without the establishment of truth commissions, in contrast to Argentina and Chile, for example. The relative degree of stability and prosperity of these societies does not appear to have been affected by the absence of such official mechanisms for truth-seeking. And then, Argentina and Chile's initial commissions worked under curtailed mandates that limited their capacity to expose the truth, in comparison with the South African truth commission, the current "standard" in the field.¹⁶

Some of the most important progress in Argentina and Chile in terms of advancing the causes of justice (prosecuting culprits of abuses) and truth (revealing the historical facts) has taken place several years after the truth commissions presented their reports and recommendations and then ceased to exist. Unquestionably, the reports from the respective commissions have been an important factor in laying the ground for these advances, but not necessarily the determinant ones. Institutional consolidation of democratic institutions and changing relations of power associated to it, seem to be more important factors.¹⁷

On Transitional Justice

The effort to provide factual evidence concerning past human rights abuses is only one part in the larger process of assisting a society emerging from conflict to deal with legacies of its past. This broader approach, known as transitional justice, is defined as *"a field of activity focused on how societies address legacies of past human rights abuses, mass atrocity, or other forms of severe social trauma, including genocide or civil war, in order to build a more democratic, just, or peaceful future"*.¹⁸ Transitional justice includes several elements:

¹⁵ On this and other key debates in the field, see: Robert I. Rotberg and Dennis Thompson 2000: Truth vs. Justice. Princeton: Princeton University Press.

¹⁶ On the limitations of these commissions in establishing historical truth, see: Greg Grandin 2005: The Instruction of Great Catastrophe: Truth Commissions, National History, and State Formation in Argentina, Chile, and Guatemala. In: The American Historical Review 110:1. 38 pars. Available at: www.historycooperative.org/journals/ahr/110.1/grandin.html

¹⁷ Brownyn Leebaw 2005: Transitional Justice, Conflict, and Democratic Change. International Interventions and Domestic Reconciliation. Draft prepared for the APSA Task Force on Difference and Inequality in the Developing World.

¹⁸ Dinah L. Shelton, ed.-in-chief 2004: The Encyclopedia of Genocide and Crimes Against Humanity. Vol 3:1045-1047. Woodbridge, CT: MacMillan Reference.

1) Prosecution, 2) Truth Seeking, 3) Reparation, 4) Reconciliation, and 5) Institutional Reform.¹⁹

Therefore, in order to assess the scope and effect of the work of any truth commission in the wider effort to “*address legacies of past...abusesto build a more democratic, just or peaceful future*” it is necessary to consider efforts developed under the other components of transitional justice.

At the same time, it is necessary to bear in mind that as a field, transitional justice is a recent academic conceptual development linked to the experience of societies in facing the legacy of human rights abuses and violence, in the context of a globalized world in which respect for human rights has become a basic parameter for international relations. But as a political challenge, the basic question of how to build a functional political structure upon a legacy of violence and death has been faced by every society emerging from internal conflict and has been resolved – sometimes more successfully than others – according to the spirit and resources of its time. The United States, Spain, and Mexico are only some examples of nations that emerged from deep internal confrontations characterized with violence on a massive scale, whose scars were dealt with according to possibilities and perceptions very different to those prevalent today.

A Matter of Precision: What is Reconciliation?

Before we can attempt to assess the extent to which the Historical Clarification Commission (Comisión de Esclarecimiento Histórico, CEH) in Guatemala has contributed to reconciliation, it is necessary to clearly define what we understand by the concept “reconciliation” in post-conflict societies.

There is, first of all, a substantive dichotomic dimension to the concept. Reconciliation, from a social-psychology perspective, points to the situation in which social or political groups, which in the context of conflict came to perceive each other as adversaries or enemies, rise above their differences, scars, and grievances – past and present, i.e. pre-dating the conflict and resulting from it – to identify with each other as part of a larger community. From a socio-political perspective, it refers to the situation in which a nation – a political community that perceives itself as voluntarily marching together towards a shared destiny, paraphrasing Renan – that was torn apart by conflict, is re-constituted and resumes its common political destiny.²⁰

Implicit to these formulations is the assumption of a sort of return to a pre-conflict situation. Reconciliation speaks of the need to recuperate from history a lost condition – social or political – that is perceived as functional for the future. But what if such a condition did not exist to begin with, or did in a way that is not useable any more? What if post-conflict challenges in any given context are not about recuperation and rebuilding but about creation and founding?

Evidently, countries like Chile and, to a lesser degree, Argentina, are example of instances in which social and political institutions that preceded the conflict offered sufficient elements for the goal of establishing a functional, democratic, and peaceful future. Recuperation of such elements is therefore not only a possibility, but a dire need in terms of the implicit social and political effort. And the task is easier when the crisis has been limited in time and scope, as political and social mores linked to the critical period – and the abuses committed in it – might have not taken root in social and political institutions.

¹⁹ Paul Van Zyl 2005: Promoting Transitional Justice in Post-Conflict Societies. In: DCAF Yearbook. Available at: www.dcaf.ch/docs/Yearbook2005/Chapter10.pdf

²⁰ For a discussion on the different meanings of reconciliation in the context of transitional justice, see: Brownyn Leebaw 2005: Op.cit.

For many other countries, though, social and political institutions that pre-dated conflict offer few “recoverable” elements for the future. Violence, arbitrariness, discrimination are often deeply rooted in society to the point in which, in terms of the consolidation of peace and stability, it makes more sense to decry the past – not only the critical period, but the historical processes leading to it – and establish new foundations, than to build upon weak or false ones. And evidently, the nature of the challenge is deeply different for each case: Overcoming what is perceived as an abnormality in an otherwise “normal”, progressive, socio-political development process is different from the foundational task implicit in breaking away from a dysfunctional past.

3.2 Two General Considerations

These considerations point to the need to reiterate two well-known truths often lost in the context of political debate:

One is that truth commissions, transitional justice, and reconciliation – elements of post-conflict reconstruction in general – are about internal processes and agency. The development of a functional polity and a peaceful society is an expression of the political and social conditions that prevail at any given time, and of the way in which these are harnessed – or fail to be – into a historical process that allows it to gradually progress toward just and peaceful coexistence.

The second is that there are no recipes that have universal validity. Political, social, and cultural conditions in each case vary in a way that prevents the identification of replicable models. Needs and goals might be objectively similar. Principles and values might have universal validity. But specific responses will differ from context to context, and depend upon specific conditions.

3.3 Assessing Guatemala’s Historical Clarification Commission

From the Perspective of Justice

The Guatemalan Historical Clarification Commission (CEH) was created in the context of the peace negotiations between Government and insurgent forces that, between 1990 and 1996, put an end to the internal armed conflict that ravaged the country for over three decades. In contrast to other negotiated settlements to conflict, the Guatemalan Peace Accords were not limited to issues of cease-fire, demobilization, and political reintegration, but covered an ambitious agenda for sociopolitical transformation embodied in several subject-specific partial accords negotiated and signed following a negotiated agenda, that were tied together with a general durable and firm peace accord. Also in contrast to other

cases, the beginning of democratic transition preceded peace negotiations: The gradual process of transfer of effective political power from the ruling military to democratically elected leaders began in 1986 and ended in 1996, with the signing of the Peace Accords.²¹

Two important factors are implicit in this timing: The first one is that the CEH was created at a moment in the transition in 1994 in which the military, which institutionally and individually was responsible for the gross majority of abuses, still held a significant amount of political power and directly participated in the governmental Peace Commission that negotiated and signed the

²¹ As a matter of fact, it was the gradual transfer of power from the military to elected civilians in office that allowed the development of conditions for a political solution to the conflict; and in turn, it was the signature of the Peace Accords that closed the cycle of political control of the military over the State. See: Bernardo Arévalo de León 1998: *Sobre Arenas Movidiza. Sociedad, Estado y Ejército en Guatemala*. Guatemala: Facultad Latinoamericana de Ciencias Sociales (FLACSO).

Accord.²² In other words, the perpetrators were defining the terms of reference and the scope of work of the body in charge of examining their crimes. The second factor is that the overall goal of the negotiation process – and of the wider political transition process – was to put an end to an armed conflict that neither party could win militarily. The terms of reference and the scope of work of the CEH therefore responded not only to its stated functions as a tool for post-conflict reconciliation, but to the need to do so in a formula that was acceptable to all parties in a difficult negotiation process in which the overriding goal was neither truth nor justice, but peace.

Thus, the CEH was structured in a way that clearly impeded its potential judiciary effects: It could not subpoena witnesses or records; it could not individualize responsibility; its findings could not be used for prosecutions. Its mandate was limited: 1) to establish the true nature of the abuses; 2) to produce an analytical report on these; 3) to formulate concrete recommendations to foster peace and harmony in society.

Nevertheless, avenues for prosecution of culprits were not closed altogether, as it was evident that this would be as unacceptable to the negotiating insurgency as full prosecution was to the military. The National Reconciliation Law of December 1996 expressly excluded amnesty for the crimes of genocide, torture, forced disappearance and other crimes that do not proscribe according to Guatemalan legislation and international treaties ratified by the State. The CEH, in its recommendations, referred to the need to fulfill the National Reconciliation Law and to prosecute every crime not included in the amnesty. Other recommendations, such as the need to establish a commission to investigate the conduct of active military and security officers during the conflict in terms of their involvement in abuses or crimes, clearly pointed to the fact that prosecution was not a closed file.

Failure to prosecute perpetrators and inability to end impunity ten years after the signing of the Peace Accords – sad facts of political life in Guatemala – are therefore not imputable to the CEH, but first of all to the political context surrounding the negotiation of the Accords, and secondly to the political context surrounding its implementation.

The first limited the possibility to design strong mechanisms for retributive justice. At a moment in which they still held significant power, the military would have rejected any attempt to establish a body with the power to individualize responsibilities and bring the accused to due process, threatening to de-rail not only the peace process, but the fragile transition process as well.

Still, the National Reconciliation Law and the recommendations of the CEH left open the possibility – and the responsibility of the State – to continue investigating and bring the perpetrators of heinous crimes to justice. But the complex conditions of post-conflict Guatemala have made this task difficult: Three successive Governments since 1996 have been trapped each in its own political contradictions and therefore failed to develop the political will to establish as a policy the continuation of investigations and the prosecution of culprits. A dysfunctional system of administration of justice, a hostile institutional environment, and constant threats and aggressions

²² For details on the Governmental positions during the negotiation of this Accord, see: Héctor Rosada Granados 1998: *El lado oculto de las negociaciones de paz. Guatemala*: Friederich Ebert Foundation. For an integral reading of the negotiation process, see: Susan Jonas 2000: *Of Centaurs and Doves. Guatemala's Peace Process*. Boulder, CO: Westview Press.

have made pursuing justice a difficult task for those individuals and organizations determined to do it on a private basis.²³

Nevertheless, even if still very few, there are clear precedents that point to the fact that the possibility of pursuing justice has not been foreclosed: Rulings on cases like the murder of Myrna Mack and the massacre at “Dos Erres” are not only establishing judicial precedent, but also fostering determination and hope in surviving victims and families. The fight for justice still goes on.

From the Perspective of Truth

Considering its formal limitations and the uncooperative attitude of Governmental authorities – the military refused to cooperate with the Commission and civilian political authorities chose not to press them into it – the CEH did an outstanding job in establishing historical truth in its seven volume report “Memoria del Silencio” (“Memory of Silence”).²⁴ Its incapacity to individualize responsibility was balanced by a report that clearly established the institutional nature of counterinsurgent terror and described its logic, its methods, and its scope. Actually, it has been argued that this limitation allowed the Commission to focus on the institutional nature of human rights violation in Guatemala’s history.

The distance taken by political authorities from its work and the outright rejection of it by the military allowed the Commission to operate unconstrained by considerations about the need to subordinate historical narratives to a “ruling consensus” which was necessary to preserve for reasons of governance. This enabled the Commission not only to investigate the violations and abuses themselves, but also to interpret these in the context of wider historical sociopolitical developments in the country. Supported by a strong team of social scientists and historians, the CEH did an outstanding job in providing evidence that the abuses were not committed due to a “break-down” of societal norms during a period of crisis, but were an extreme expression of the underlying exclusionary and discriminatory structural logic of the Guatemalan State since colonial times. Its chapter on “Causes and Origins of the Internal Armed Conflict” is a detailed analysis of the interrelationship between economic exploitation, ethnic and social discrimination, and political exclusion that characterized the Guatemalan State from its inception. This is clearly beyond the scope of historical interpretation that truth commissions in Argentina and Chile produced.²⁵

The CEH was able to build upon the exhaustive investigation into human rights violations during the confrontation carried out by the Catholic Church’s project on “Recovery of Historical Memory” (REMHI in its Spanish acronym). Established in 1995 – after the agreement establishing the CEH and its limited mandate was made public – REMHI carried out its work without the formal constraints

²³ Impunity in Guatemala is a structural characteristic of a system of justice that denies justice not only to victims of crimes committed during the conflict, but also to the average citizen. See: Helen Mack 2003: *Impunidad y Denegación de Justicia en Guatemala*. Paper presented at the Second National Conference on Human Rights in Guatemala City. Available at: <http://www.derechos.org/kizkor/guatemala/doc/impu.html>.

²⁴ Comisión para el Esclarecimiento Histórico (CEH) 1999: *Guatemala. Memoria del Silencio*. Guatemala: F&G Editores. Available at: <http://shr.aaas.org/guatemala/ceh/report/spanish/toc.html>

²⁵ For a comparative assessment of historical narratives in Argentina, Chile, and Guatemala, see: Greg Grandin 2005: *Op.cit.*

imposed upon the Commission due to its non-official status. Its report "Guatemala: Nunca Más"²⁶ ("Guatemala: Never Again") added to the detailed research into the methods and context of abuses, identified individual responsibilities of civilian and military governmental officers, and was published almost a year before the CEH issued its "Memoria del Silencio". So in terms of historical truth, "Guatemala: Nunca Más" and "Memoria del Silencio" complemented each other in providing a comprehensive narrative of horror, not only describing events, methods, institutional and even individual responsibilities in detail, but also placing these elements into a historical context.

The emotionally charged and cathartic public presentation of "Memoria del Silencio" at the National Theatre in March 1999 was a symbolic milestone for the social and political actors who wanted to see the truth that they knew from experience or research legitimized in an official ceremony. But the discourse contained in the report was denied a wider social impact due to the political context in which it was presented. In its muted response to "Memoria del Silencio", the Government downplayed its political importance by referring to its historical interpretation as "... a contribution to a task that is only now starting".²⁷ This position only confirmed the ambiguous position that political authorities had taken since the onset of the Commission's operations: A decision to allow it to proceed with its work without recognizing it in terms of its value as a resource for the consolidation of peace and democracy.

The emerging truth – epitomized in the declaration of the commission of acts of genocide by the State between 1981 and 1983, and the characterization of racism as a constitutive element of the authoritarian State – became uncomfortable to economic and political elites that had been beneficiaries and managers of that State and that continued to occupy positions of political control and influence in the post-conflict period. Instead of attempting to contest the findings of the "Memoria del Silencio" – a difficult task in any case given the outstanding professional work of the Commission in documenting abuses – the attitude has been to look in other directions²⁸ and thus to deny the document the crucial role it could play for the creation of new political and social relations in the country.

Nevertheless, the truth revealed – and possibly more importantly, the process under which this truth was revealed – has had important effects in Guatemalan society. It has contributed to the healing process of those affected by human rights abuses, surviving victims and their families, families of the deceased and whole communities that were targeted by mass violence. And it has had effects on a socio-political level: Civil society organizations and political activists have been empowered in their

²⁶ Oficina de Derechos Humanos del Arzobispado de Guatemala (ODHAG) 1998: Guatemala. Nunca Más. Informe Proyecto Interdiocesano de Recuperación de la Memoria Histórica (REHMI). Vols 1-5. Guatemala: ODHAG.

See also the English translation: Human Rights Office of the Archdiocese of Guatemala (ODHAG) 1999: Guatemala. Never Again! Recovery of Historical Memory Project (REMHI). Maryknoll: Orbis Books.

Bishop Juan Gerardi, leader of the team that produced the report, was murdered a few days after it was made public. Although circumstances surrounding his death have been obscured by the handling of the ensuing investigation, one valid interpretation is that it constituted a warning to the CEH in terms of the content of its report. If anything, Gerardi's murder galvanized the determination of civil society – and presumably of the Commission – not to allow fear to dissuade their efforts to expose truth.

²⁷ Posición Inicial del Gobierno de la República ante el Informe y las Recomendaciones de la Comisión de Esclarecimiento Histórico. Published in Guatemalan major newspapers on March 16, 1999. Available at <http://www.net.gt/ceg/doctos/gob0316.html>. See also: Juan Hernandez Pico 2004: Terminar la Guerra. Traicionar la Paz. Guatemala : FLACSO.

²⁸ Although private individuals – retired military officers and right-wing politicians – criticized the report openly, neither Government in general nor the military in particular officially contested its contents. For a critique from a military perspective, accusing the report of downplaying the extent of human rights violations by the insurgency, see: Mario Mérida 2000: Testigo de Conciencia. Guatemala: Fondo de Cultura Editorial.

effort to pursue justice and political reform, and indigenous communities have been empowered to demand their rights and resist continued abuse.²⁹

Moreover, the revelation of truth has not ceased: Recommendations from the CEH pointed to the need to continue the exhumation of mass graves and to establish Commissions to explore the individual responsibility of military officers and to investigate cases of abduction and forced adoption of children. Even if political authorities have failed in many instances to turn these recommendations into State policy, civil society organizations – and some State institutions, like the Human Rights Ombudsman office – have taken on this as their task. The fight for truth still goes on.

From the Perspective of Reconciliation

After the signing of the peace accords, many analysts in Guatemala commented on the fact that one cannot “re-concile” what was never “conciliated” to begin with. Beyond the easy play of words lies a concrete fact that underscores the challenges of post-conflict Guatemala: It is more about construction than re-construction. It is more about creating than recuperating.

Social and political life in Guatemala has had very little to do with the functional and voluntary interactions associated with a democratic system of government. Social, political, economic, and cultural relations have been developed and kept in place by discriminatory and exclusionary structures that took different shapes according to the historical context, but have changed little in essence. Attempts to transform political structures in the first half of the 20th century – the ten-year “Democratic Spring” between 1944-1954 – were derailed before they could actually achieve sustainable impact. It is only since 1986 that the country has been advancing – painfully slowly – in a democratization process, challenged by the legacy of authoritarian rule. Reconciliation in Guatemala, therefore, has not been about dealing with the effects of an extraordinary period – the war, but rather about dealing with the social and political legacy of a historical state-building process.

The “political community” of the past was not held together by the cohesiveness of voluntary and functional associations, but by the force of coercive political structures. Inter-sectoral relations at the national and communal level – be it across ethnic, class, political, or religious divides – were not about solidarity but about subordination. In this context, the uses of historical truth are conditional to the existence of a clear will to abandon and decry this past. The signing of the Peace Accords in 1996 provided an opportunity to establish such a clear historical divide: The end of the authoritarian State and the birth of a democratic one, which would close the cycle of political transition. Reconciliation in this context would mean the recognition by all social actors of the need to break away from a set of cultural, social and political relations that were inherently twisted, in order to establish new and sound ones.³⁰

Unfortunately, dominant political elites in the country understood the historical moment not as one of rupture with the past, but as one of continuity. Accordingly, human rights violations committed during the internal armed confrontation were regarded as excesses committed in the context of a

²⁹ Victoria Sanford 2003: *Buried Secrets. Truth and Human Rights in Guatemala*. New York: Pelgrave. See also: Rachel Seider 2001: *War, Peace, and Memory Politics in Central America*. In: Alexandra Barahona de Brito and Palma Aguilar, eds. *The Politics of Memory: Transitional Justice in Democratizing Societies*. Oxford: Oxford University Press.

³⁰ Brownyn.Leebaw 2005: *Op.cit.*

justified defense of threatened political institutions.³¹ In this situation, historical truth cannot reconcile, in so far as it demonstrates the structural logic of a perverse social order that is still vindicated by powerful political actors. But if reconciliation is about building a just, democratic, and peaceful future, the conclusion should be different.

In the contemporary world, a democratic community cannot be build over the occultation of truth and the denial of narratives that speak of tragedies of such enormous proportions. Even if political conditions and prevailing political and ideological gaps prevent the emergence of a common narrative of the past, or at least, of a shared strategy on how to deal with it, the affirmation of the truth from the perspective of the victims is a necessary element for any future effort to build a shared destiny out of the tragedy of the past. "Memoria del Silencio" has been an important contribution to groups that are fighting for such a future. It has empowered social and political actors that believe in and strive for the establishment of a fully democratic state to evidence the nature of economic, political, and social relations inherited from history and articulate alternative responses.³² Even if shunned by political elites of today, the report will not disappear: Its uncontested official nature will sustain it as a social asset that can still play a pivotal role in a different political context in the future.

3.4 Final Considerations

"Memoria del Silencio" included a series of recommendations that dealt with the continued pursuit of truth and justice, as well as with the need to reconcile Guatemalan society: a) measures to preserve the memory of victims, b) measures of reparation to victims, c) measures towards the development of a culture of mutual respect and observance of human rights, d) measures to strengthen the democratic process, and e) other recommendations, favoring peace and national harmony. These ranged from punctual recommendations, such as the ratification by the State of a series of international treaties, guaranteeing observance of human rights, to the initiation of new processes, such as the creation of a Commission for the investigation of forced abduction and adoption of children during conflict and legal measures to redress these. Today, the balance indicates a mixed record of some achievements – e.g. the existence of a national policy and commission for reparation with a budget higher than some governmental ministries – and several failures – e.g. the commission to investigate the record of military and security officers, currently serving, regarding possible human rights abuses has not been established. In brief, neither has justice been fully served, nor does any consensus exist concerning historical truth, nor has reconciliation been achieved.

Yet, it is still too early to attempt a final assessment on the effect that the Commission has had in post-conflict Guatemala. As a matter of fact, the Commission itself, perfectly conscious of its formal and contextual limitations, not only left open avenues for official and private action beyond its own temporal limitations, but envisaged an official body – a national Foundation for Peace and Harmony – in charge of ensuring implementation of all its recommendations. In what can be taken as a metaphor for the general attitude of political elites towards the report and its recommendations, a congressional decree did, in fact, establish a Commission for Peace and Harmony in 2001, but without proper consultation with civil society groups and the Human Rights Ombudsman office. According to the United Nations Verification Mission in Guatemala (MINUGUA), this did not

³¹ A clear example of this perception was the decision by the Portillo Government to grant compensation to former members of paramilitary groups for "services rendered to the State" during conflict, instead of opting to compensate them for the abuses the State had committed against them in mobilizing them for counterinsurgent purposes.

³² Greg Grandin 2005: Op.cit. Pars 24-31.

correspond to the letter and spirit of the CEH's recommendation, as it left out substantive governmental and civil society participation and support.³³

Two final considerations remain to be mentioned:

The first one is to remember that with respect to reconciliation in terms of the need to establish a just, peaceful, and democratic society, the CEH has been only one factor in a complex formula of measures to that effect in post-conflict Guatemala. The truth commission was one of several initiatives envisaged in the Peace Accords that, in combination, precisely proposed to establish solid foundations for such a "firm and durable peace". The Peace Accords themselves were elements within a wider process of social and political transformation that, if successful, will enable Guatemala to escape the cycle of violence and instability it has suffered throughout its history. But what has been faltering in Guatemala has been precisely that overall sociopolitical process.

Guatemala is advancing slowly and painfully on the road toward social transformation due to social and political conditions that are beyond the scope of this article, but that can be summed up in the fact that Guatemalan society has not evidenced the same determination to engage in the deep structural transformations necessary to sustain peace in the same way in which it engaged in the process that extricated it from armed conflict. But that does not mean that the process of transformation is being reversed or even stalled: An analysis of the last twenty years of history enables us to identify that even following its own twisted and faltering way, social and political transformation of the country is indeed happening. Considering all its limitations, electoral democracy has been established; and the armed conflict has been left behind. The legacy of authoritarianism still permeates cultural, social, and political structures of the country, but not enough to revert the timid advances of a process that holds the promise of a just and peaceful society as its overall goal. A new society has not been consolidated, and there is certainly no room for complacency: The possibility of a relapse into authoritarian rule and into conflict is still present. But the process is advancing.³⁴

It is in this context – the one of the twisted path to reconciliation of Guatemalan society – that the impact of the CEH has to be considered. It was never within the possibilities of the CEH to be a determinant factor for reconciliation – a "path" in itself. But, in the on-going struggle for reconciliation, its contributions have been clear and positive. Its outputs on issues of justice, peace, and reconciliation empower social actors and forces that still hope to advance further in this direction. Given the right conditions, they will be able to build upon them and seize their potential in the future, as has happened in Chile and Argentina.

This links with the second consideration, which is that the reasons for the weakness of this process are the ones that also hold the promise of its sustainability: The democratization process, the negotiations that led to peace, the fight for truth and justice have all been processes led and implemented by internal actors according to national conditions and capacities. The international community has given considerable and even critical financial, political, and technical support to all these processes, but as an external contribution, not as a substitute to internal agency. The content of the Accords, the compromises made in the negotiations, the political processes leading and

³³ Until the establishment of the Foundation, the Commission requested the Secretary General of the United Nations to include in the mandate of the UN Mission for the Verification of the Peace Accords (MINUGUA) verification of its own recommendations. See: MINUGUA 2004: Informe de Verificación. El estado del Cumplimiento de las Recomendaciones de la Comisión para el Esclarecimiento Histórico. Guatemala: Mimeo.

³⁴ For a general analysis of post-conflict challenges in Guatemala, see: Edelberto Torres-Rivas 2005: *Implantar la Democracia es Construir la Paz*. In: Bernardo Arévalo de León, José Beltrán Doña, and Phillip Fluri, eds. *Hacia una Política de Seguridad para la Democracia en Guatemala*. Geneva Centre for the Democratic Control of Armed Forces (DCAF). Münster: LIT-Verlag.

originating in these have resulted from decisions taken by local actors. Furthermore, local actors have claimed sufficient ownership of the outcomes of these processes to ensure that the push for transformation is not lost. The frustratingly slow rhythm of progress is explained by the difficulty of enabling conditions and the relative political weakness of actors committed to it; but the continuation of progress is explained precisely by their resilience and determination to prevail and transform their circumstances.

Even in its own convoluted and limited way, agency for transformation is present in Guatemala, and is working. As the process goes on, reconciliation is in the horizon.

4 'Dealing with the Past' in Bosnia – Obstacles and Challenges for 'Reconciliation' in the Region of former Yugoslavia

Martina Fischer

4.1 Introduction

The need for societies in former Yugoslavia to deal with the wars in the region and to clarify responsibility for past violence was put on the agenda in recent years by international organizations and by local groups and individuals (scholars, peace practitioners, human rights activists, artists, etc.). There has been an array of efforts to set up mechanisms which can be summarized under the heading "dealing with the past."³⁵ These include the prosecution of war criminals before national and international courts, reform of state institutions, especially the security sector and the justice system, reparation for victims, lustration, proposals for truth commissions, fact-finding and documentation, education reform, and various healing processes including trauma work to strengthen individual capacities to cope with past violence.

The situation in Bosnia and Herzegovina ten years after the war can be summarized as follows:

- Prosecution of war criminals and trials, especially by the Hague Tribunal, have brought out important facts on crimes and atrocities. But retributive justice has its limits as far as peace-building is concerned.
- In order to complement retributive justice, civil society organizations (CSOs) have developed fact-finding, truth-telling, peace education and awareness-raising initiatives for dealing with the past.³⁶ These efforts still remain marginalized or are ignored by the wider society. The tension between truth, justice, and peace is reflected in the diverse activities.
- Political decision-makers strive to avoid any public debate on dealing with the past. Many politicians seem to have little interest even in the publication of reliable data. Each side is convinced of its own truth, and data are merely used in order to prove the respective victim-status rather than to paint an objective picture. Official discourses are still beset with nationalist propaganda – often actively supported by the media.

In the following article, I will outline some dilemmas, potential and obstacles for reconciliation in Bosnia and Herzegovina and stress some challenges for peace-building in the region of former Yugoslavia.

4.2 Potential and Limits of Retributive Justice: Ambivalence of the Hague Tribunal

Analysis of the post-Dayton period has emphasized the importance of justice, in particular the importance of the International Criminal Tribunal for the former Yugoslavia (ICTY). It has helped to

³⁵ Natascha Zupan 2006: Facing the Past and Transitional Justice in Countries of Former Yugoslavia. In: Martina Fischer, ed. 2006: Peacebuilding and Civil Society in Bosnia and Herzegovina. Ten Years After Dayton. Münster: LIT-Verlag. pp. 327-342.

³⁶ For an overview of these activities (country surveys and a regional synthesis report), see: Paul Stubbs 2003: Dealing with the Past in Bosnia and Herzegovina, Croatia, and Serbia & Montenegro. Post-Yugoslav Countries Program. Regional Synthesis Report. Zagreb: Quaker Peace and Social Witness. Available at: http://paulstubbs.pbwiki.com/f/stubbs_dealingwiththepast.pdf.

uncover facts about massacres and atrocities. Aiming at the punishment of those responsible for war crimes and human rights violations, the ICTY is undoubtedly an important instrument of retributive justice. For the victims, trials against war criminals are fundamental. There have been voices arguing that domestic systems (instead of international mechanisms) should handle these prosecutions, but analysis of the status of domestic legal systems in these countries casts doubt on this option. Diverse studies have concluded that domestic legal systems in Bosnia and Herzegovina (BiH), Croatia, and Serbia-Montenegro have been unable to handle even routine criminal matters so far and therefore it would be risky to return war crime prosecutions "home" because those systems do not currently have the capacity or political will to support them.³⁷ It seems that there was probably no alternative and that the ICTY still is indispensable.

However, in terms of contributions to the peace process, its limits have to be acknowledged. Its impact on societal peace in BiH is still not sufficiently investigated. But there are strong indicators that, in BiH for instance, it has exercised little effect on societal peace. The Tribunal has been an important motor for public discussions, but has also fuelled the nationalist discourses about the war which still dominate the debate. James Meernik has applied the Kansas Event Data System (KEDS) to measure the degree of conflict and cooperation among the principal ethnic groups in BiH and "found little evidence to support the notion that the ICTY had a positive impact on societal peace in BiH. In fact, in more instances the effect was the opposite of that intended.... More often than not, ethnic groups responded with increased hostility towards one another after an arrest or judgment."³⁸ Some analysts argue further that diplomatic and media expectations that the work of the ICTY could be expanded beyond its legal mandate and that it would contribute to reconciliation among former warring groups have proved unrealistic. They conclude that attempts to link the ICTY to this broader social project, without the political will and infrastructure to support it, "undermine the important contributions that international trials can make to post-conflict societies."³⁹

Although unchallenged and irreplaceable, justice delivered by the Hague Tribunal is obviously not sufficient to change the political climate of inter-ethnic mistrust and hatred. According to peace and human rights activists in the region of former Yugoslavia, reconciliation of a war-torn society needs both *justice* and *truth* and has to effectively involve the broader society.⁴⁰ This is why some Bosnian activists, and a few politicians, suggested establishing a *truth and reconciliation commission* for the entire region. The idea was rejected by political decision-makers and parliamentarians from all sides and has not been based on broad social support, nor was it supported by relevant civil society organizations (victims' organizations in BiH, for instance, were adamantly opposed). The initiative was supported by the United States Institute for Peace and a commission was founded in 2001, but due to the lack of support in BiH it never became active.⁴¹

In the decade after Dayton, Bosnian decision-makers in governments and parliaments did not undertake major efforts either to foster justice or fact-finding (not to mention peace-building). Even ten years after the war, it is not possible to get reliable figures from Bosnian administrations about

³⁷ Katie Zoglin 2005: The Future of War Crimes Prosecutions in the Former Yugoslavia. Accountability or Junk Justice. In: Human Rights Quarterly 27,1. pp. 41-77.

³⁸ James Meernik: 2005: Justice or Peace? In: Journal of Peace Research 43,3. pp. 271-287.

³⁹ Laurel Fletcher and Harvey Weinstein 2004: A World Unto Itself? The Application of International Justice in Former Yugoslavia. In: Eric Stover and Harvey Weinstein, eds. 2004: My Neighbour, My Enemy. Cambridge: Cambridge University Press. pp. 29-48.

⁴⁰ Sanela Basic 2006: Bosnian Society on the Path to Justice, Truth, and Reconciliation. In: Martina Fischer, ed. 2006: Op.cit. pp. 357-385.

⁴¹ It was recently reported that a working group has been established which is going to present a revised concept.

how many people have died, how many left the country, and how many have returned, etc.⁴² Numbers are highly speculative and can be manipulated according to individual political purposes. This contributes to new myths which are counterproductive to peace-building. Lack of protection and support for victims by state institutions are a further consequence. There are no clear categories of "victims", and especially the fate of women who were affected by rape and torture during the war was ignored for a long time.

It was only after the launch of the film "Grbavica"⁴³ – which won an award at the international film festival "Berlinale" – that the Bosnian parliament decided in Summer 2006 that raped women would be legally acknowledged as "war victims" or "war invalids" and deserve an according compensation, similar to men who fought in the war. This was due to pressure of NGOs like Medica Mondiale and campaigns which accompanied the film in BiH, and is seen as important progress especially by human rights and women's organizations.⁴⁴

Families of victims of the Srebrenica massacre brought a complaint against the Republika Srpska (RS) in front of the Human Rights Court. It is due to their initiative that a commission was established in 2003 to investigate the events which took place in Srebrenica from 10 - 19 July 1995.⁴⁵ Unfortunately, the victims themselves often risk being exploited for political purposes in campaigns that aim at presenting the "others" as negative and ignoring the crimes of the own group. "Today each of the three ethnic constituencies in BiH cultivates their own 'truth'. This is reflected in the education sector, in the different history books and in the way media report on reality."⁴⁶

The fact that the three national commissions for missing persons merged in 2005 is seen as another sign of progress.⁴⁷ But the failure of the plan to establish a truth and reconciliation commission in Bosnia has demonstrated that it is still difficult to tackle the war and that time is not yet ripe for

⁴² The decade after Dayton was marked by vast discrepancies in the casualty figures cited by the stakeholders in the war. International sources on the number of victims in the war also have varied greatly. The most commonly cited figure is between 200,000 and 250,000 Bosnians killed, which the journalist Nick Gowing has traced back to Bosnian government officials. Articles in the Stockholm International Peace Research Institute (SIPRI) yearbooks and other reports (See: Dan Smith 2003: *The Penguin Atlas of War and Peace*. New York/London: Penguin.) contain the figures of 140,000 and 200,000 as the total number of Croats, Muslims, and Serbs killed. The divergence of the figures reflects their status as estimates. (On the problematic consequences of this, see: Vanessa Pupavac 1998: *Disputes over War Casualties in former Yugoslavia*. In: *Radical Statistics* 69. Available at: www.radstats.org.uk/no069/article3.htm.) A solid data base has been established recently by a CSO based in Sarajevo, the Research and Documentation Center (RDC). In its 2006 report, RDC outlines a total of 96,000 dead and missing persons, for whom data are secured See: Research and Documentation Center 2006: Report April 2004 – April 2006. Sarajevo. p. 4. Available at: www.idc.org.ba.

⁴³ The film „Grbavica“ (by Jasmila Zbanic) tackles the relationship between a Bosniak women raped during the war and her teenage daughter, both trying to cope with the past in post-war Sarajevo. It outlines the individual trauma as well as the existing taboos which still mark society at present.

⁴⁴ Since the film "Grbavica" started showing in BiH, NGOs have collected 50,000 signatures in favor of official acknowledgement and improvement of raped women's situation. A parliamentary proposal had foreseen a compensation which would have been 50 percent of the amount which male war participants would get. The campaign contributed to the decision that women now get the equal sum. (See the interview with the psychologist, Mirjana Senjak: *Die Frage nach Gerechtigkeit ist sekundär*. In: *die tageszeitung*. 19 October 2006. Available at: <http://www.taz.de/pt/2006/10/19/a0162>. Accessed 23 November 2006.) The film has been seen by 100,000 people in Bosnia, but was also partly boycotted by cinemas and distributors in the RS.

⁴⁵ The Srebrenica Commission presented a report in 2005 in which the RS finally had to acknowledge that more than 7,000 persons were killed (instead of less than 2,000, a figure claimed by the RS government up to that point).

⁴⁶ Gabriele Baumann and Nina Müller 2006: *Vergangenheitsbewältigung und Erinnerungskultur in den Ländern Mittelost- und Südosteuropas*. Working Paper 164. p. 30. Berlin/Sankt Augustin: Konrad Adenauer Foundation. Available at: <http://www.kas.de>. Translation by M.F.

⁴⁷ *Ibid.* p. 31.

institutionalized processes of dealing with the past involving state institutions and civil society. The crucial question therefore becomes: *What can be implemented and achieved in terms of 'interim measures', which – in the long run – might contribute to the process of reconciliation?*

4.3 Initiatives for Fact-finding, Documentation and Research

In order to complement mechanisms of retributive justice and to involve society, four NGOs from Serbia, Bosnia, and Croatia elaborated a joint strategy in the process of dealing with the past. The Humanitarian Law Center (Belgrade), the Research and Documentation Center (Sarajevo), Dokumenta – Center for Dealing with the Past (Zagreb), and the Center for Peace, Nonviolence, and Human Rights (Osijek) presented a project for regional cooperation in March 2005 in Belgrade. Its basic objective is to create common data base on crimes and serious human rights violations committed on the territory of the former Yugoslavia, which is seen as an important condition for establishing peace in the region. A funding proposal aiming at "Strengthening Regional Cooperation and Capacities for Dealing with the Past," submitted to the Swiss Ministry of Foreign Affairs, was accepted. The three Centers signed the "Protocol for Regional Cooperation in Researching and Documenting War Crimes in Post-Yugoslavian Countries." While each Center approaches this complex field of activity by means of its own methodology, all agree on one point "... that truth, as a precondition of all forms of justice, can be attained only through the persistent pursuit of the facts."

Declared purposes of the Centers' cooperation include:⁴⁸

- Collecting facts and documenting the ways in which people suffered, instead of abstract rhetoric and manipulation of numbers;
- To draw lessons from tragic events and to equip people to deal with potential sources of conflict returning dignity to victims and to enable them to talk about their suffering;
- Identification of most suitable ways of finding justice, truth and rule of the law as guarantees of long-term peace;
- To prevent revisionist history.

The Centers have organized important conferences, for instance on "Establishing Truth in the Aftermath of Violent Conflict" in May 2006 in Sarajevo and have established a permanent regional summer school - a unique endeavor and the first enterprise of its kind in the field of transitional justice and dealing with the past in this region. The Summer School for Dealing with the Past is a one-week educational program designed for university students and NGO activists (age 20-35), consisting of lectures, presentations, and discussions with international and regional experts working in the field of transitional justice and dealing with the past. Topics include retributive and restorative justice, truth-telling mechanisms, commissions for truth and reconciliation, collective memory, reparations, vetting and lustration, reconciliation, international tribunals for war crimes, international criminal law and the ICTY, as well as domestic war crimes trials. The initiators hope that this school will "... become a regional hotbed of analytical inquiry into the aspects and mechanisms enabling the successful development of the process of dealing with the past."

The work of these organizations had had an impact on the public discourse. This became obvious in 2005 when a video became public which shows the killing of several young Bosniaks in the

⁴⁸ See: Humanitarian Law Center (Belgrade) / Research and Documentation Center (Sarajevo) / Dokumenta – Center for Dealing with the Past (Zagreb): Strengthening Regional Cooperation and Capacities for Dealing with the Past. Project Proposal submitted to Swiss Ministry of Foreign Affairs. September 2004. Available at: www.idc.ba.

Treskavica mountains by soldiers belonging to an elite unit of the state of Serbia (Scorpions), revealing that the Srebrenica massacre was not committed solely by Bosnian Serb militia, but that troops from Yugoslavia were also actively involved. The video was broadcast by all public TV stations in Bosnia and also disseminated in Serbia and in Montenegro, triggering a number of public debates. Many people in the region realized that they had to revise their views of history and the "truth" they had believed so far. According to peace activists, this has created a better basis for recognizing individual and collective responsibilities in BiH and the wider region. The video was unearthed by the Belgrade-based Humanitarian Law Center and the human rights activist Natasa Kandic. The video provided important evidence at the Hague Tribunal. This proves the significant role that the documentation of war crimes and fact-finding can play.

Beyond fact-finding there are ongoing efforts by civil society organizations in Bosnia and Herzegovina and in the region of former Yugoslavia to enhance the societal debate on the past and to prepare the ground for what some might call peaceful co-existence and others might call future processes of reconciliation by awareness-raising and peace education.

4.4 Public Awareness-Raising, Training, and Peace Education

The Center for Nonviolent Action (Centar za Nenasilnu Akciju – CNA) has been actively involved in transnational peace work since 1997. CNA started out as a training organization in Sarajevo. Since 2001, part of the team works from Sarajevo and part from Belgrade. The team has gathered people from all over former Yugoslavia (BiH, Croatia, Macedonia, Montenegro, and Serbia, including Kosovo) in training workshops for nonviolent action and initiated substantial cross-border networking.

CNA soon grew into a team of committed young people from BiH, Croatia and Serbia-Montenegro – women and men with a diverse set of backgrounds and biographies, ranging from conscientious objectors to war veterans – who all wanted to contribute to transforming conflicts in the post-war zones of former Yugoslavia. The CNA team developed and offered various training formats (basic trainings and a "training for trainers") that translated the concept of nonviolence ("nenasilje") into the regional context and aimed to spread it widely throughout the Balkans. These trainings have created an impressive cross-border network of experts from the education sector, the media, and the NGO community.⁴⁹

Starting in 2002, CNA has increasingly focused on activities that aim to initiate and support a self-critical process of "Dealing with the Past". For this purpose, CNA organized public discussion forums in which war veterans from all sides spoke about their personal experiences and opinions. Fourteen such public forums were held between 2002 and 2004 in Bosnia and Herzegovina and in Serbia-Montenegro. Sixteen war veterans of Serbian, Bosnian and Croatian origin have gone through the process of preparing themselves for such public debates together with CNA. The forums built on a broad-based media campaign and contacts with local politicians and administration. They aimed to encourage public debate and reflection about individual responsibility for violence and to provide space for individual story-telling in local communities. Beyond the public forums, all of CNA's educational materials – from training manuals to film documentaries for TV and video screenings – aim to motivate people to reflect critically and honestly on their role and their personal responsibility before, during and after the wars.

⁴⁹ For a more detailed account, see: Martina Fischer 2001: Conflict Transformation by Training in Nonviolent Action. Activities of the 'Center for Nonviolent Action' (Sarajevo) in the Balkan Region – An Evaluation Report. Berghof Occasional Paper No. 18. Berlin: Berghof Research Center for Constructive Conflict Management and Martina Fischer 2006: Confronting the Past and Involving War Veterans for Peace. Activities by the Center for Nonviolent Action. In: Martina Fischer, ed. Op.cit. pp. 387-416.

In CNA's view, dealing with the past means that people should try to analyze the causes of the war and address individual attitudes which supported violence. These include widespread stereotypes and enemy images concerning members of the other groups and peoples. CNA argues that there are still high levels of violence and tension within and between states in the region and therefore regards it as very important that societies deal with the past right now. Otherwise, they will risk running into the same trap as before and will face new outbreaks of violence since important factors which contributed to the war will persist.

Talking about the lessons learned from their peace work in recent years, the CNA members shared an important observation: the question whether the past has to be addressed at all is answered in a different way by different generations and dealing with the past does not have the same meaning for them.⁵⁰ Peace education strategies have to take this into account. Young people from post-war generations, who have not been directly involved in war, often do not see a need to face the past and argue that they do not feel responsible for the actions of their parents' and grandparents' generation. They consequently have to be addressed in a distinctive way, compared with the pre-war and war generations.

Ignoring this challenge leads to a situation, in which peace work risks having unintended (negative) side-effects.

It seems that peace education faces a serious dilemma: Leaving the past un-addressed – according to CNA – will necessarily mean that things are swept under the carpet. Forcing people to deal with the past, on the other hand, is not effective, as it will not change attitudes. On the contrary, it might lead to rejection or depression. Talking about the past, present, and future has to be balanced in a way which avoids exhausting and alienating people. CNA's experience shows that many people in the region want to address the past and are searching for opportunities to ask questions and join in discussions on these topics, even if remembering is a painful process for them. But in their daily work, the team members also had to cope with backlashes and frustration. Overall, they feel that there is still a long way to go to achieve co-existence, tolerance, and lasting peace. The current situation is characterized as kind of "cold peace."

According to CNA, societies in the region are marked by the common phenomenon of "victimization" which becomes a major obstacle for peace-building and conflict transformation, and also for reconciliation.⁵¹ Victimization exists on different levels: People feel like victims of "the others", against whom they were once opposed in war. "The others" are often blamed not only for the war, but for all the consequences of the war as well: The difficult economic situation, many refugees and displaced persons, a ruined economy, increased crime and violence rates, etc. Furthermore, there is the feeling of being a victim, of being helpless and dependent on "one's own" politicians and also on world powers.

CNA-activists have rightly pointed to the danger that the role of the victim can be very comfortable because it frees people from any kind of responsibility – for their own destiny, but also for the society they live in. Opening up the discussion about responsibility for the war and its atrocities can trigger resistance. But dealing with one's own responsibility for the past is seen as the first step towards reconciliation, thus supporting the others to start that process, too. In CNA's view, it is therefore important in a peace-building process that people deal with war crimes committed "in

⁵⁰ See: Martina Fischer 2006: Finding a Balance. Interview with CNA staff. In: Martina Fischer, ed. Op.cit.. pp. 417-436.

⁵¹ Center for Nonviolent Action 2002: Four Views. How I found myself in war. How to reach sustainable peace. Articles published a special edition of Vreme, No. 600. Belgrade. 4 July 2002. pp. 24-26. Available at: http://www.nenasilje.org/cna_e.htm

their name." Giving people a chance to hear what it is like for "the others," what their problems, fears, and hopes are, is a very important step towards mutual understanding and thereby towards peace-building. Within such a framework it is very important to have public debates on identities, especially national identities.

According to CNA, people must learn to take responsibility for the past, both on an individual level and as regards the role of their "own" group. As a consequence, they need to be sensitized in order to refuse to accept violence as a political instrument and social structure. "People should realize that violence does not start with an exchange of gunfire; it starts when 'Ekavica' (Serb) dialect is corrected to 'Ljekavica' (Bosniak) dialect in a bakery in Sarajevo, and when people feel unsafe and discriminated against in the towns and villages they live in."⁵² To make society aware of this, according to CNA, is one of the main challenges for peace-building in the present and future.

4.5 Progress and Backlashes: The Potential and Limits of CSO Approaches

The CSO initiatives mentioned above are outstanding in that they all support regional initiatives. They have made efforts to link with the media and they were also partly successful in creating alliances with journalists. Apart from these initiatives, several media organizations are active, aiming at professional reporting on the ICTY's work and court decisions, as for instance, the Balkans Investigative Reporting Network (BIRN) and the Media Plan Institute, both located in Sarajevo.

As outlined above, there is no proactive engagement by political decision-makers sitting in governments and parliaments for "dealing with the past" in the sense of fact-finding.⁵³ As many of them have been active politicians before, during, and after the war, any public debate would force them to deal with their own responsibility. So it is mainly non-governmental organizations, international organizations, victims' organizations, women or youth organizations who are ready to tackle the past. But not all of them necessarily share the same values and purposes. There are civil society initiatives aiming to achieve justice by focusing exclusively on the suffering of members of their own constituency and others who try to paint a more objective picture of the past war and advocate for empathy with the suffering of members of the other constituencies as well. Still others see analysis of the causes of the war – and dealing with individual roles, attitudes, and behaviors which contributed to it – as a key issue.

A problem remains that initiatives for dealing with the past in BiH and the region of former Yugoslavia are still operating in niches and quite isolated from support by broader society. A great part of the population is not interested in such a process: "It is estimated that 9,000 individuals have been involved in war crimes. Many of them joined the state institutions as civil servants after the war. 'Dealing with the Past' would be very inconvenient for them. In addition, the threefold ethnic division of society makes the situation even more complicated."⁵⁴

It was reported by many peace and human rights activists from Bosnia, that some progress had been made in the period following the release of the so-called "Srebrenica Video" in 2005 (see above 4.3.). People started to talk about the war and hope grew that this would have an impact on the

⁵² Center for Nonviolent Action 2002: Op.cit. pp. 24-26.

⁵³ One of the few initiatives is the preparation of the case against Serbia at the International Court of Justice, which should clarify the role and responsibility of the former Yugoslav government with respect to the war in BiH. Such an initiative will undoubtedly contribute to a clarification of facts, but for peace activists it is still an open question whether it will also contribute to reconciliation.

⁵⁴ Gabriele Baumann and Nina Müller 2006: Op.cit. p. 30. (Translation M.F.)

general public discourse. But the "official" discourse remained dominated by perceptions of "victimization" and selective memory. This became obvious, for instance, in July 2005 at a burial ceremony in the Potocari Memorial Cemetery near Srebrenica.⁵⁵ To mark the tenth anniversary of the Srebrenica massacre, the remains of a further 610 identified victims were laid to rest.⁵⁶ The victims' families and international representatives who gathered for the ceremony waited in vain for some kind of address (or even an official apology) from Serbian President Boris Tadic, who was also present at the ceremony. In a declaration issued in Belgrade, the Serbian government merely condemned all crimes committed during the ten years of war in former Yugoslavia, including the massacre at Srebrenica. However, this statement was immediately watered down by the comment that Bosnian Muslim troops had also committed war crimes against Serb civilians in the winter of 1992/1993. The day after the ceremony in Srebrenica, Bosnian Serbs gathered in neighboring Bratunac to hold their own memorial ceremony exclusively for "their" victims of war.⁵⁷ This shows that remembrance in Bosnia and Herzegovina continues to be highly selective.

Unfortunately, in addition to this, an amazing roll back in the general political discourse towards nationalist and aggressive rhetoric could be observed in 2006, used by Bosnian politicians from all sides who played the nationalistic card: Both a constitutional reform debate which was launched by US-advisors among the political parties and in the BiH parliament in 2005/2006 and the campaign for the national elections have been instrumentalized by political hardliners and opportunist leaders from all sides for their own purposes. Nationalist rhetoric was heard in reaction to Montenegro's decision to leave the federation with Serbia and establish a sovereign state in spring 2006. The Prime Minister of Republika Srpska, Milorad Dodik (who was until then not even considered as a hardliner but internationally accepted as a moderate actor) embarrassed the Bosnian and international public when he called for a referendum for the RS as well.⁵⁸ Dodik's announcement clearly referred to a revision of the state Bosnia and Herzegovina. It was also inspired by recent developments in the negotiations on the future status of Kosovo (which seem to accept independence under certain conditions).⁵⁹

Reactions from the Bosniak political establishment were not less nationalist and contributed to further polarization. A proposal that aims to modify the Dayton constitution slightly and foresees more competencies for the national state institutions had been discussed by the national parliament

⁵⁵ The memorial and cemetery maintained by the Foundation of Srebrenica-Potocari was set up in 2001 with international support. See: Statute of the Foundation of Srebrenica-Potocari Memorial and Cemetery, Available at: www.ohr.int/print/?content_id=5868.

⁵⁶ The event did offer an opportunity to reflect critically on the failure of the international organizations. The Heinrich Böll Foundation Sarajevo published a compilation of comments by international politicians and Bosnian intellectuals on lessons from Srebrenica as a synonym for genocide (Heinrich Böll Foundation 2005).

⁵⁷ Neue Zürcher Zeitung, 12 July 2005. Available at: <http://www.nzz.ch/2005/07/all/articleCZ0VB>. Accessed on 25 July 2005. There is also an on-going debate and criticism that the Srebrenica Commission revealed the facts about the massacre of the Bosniak population, but did not investigate sufficiently war crimes which had been committed under the Bosniak Commander Naser Oric against Bosnian Serb inhabitants. See: Thousands Welcome Commander of Srebrenica. Washington Post, 1 July 2006. Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2006/07/01/AR2006070100697.html> Accessed on 5 September 2006.

⁵⁸ In an interview published in the Sarajevo newspaper *Oslobodjenje* on 27 May 2006, Dodik stated: "In a future debate on constitutional reforms in BiH, one could insist that BiH will be defined as a federalist state which includes a clear defined right of self-determination for its peoples." He added that "the Montenegrin model" on its way to sovereignty could also be applied in the case of BiH and argued that a constitutional reform would have to approve the right of self-determination via referendum. Such a referendum, he explained, could be conducted under the conditions prescribed by the European Union.

⁵⁹ This is why High Representative Christian Schwarz-Schilling made it clear on 29 May that partition of BiH is not on the agenda, whether in "compensation" for Kosovo or for any other reason. OHR press statement. "Need for Responsible Political Leadership." 29 May 2006. Available at: <http://www.ohr.int/>.

in spring 2006 and seemed to be supported by nearly two thirds of the members of parliament. In the end, it could not be adopted because it lacked two votes.⁶⁰ It seems that the reform proposal was launched at a wrong time. Moreover, the public was badly prepared by the international and local politicians. Finally, the initiative fell victim to power plays due to the pre-election campaign. Nationalist hardliners from the Bosniak side (like the former Foreign Minister Haris Silajdzic) wanted to challenge the Dayton constitution in a different direction: Getting rid of the RS-entity structure in favor of a single national state. Croat hardliners used the situation to put the establishment of a third, "Croatian", entity on the agenda once more. The outcome of the 2006 elections was quite depressing. While the ethno-political parties which existed during the war – HDZ (Party of the Bosnian Croats), the Bosniak SDA und SDS (Party of the Bosnian Serbs) – lost votes, the majority of voters supported parties led by politicians who also made use of the nationalist card to get into power.⁶¹ In short, the traditional hardliners have been replaced by „new“ and more fashionable nationalists.

No matter what the motives and reasons behind the recent outbreak of separatist rhetoric are – be it nationalist ideology or just an instrument for fishing for votes during elections – it had an immediate and highly destabilizing social impact. It contributed to revive fears of war and ethnic expulsion and to re-traumatization especially in returnee communities in Eastern Bosnia and other regions of Republika Srpska.⁶² Activists who are trying to set up a youth network in the Eastern Bosnian region ("Youth building the Future" in the municipality of Zvornik), aiming at integration of Bosniak returnees and reconciliation, have reported that many returnees are now considering definitely to leave the area.⁶³ These activists have noticed a significant change in the climate in the past two years. After the release of the Srebrenica video in early 2005, young people in particular started to talk openly about the past, the war, and its consequences in BiH. But in 2006, after the nationalist speeches had poisoned the political discourse, people stopped talking about these issues and addressing the past became impossible.

In conclusion, it seems that the nationalist political rhetoric which dominated the public discourse during 2006 has destroyed several years of peace work and considerably endangered relationship-building between the different constituencies. Moreover, the recent developments have demonstrated once more that the question whether political change towards integration, peace, and reconciliation is possible in Bosnia depends very much on the territorial problems and decisions taken elsewhere in the region. As long as political status questions in the entire region remain unresolved and can be used as bargaining chips in power games by political decision-makers, initiatives for constructively dealing with the past cannot be expected to be effective.

⁶⁰ The proposal was supported by five political parties, among these HDZ, SDS and SDA. One prominent member of SDA (Haris Silajdzic) and one member of HDZ refused to accept it since the proposal was based on maintaining of the two entities.

⁶¹ New members of the state presidency are Zeljko Komsic (Croat representative, member of the Social Democrat Party SDP), Nebosja Radmanovic (Serb representative and member of Savez Nezavisnih Socijaldemokrata (SNSD) and Haris Silajdzic (Bosniak Representative and former Minister of Foreign Affairs, Founder of the Party for Bosnia and Herzegovina, SBiH).

⁶² For an analysis of the consequences of the Montenegro decision and Dodik's public announcements in Bosnia, see Tanja Topic 2006: *Das Referendum in Montenegro und seine Auswirkungen auf Bosnien und Herzegowina*. Berichte aus Südosteuropa der Friedrich Ebert Stiftung. Banja Luka. 1 June 2006. Available at: <http://www.fes-bih.com/ba>.

⁶³ Martina Fischer 2006: *The Need for Multidimensional Youth Work. Education, Inter-ethnic Networking, and Income Generation*. In: Martina Fischer, ed. *Op.cit.* pp. 233-256.

4.6 Challenges for Enhancing Future Processes of Healing and Relationship-Building

Healing processes are needed in order to support social coherence. With respect to healing, it is obvious that justice matters: First of all social justice (which includes setting up social policy and minimum support for vulnerable groups in society), and secondly, justice that clarifies responsibility for past violence. In those regions where war and human rights violations took place, there will be no sustainable peace unless truth about war crimes is established and justice for the victims is served. Criminals must be prosecuted and held individually responsible for their acts against peace and humanity. As outlined before, the ICTY has played an important, but also ambiguous role in this respect. National courts in the region are also needed in order to serve justice with regard to past atrocities. The recent establishment of a War Crimes Chamber at the Court of BiH can be seen as a step in this direction; since 2005 this chamber has also started to prosecute war crimes and it has already taken over some cases from The Hague.

Mirza Kusljagic, university professor and former Bosnian Ambassador to the UN, considers three important tasks as necessary prerequisites for reconciliation in BiH and the region of former Yugoslavia:

- to get the criminal courts up and running and to imprison war criminals like Ratko Mladic and Radovan Karadzic: "As long as the key perpetrators are still at large, it is difficult to even talk to the victims, to convince them that reconciliation is necessary in Bosnia. ICTY cannot do that. Unless we target the instigators who are still comfortably sitting in their chairs and in cabinets, we will not tackle the problem. ... Without starting this process, it is difficult to imagine a functioning, sustainable, not to say European, BiH";
- to find and identify the missing people (to give names and figures to what has happened is an indispensable precondition for reconciliation);
- to establish mechanisms to talk about the past (truth commissions) at a later stage, when the time comes.⁶⁴

Kusljagic argues that a reconciliation process is a prerequisite for long-term stability in BiH and the Balkans and that a region-wide process is needed. Reconciliation, according to him, is "a fragile, long-lasting, and cumbersome process" and "national reconciliation is not possible without a national catharsis" which can only be reached by a self-critical examination of objective and unquestionable facts. But this process can only be successful if certain conditions are guaranteed: An "environment without fear, xenophobia, or collective guilt" and an "atmosphere of dialogue and understanding and forgiveness as the most noble of all human virtues."⁶⁵

It is obvious that "dealing with the past" can not be initiated by outsiders (international organizations), but has to be done by the people in the region of former Yugoslavia. It is also up to them to decide on timing and sequencing for such a process. Another question is: How can international community support reconciliation – understood as a long-term process of healing and

⁶⁴ Mirza Kusljagic 2005: Genocide and Aftermath: Rationalizing the Process of Truth and Reconciliation in BiH. Transcript of a Public Panel on the 10th Anniversary of the Massacre at Srebrenica on 13 July 2005. Available at: <http://www.cceia.org/resources/transcripts/5208.html>

⁶⁵ Martina Fischer 2006. The Need for Multidimensional Youth Work. Education, Inter-ethnic Networking, and Income Generation. In: Martina Fischer, ed. Op.cit.

relationship-building⁶⁶ – in the Western Balkans? Are there any policy options which could influence the situation to take a more positive direction?

It is important to support both institution building in the field of justice and security and the existing cross-border initiatives undertaken by civil society organizations that focus on dealing with the past and aim at fostering social coherence, trust and relationship building in war-torn communities and on a regional level. Yet additional CSO initiatives will be needed in order to put pressure on decision-makers in governments, parliaments, and political parties to face the past. But, in my view, there are clear limits to what international institutions can do – and they cannot actively help the region to deal with the past. They should, first of all and by all means, avoid imposing their own definitions of what they understand as “constructively” dealing with the past. Secondly, they should not overemphasize the need to deal with the past. Instead, international organizations should focus primarily on supporting structures, processes, and visions for designing a better future.

The perspective of future integration with the EU can have an important psychosocial impact on the respective societies and serve as an incentive for democratic reforms. But this means that EU-integration has to be a real option and criteria for access have to be concrete, transparent, credible and achievable in a time period which is not far in the imagination of the population. Especially the EU, which has assumed more and more responsibility for further development in the Balkan region, can develop important potential, but the EU needs to devise a coherent regional concept for peace-building and stability in the Balkans, which is still missing. The EU should contribute to create favorable conditions and incentives in the region to make young people resist nationalist rhetoric and roll-back strategies. Youth exchange programs and peace education can contribute to this, but have to be linked with a strategy for economic development of the region.

An important challenge is to open the EU’s doors, in order to make travelling easier for young people. After the dissolution of former Yugoslavia and after the wars in the region, an amazing phenomenon can be observed not only in BiH, but also in its neighboring countries. The great majority of young people have not had any opportunity to travel, which means that many of them have never met people from neighboring countries and thus cultivate a whole lot of stereotypes. This is why initiatives for youth exchange both within the region of former Yugoslavia and exchange with youth from other European countries should be fostered. Former High Representative Wolfgang Petritsch has also stressed that – given the fact that 70 percent of the Serbian and Bosnian youth have not traveled to any foreign countries – EU borders will have to be opened.⁶⁷ Changes in the EU’s visa policy – as recently outlined by the International Crisis Group – are urgently needed.⁶⁸

But youth exchange and peace education as such are not sufficient. At the same time the EU has to provide economic perspectives for young people in the region. This applies not only to BiH, but to the other Western Balkan countries as well, especially Serbia and Montenegro, including Kosovo. Strategies are needed that make job creation a key priority – for “unless we overcome the

⁶⁶ David Bloomfield 2006: On Good Terms. Clarifying Reconciliation. Berghof Report 14. Berlin: Berghof Research Center for Constructive Conflict Management.

⁶⁷ Keynote speech by Wolfgang Petritsch at the conference „European Perspectives of the Western Balkans“ sponsored by the Heinrich Böll Foundation on 5 July 2006 in Berlin. According to Petritsch, the way the EU treats young people is a scandal. He underlined that the Schengen policy is perceived as proof that the fortress Europe is real, and thus contributes to the widespread image of an unjust Europe of double standards, which will be instrumentalized by political hardliners.

⁶⁸ International Crisis Group 2005: EU Visas and the Western Balkans. Europe Report 168. Brussels. A summary of the report is available at: <http://www.crisisgroup.org/home/index.cfm?id=3809> The report advocates “liberalizing the limited-term visa regime, primarily for students, business people, and tourists, and making the application process simpler, faster, and less painful” and points out that EU visa policy towards the Western Balkans contributes to the ghetto-ization of the region and undermines Balkan efforts for reform and stability.

horrendous levels of unemployment, which increasingly affect young people, by offering the opportunity for migration to the EU as well as local employment, the Western Balkans (...) will remain a simmering hotspot which sooner or later will explode into further violent catastrophe and contribute to the expansion of trans-national criminal networks", as the German peace researcher Peter Lock has outlined.⁶⁹ A major challenge is the provision of training opportunities which equip young people from these regions with the skills required by the labor market. This process can be supported through scholarship programs. Moreover, economic analysts working in the field of peace research have called for the borders of neighboring countries to be opened to workers – especially young people – from the Balkan region, based on a new migration strategy.⁷⁰

Some would argue against this proposal and warn that opening the EU borders could create an incentive for further emigration of young people and that it contradicts the purpose to make use of the potential of youth in the countries of former Yugoslavia. But one should be aware that many young people are ready to re-migrate to their countries of origin after finishing their exams or after having gained some professional experience in foreign countries. Those who stay abroad, at the same time, contribute to maintain their families by financial support. Of course, improving the professional chances of young people in the Balkans should be a priority goal, but as long as there are no income generation opportunities, it is definitely preferable that young people from the region gain income and experience elsewhere – in comparison with the option to stay without jobs, income, and visions of the future and to join with populist movements or criminal networks which tend to destabilize economy, politics, and society in BiH and the neighboring regions.

Providing young people with economic perspectives and giving them opportunities to travel and to work abroad means to support them to develop a positive vision for their lives and to exchange opinions on their countries. This might be an important investment which contributes to more open-minded views on the future, which – in the long run – will contribute to peace-building and increase readiness to constructively deal with the past.

⁶⁹ Peter Lock 2005: Die wirtschaftlichen Dimensionen und Beurteilung der Wiederaufbaustrategien. Paper presented at the conference "Politik und Krisenprävention" from 15-17 July 2005 in Hammelburg. (Translation by Hillary Crowe.)

⁷⁰ They argue that the EU's current policy of self-imposed isolation is encouraging the emergence of mafia-controlled markets and a shadow economy without having any significant impact in terms of curbing migration.

5 The Legacy of Genocide in Guatemala: Memory and Psychosocial Recovery in Affected Communities

Carlos Martín Beristain

The effects of this are disastrous. It destroys you little by little and leaves you dying in a society where life is not permitted. I have not recovered life. And particularly, so many of our expectations were destroyed. What gives me hope is the belief that the great sacrifice which they endured was not in vain.

We need to know what happened. To be sure that at a certain moment, they died. And to clarify the responsibility of the perpetrators. We cannot practice revenge, but what happened should be regretted, so that it is not repeated.⁷¹

In this presentation, a number of aspects related to memory and psychosocial recovery in the communities affected by the genocide and the war in Guatemala will be treated. First, a few structural factors conditioning the process will be addressed. Then, aspects like assimilation of memory, communitarian processes including exhumations and the search for the disappeared, the victims' role in the struggle for justice, psychosocial programs, and the initiatives for integral indemnification and reparation will be considered. In all these areas, important steps have been made by civil society, but there are no government and state policies for the promotion of these initiatives. At the same time, the human rights situation is deteriorating amidst a climate of violence, which adversely affects the potential and the nature of these processes.

5.1 Psychosocial Structural Factors of the Guatemalan Process

Before elaborating on the aspects that are related to the impact and to processes of psychosocial recovery, I would like to address a few aspects in connection with the context of political violence in Guatemala, because they influence the legacy of genocide in the affected communities.

Non-Recognition of the Genocide

In spite of the revelations of the Historical Clarification Commission (Comisión de Esclarecimiento Histórico, CEH), which declared that acts of genocide were committed against Mayan groups and communities in various places of the country, the state still fails to recognize the genocide against the Mayan population. From the presentation of the report of the CEH, which then president Arzú refused to accept, to the present, successive governments have been reluctant to recognize the existence of genocide in the context of the armed conflict. In the negotiations on the implementation of the National Reparation Program (Programa Nacional de Resarcimiento, PNR), there was no mention of genocide - neither in the speeches nor in the catalogue of recognized violations. This is the source of enormous frustration among many leaders and victims' movements concerned about the extent of the political will for recognition and reparation.

Level of Impact and Internal Source of Violence

With 18 deaths per thousand, Guatemala has suffered the highest percentage of violence in Latin America in epidemiological terms of mortality (e.g. sixty times higher than Chile, with 0.29 deaths per thousand); two or three generations have been massively affected by death, silencing, and displacement.

⁷¹ Witness testimony quoted in: Oficina de Derechos Humanos del Arzobispado de Guatemala (ODHAG). Informe Proyecto Interdiocesano de Recuperación de la Memoria Histórica (REHMI) 1998: Guatemala. Nunca Más. Víctimas nel Conflicto. Vol. 4. Guatemala: ODHAG. p. 483.

On the other hand, the characteristics of the violence in Guatemala - with a strong involvement of paramilitary groups (Civil Defense Patrols / Patrulleros de Autodefensa Civil, PAC) that were created by the state in its counterinsurgency struggle - implied a strong involvement of the communities and an internal source of violence (through communitarian control and participation in murders and massacres), which, in turn, has created enormous challenges for the reconstruction of social life on a local level. Currently, the legacy of this violence is manifest in the following ways:

- In many places, victims and perpetrators are living together in a context in which the violations have not been investigated and no justice has been administered.
- The former members of paramilitary groups and military commissioners are still exerting significant control over communities, although they had to disarm in connection with the peace accords. They are organized around a political party (Guatemalan Republican Front / Frente Republicano Guatemalteco, FRG), led by former General Ríos Montt. They possess a great deal of power in the municipalities and have been able to organize violent demonstrations when his role or person was questioned (with acts of terror against communication media and human rights organizations in the Capital) or to conduct street blockades and threats in the event that they would not be compensated for their counterinsurgent services to the state.
- The paramilitary structures are directly responsible for forms of organized violence existing in numerous communities, such as lynching, although they are often portrayed as spontaneous reactions to criminal acts based on the reproduction of violence experienced during the war. Such forms of violence are used periodically against supposed delinquents or suspects of any kind of misdeed or conflict (including everyday problems such as traffic accidents). As extra-legal forms of community action, they undermine the responsibility of the state to provide security and an efficient system of investigation, sanctions, and violence prevention to the communities.

Context of Racism and Poverty

The Mayan population was most affected by the war (83 percent of the victims were Mayan). On many occasions, its way of life became a target of the military, which attacked the very structure of the communities (by murdering their leaders, elders, etc.) and substituted it by new forms of organization that were based on militarization, thus creating a new power structure in the Mayan communities.

The conditions of poverty as well as the social and political marginalization of the Mayan population continue to be significant. The increase in disparity, the frustrated prospects for change, and the absence of mechanisms for political participation of the indigenous population outside the structures of the political parties that respond to dominating economic and political power groups imply that the truth and justice policies for dealing with human rights violations also need to incorporate structural measures against social and political marginalization.

In the case of Guatemala, the political parties have engaged in a managerial exercise from one electoral period to the next.⁷² Therefore, no basic consensus on a policy of truth, justice, and reparations has yet emerged, unlike in some other countries of Latin America. The ethnic exclusion, which has persisted in the system of political representation, inhibits any change not only with

⁷² H.B. Mack Chang 2005: La reconciliación en Guatemala: un proceso ausente. In: Gilda Pacheco Oreamuno, Lorena Acevedo Narea, Guido Galli ed.: Verdad, justicia y reparación. Desafíos para la democracia y la convivencia social. San José: International IDEA / IIDH. Available at: www.idea.int/publications (translator's note).

respect to the period of the armed confrontation, but also with regard to the more remote history of the country.

Social Polarization after the War: Fear of the Indigenous and Ethnic Reaffirmation

One of the first measures aimed at creating space for political transformation in Guatemala after the signing of the peace accords was the referendum on constitutional reforms which should have been approved in 1999. These reforms were rejected because of the fear-raising propaganda waged against the indigenous populations by different media. Only a tiny fraction (18.55 percent) of the population participated in the referendum and the reforms were turned down by a vote of 9 percent against to 7 percent in favor, and the rest invalid. The level of abstention was 81.45 percent. This example shows how difficult reconciliation is in a country where memory and the blame attributed for it is fragmented by violence, where there is no real recognition of multiculturalism, and where collective identity is consolidated by the fear of the "other".

A second aspect is that in post-conflict situations, especially after a case of genocide, it is normal that there will be a movement aimed at boosting the oppressed ethnic identity in an effort of collective reaffirmation. In Guatemala, the Pan-Mayan indigenous identity has been considerably strengthened under the leadership of different intellectuals and organizations in the course of the last years. This reaffirmation is due to the will for Mayan emancipation, for participation without delegation, for taking control of one's own life (and not in a subsidiary form by leaders of organizations, as was the case until recently). However, there is also the risk of reaffirming oneself by opposing the "other", the "Ladino" or the "Indigenous", using mutual over-generalizations which is not helpful in resolving conflicts constructively. In recent years, conflicts of this type have shaped the relations between the different social organizations and have affected the negotiations on reparation measures for the victims of the armed conflict.

5.2 The Assimilation of Memory

After the conclusion of the armed conflict in Guatemala, it was suggested that it was necessary to know the past, in order for the victims, whose experience had been silenced or manipulated, to be given a voice and for society as a whole, a considerable part of which had not suffered such atrocities, to recognize what had happened.

In the case of Guatemala, this 'struggle for memory' resulted in two separate investigations: One was the project on the Recovery of Historical Memory (Recuperación de la Memoria Histórica, REMHI) which was sponsored by the Catholic Church and produced the report *Guatemala: Nunca Más* (Guatemala: Never Again).⁷³ The other was the project of the official Historical Clarification Commission (Comisión de Esclarecimiento Histórico, CEH), which published its report under the title *Guatemala: Memoria del Silencio* (Guatemala: Memory of Silence).⁷⁴ Neither of these investigations, however, was followed by steps on the part of the state to assimilate this memory. No institutional changes were undertaken in school curricula to introduce these works into different levels of public education nor has the memory constituted a permanent reference for human rights policy, as has happened recently in other Latin American countries.

⁷³ Oficina de Derechos Humanos del Arzobispado de Guatemala (ODHAG). 1998: Guatemala. Nunca Más. Informe Proyecto Interdiocesano de Recuperación de la Memoria Histórica (REHMI) Vols 1-5. Guatemala: ODHA.

See also the English translation: Human Rights Office of the Archdiocese of Guatemala (ODHAG) 1999: Guatemala. Never Again! Recovery of Historical Memory Project (REMHI). Maryknoll: Orbis Books.

⁷⁴ Comisión para el Esclarecimiento Histórico (CEH) 1999: Guatemala. Memoria del Silencio. Guatemala: F&G Editores. Available at: <http://shr.aaas.org/guatemala/ceh/report/spanish/toc.html>

On the contrary, from the very beginning, the attempt to construct a collective memory was confronted by significant obstacles such as the murder of Bishop Gerardi and the failure of the government to respond to the revelations of the CEH. The detractors of these processes, who are closely linked to the army and bear a heavy responsibility for the violence against the civil population, tried to promote the distribution of responsibility among all parties to the conflict and to prescribe forgetting as the formula of recovery. Recently, some army members and journalists began to rewrite history by dismissing the work of the REMHI or the CEH and thus contributing to the denial of the genocide.

5.3 The Human Rights and Victims' Movement: Actors and New Violations

The human rights and the victims' movement in Guatemala has played a very important role in mobilizing civil resistance and in the support of victims. It also played an important part in the negotiation process through its involvement in connection with the Assembly of Civil Society.⁷⁵ The movement took shape beginning in the mid-eighties, when it was possible to re-establish a part of the social fabric after the scorched earth policy. It is a pluralistic movement with a strong indigenous component and involvement of the Church. Until now, it has played a key role in the support of the demands of the victims and in the struggle against impunity.

However, after the signing of the peace accords, a campaign of intimidation began that led to an escalation of human rights violations and threats against organizations. This campaign has intensified of late, contributing to the present deterioration of the social climate.

Currently, the organizations complain about exhaustion and frustration due to the lack of substantial changes, while the struggle against impunity continues under very difficult conditions and with very few supporters. Moreover, a number of organizations and victims' associations have experienced internal dissension and begun to split up over the issue of reparations.

Compared to other countries, there have been relatively few achievements and even these are only due to the efforts of the civil society and not to institutional policies, despite the need for profound structural reforms and for considering the human rights agenda as an indispensable part of democratization.

5.4 Reconciliation with Personal Experiences: Where are the Disappeared?

The first obstacle to reconciliation is the processing of personal experience. People cannot reconcile themselves with their experiences if they cannot share them with others and thus give them a social dimension, which would enable them to make them part of their lives. People who have lost relatives want and need to know what happened to them and where their bodies are. If this is not granted to them, a difficult grieving process is imposed upon them and with the result that they cannot engage in new personal and collective projects.

During a recent conference on reconciliation at a foreign university, a Guatemalan army general, who had played an important role in the signing of the peace accords, was asked by some relatives,

⁷⁵ Asamblea de la Sociedad Civil (ASC): A forum founded in 1994, consisting of representatives from different sectors of civil society with the exception of private business interests. The assembly made proposals for the peace negotiations, evaluated them, and worked to consolidate them as national agreements. (translator's note).

whether he had any information on the disappeared. He denied any knowledge in the matter. A few days later, however, his name appeared in a witness testimony given to the Human Rights Ombudsman's Office as part of the records of the Molina Theissen case before the Inter-American Court of Human Rights. The witness, who had served as commander of the intelligence services in 1983, referred to him to as one of the three army officers, to whom he had to report on clandestine operations. Perpetrators do not recover memory unless prompted to do so by a crisis, as was evident in the case of Pinochet in Chile and which resulted in the creation of a roundtable (*mesa de Diálogo*) for the exchange of information on the disappeared. In Guatemala, a crisis of this kind has not occurred yet.

Since the publication of revelations on the disappeared in the report of the CEH that refer to known records such as the *Diario Militar* (internal military log), there has not been any administrative or judiciary investigation which would shed light onto the fate of the disappeared. All this suggests not just an absence of justice, but also the negation of the right to truth and has enormous consequences for their relatives and the whole society.

In the testimonies compiled by the REMHI project, one of the most pronounced effects among the victims apart from sadness and fear was the sense of injustice: *'They treated us worse than animals.'* The demands most frequently mentioned in the testimonies concerned knowledge of the truth, respect for human rights, and the struggle against impunity. There were also other demands for reparations such as compensation and exhumations for re-establishing the connection with the past and relationship with those who died.⁷⁶ All this implies that for the improvement of the situation of the victims – give the impact of the violence and also the social climate of the country – the truth needs to be acknowledged, impunity needs to be counteracted, and the survivors need to be supported. All these issues are still pending in the Guatemalan transition.

5.5 Exhumations of Clandestine Cemeteries

Mayan culture considers the dead as a part of the community in possession of another form of life. For this reason, exhumations constitute for many people a possible way of re-establishing links with what had been destroyed by the violence. They are part of the families' grieving process and of the fulfillment of their duty of memory and reciprocity with their ancestors.

However, it is a commonly known fact that in many cultures, knowing what happened to one's relatives and having a place where one can go and watch over them is related to being able to bring the grieving process to a closure, even though this implies a greater certitude of their death and the expression of pain of loss and distress about the impunity for the acts.⁷⁷ The burial closes the circle of death and allows the survivors to express their anger and indignation toward the authors. The rituals can also help survivors to re-establish social ties and solidarity and to feel less defenseless.

In the course of the last years, more than 400 exhumations of clandestine cemeteries have been carried out in Guatemala, all of them at the initiative of victims' and human rights organizations or of sectors of the Catholic Church and with the support of independent teams of forensic anthropologists and psychologists who accompany them. There has been no support or initiative taken whatsoever from any state program and there is still no law for facilitating and coordinating

⁷⁶ The people who were more affected by sadness about their losses and by fear were most interested in truth and justice. Whereas the demands of those who focused more on injustice and their anger about the events were more frequently related to reparations (ODHAG 1998: Op.cit. Vols 1-3. Impactos de la Violencia.).

⁷⁷ In Guatemala, for instance, in families that knew about the death of their loved ones and even were able to bury them, in addition to the sadness over their death, the feeling of injustice and anger about what had happened dominated years after (ODHAG 1998: Ibid.).

the exhumation processes. Nor is there any law which recognizes the absence of a person due to forced disappearance, as in other countries such as Argentina or Peru, which saves the families from having to go through the traumatic process of pronouncing a loved one dead (and thus symbolically to kill her or him) if they want to get access to certain services or procedures related to property.

Moreover, psychological problems are not the only issues underlying many of these queries. There are also practical questions such as inheritance rights or land ownership. The violence against the civil population has left the victims in a worse economic and social situation. They have to face numerous problems like threats, family overload, and enormous bureaucratic obstacles when trying to recover their land after having been displaced or to claim their legal rights to property and means of life.

5.6 Community Processes

When we started the REMHI process in Guatemala, some community leaders asked us: "The guerilla and the army are going to sign the peace accords, but what about us? What about all the discord and damage in the communities?" Attitudes and beliefs which sustain violent conflicts (discrimination, racism, rigid or sectarian ideologies) generally extend throughout a community and require a broad approach.

Bottom-up reconciliation processes are more important in places where the social fabric has been severely affected and where there has been a great deal of conflict within the communities as has been the case in Guatemala.

Such processes have been undertaken in some communities, where a large number of the inhabitants have been affected or where the wounds are still wide open and the victims are living together with perpetrators who have not assumed their responsibilities and still have the capacity to coerce the communities. However, the processes differed depending on the communities because the local context and differences had to be taken into consideration.

For example, the first exhumations of clandestine cemeteries in Guatemala triggered a debate. Some people were opposed and claimed that the victims were going to take revenge and that this would cause even more violence in the communities. However, the exhumations had an important effect. They enabled the victims, who had been living with bowed heads for so many years, to start raising them. The perpetrators, however, who had been arrogant in their abuse of power, began to lower their heads when their role was put into question, as the truth was being unearthed with the bones.

From its very beginning, the REMHI project understood the importance of restoring memory to the communities as a form of community work which furthers social reintegration. When the first testimonies were collected in Chicomilco, many people wanted to make their story public, but they also wanted to share it with other communities, to which they felt opposed or from which they felt alienated due to the war, as a form of initiating a local reconciliation process.

In other places, talking about what had happened encouraged people to reveal information on clandestine cemeteries and to conduct ceremonies like the one in Sahakok (Alta Verapaz) where the elders dreamt of a cross on the top of a mountain where so many of their brothers and sisters had been left without burial. Twenty-eight communities subsequently realized this dream in a joint effort. Not only did they bury the remains of their relatives on the mountain, but they also engraved the

names of 916 people whom they had identified.⁷⁸ The experiences of different regions like Quiché, San Marcos, and Alta Verapaz has produced numerous examples of this kind, which in turn have resulted in pedagogic materials on how to accompany such processes. However, all these processes were based on initiatives of the communities or civil society and not supported by the state or any local government.

5.7 The Agenda of Justice in a Context of Impunity: The Burden on the Victims

For years, the only case which had been investigated and prosecuted and in which a judgment had been handed down in Guatemala was the one against the material author of the murder of the anthropologist Myrna Mack. Currently, a few more cases have been opened in spite of tremendous difficulties, such as those faced in the trial of the Gerardi case. These conditions expose the families to an enormous emotional overload, threats, and new forms of contempt by those responsible for carrying out the investigations.

Some cases have even been brought before the Inter-American Court of Human Rights and have resulted in reparation measures or in ceremonies in recognition and honor of the victims, which have had an undeniable collective impact as in the cases of Myrna Mack, the disappearance of the child Marco Antonio Molina Theissen, or the massacre of Plan de Sanchez. There were also a number of friendly settlement agreements signed before the Inter-American Commission on Human Rights, which included both moral and economic reparations and the promotion of judicial investigations. However, the judicial investigations emanating from these friendly settlements have not been initiated yet. Again, this put into question the will of the successive governments to struggle against impunity.

Moreover, many administrators of justice, sometimes even police officers, were persecuted, threatened and suffered attacks, forced into exile, or were even killed. This shows that there are not even any guarantees for the administrators of justice, which means that judicial independence is seriously jeopardized.

Legal processes under such conditions entail an enormous emotional stress for the affected people. A recent study conducted on the massacre in Xamán and its consequences for the community, which had to pursue various legal options in a context of impunity, shows that the people directly affected suffered serious negative repercussions due to their participation in the process.⁷⁹ The victims themselves developed severe disorders and altered belief systems, which increased their emotional distress, and they exhibited more symptoms of avoidance behavior. For the witnesses, however, the process had mainly positive effects, because it had allowed them to vindicate the injustice of the

⁷⁸ According to a half-mythical story told in the region, at the beginning of 1995, the elders and many other people started having a similar recurrent dream of a big white cross on the top of a mountain. The elders interpreted this as a supernatural signal on behalf of their relatives who had died during the violence and had not been buried in accordance with traditional practices and rites. They decided to build a stone monument in the form of a cross on a nearby mountain and to engrave the names of their missing relatives. They recorded the names of 916 victims of local state repression who had died on the mountain. See: C.Y. Flores 2002: *Apuntes sobre la dimensión cultural del conflicto armado entre los q'eqchi' de Guatemala*. In: *Desacatos No 010 2002*. Mexico: Centro de Investigaciones y Estudios Superiores en Antropología Social. Available at: <http://redalyc.uaemex.mx/redalyc/pdf/139/13901011.pdf>. (translators note).

⁷⁹ M.L. Cabrera 2004: *Violencia e impunidad en las comunidades mayas de Guatemala. La masacre de Xamán*. Madrid: Universidad Complutense; M.L. Cabrera 2004: *Violencia e impunidad en las comunidades mayas de Guatemala. La masacre de Xamán desde una perspectiva psicosocial*. Guatemala: ECAP and F&G ed. (translators note).

acts with the lowest emotional costs. Globally, the experience of impunity had a significant negative impact. In spite of this, however, the victims did not lose hope that some day justice would prevail.

Recently, in the Plan de Sanchez case, repeated threats were issued against the community leaders and support personnel involved in bringing the case to the Inter-American Court of Human Rights, because the victims continue to seek justice. This is an example of the pressure that perpetrators exert against demands for justice at the local level and demonstrates the importance of guaranteeing the safety of the victims.

5.8 Handling of Reparations

In Guatemala, six years after the publication of the report of the CEH, a still undefined National Reparations Program was started after an enormous delay and amidst many difficulties. More than two years after its start, the program has undergone various changes of direction. According to a recent document of the Human Rights Ombudsman's Office (Procuraduría de Derechos Humanos, PDH), there is still neither an appropriate methodology for the registration of victims and beneficiaries nor an adequate process handbook. Moreover, there is still no law, ensuring that the framework of the reparations policy, which for the time being is only supported by a government decree, will become part of a national policy independent of the government in power in subsequent legislature periods.

The proposed holistic approach to reparations, alluded to in the official discourse of the authorities, has not been substantiated by the scarce initiatives undertaken by the program. To date, there have only been a few hundred cases of financial compensation to the amount of USD 3,000.– for cases of extra-judicial executions or disappearances. This quantification of reparations solely in monetary terms fails to consider how compensation is related to other measures, what criteria it should fulfill, what its meaning is (not as a form of humanitarian aid, but as redress for violations), or in what form the payments could be made (in public, receiving "the check", etc.).

Conversely, the government policy of indemnifying members of the PAC, including perpetrators, before satisfying the victims' right to reparations has violated the victims anew. Furthermore, it has conditioned the people in communities to seek an opportunity to obtain economic aid for their acute family needs by putting their names on different 'lists', thus conditioning the meaning and establishing a chential example of reparations.

Symbolic measures and the forms by which collective memory expresses itself in connection with human rights violations are signposts marking the way towards accepting the truth and supporting the victims. They also imply a break with the perpetrators and contribute to a change of the social climate, if they respond to the demands of the victims and are not merely a facade of the process. A negative example was given in 1998, when President Arzú decreed that December 29, the anniversary of the signing of the peace accords, be commemorated as 'Reconciliation Day' before even knowing the contents of the report of the CEH and two months after refusing to accept its conclusions.

Although the current government pronounced the day on which the report of the CEH was publicly presented to be 'Victims' Day', the authorities have not promoted the creation of memorials as part of their policy to honor the memory of the victims (política de memoria y dignificación). Nevertheless, many local initiatives have been taken by the communities themselves such as the museum in Rabinal, in which the victims of the Plan of Sanchez massacre and of genocide in other communities are commemorated and remembered. In 1998, the Church covered the entrance columns of the cathedral of Guatemala City with the names of the eighteen thousand known victims and the more than four hundred devastated communities recorded in the REMHI report. Moreover, on the basis of the work of the REMHI and CEH, numerous pedagogic initiatives were taken. Materials in different Mayan languages were published and communitarian processes, focusing on

the restitution of memory, were realized in some of the regions that were most affected by the internal armed conflict. There have not been any similar initiatives undertaken as part of any state policy.

5.9 Psychosocial Programs

Health care and psychosocial support programs are part of the rehabilitation measures included in the right to reparations and of the efforts to help the victims, survivors, and affected communities face the consequences of the violence and re-establish the social fabric.

In the case of Guatemala, such programs were realized during the last decade by NGOs committed to psychosocial work, albeit with different focuses and perspectives. In general, the emphasis was put on a community-oriented approach more appropriate for the massive dimension of the violence, the collectivist character of the Mayan culture, and the political nature of the events.

Over the last few years, new organizations have been established to try to address these needs from a civil society perspective. A specific factor in the case of Guatemala is the need for complementarity between a western psychosocial approach and traditional and cultural forms of dealing with the suffering of victims and providing them with support. The development of these complementary approaches is beset with difficulties and represents one of the challenges for the future.

This challenge has implications with respect to the conceptions of mental health, trauma, and support. For instance, in more collectivist cultures like the Mayan, suffering caused by traumatic experiences is expressed in an 'indirect' form, e.g. in diffuse physical problems, and is conceived as 'falling sick'. In indigenous cultures, a 'trauma' is not perceived as an individual psychological injury, but rather as something affecting *the sense of relationships of the individual. The relationship with oneself, with the community, and with the Universe is damaged.* And this creates challenges from the perspective of recovery or reparations, because these very relationships have to be re-established by means of specific acts, rites, and ceremonies in the circle of the community or family.

One must also consider the explanations of the context, the existing concepts for describing the experience. Traditional explanations may differ from western concepts and this may have an influence on the way problems are handled. For instance, in many indigenous cultures, trauma is associated with a 'fright' that has to be 'removed from the body'. Trauma work in the victims' language is the key to a better understanding of its meaning and to accompany the healing process. All these factors have to be taken into account in psychosocial approaches.

However, in spite of their enormous value and the difficult working conditions, the initiatives of civil society and the NGOs have not been reflected in government policies. The state has still not developed a psychosocial support program which coordinates, facilitates, or steers the initiatives of the health sector and civil society according to the needs. The first steps taken in the incipient strategy of the National Program of Reparations (Programa Nacional de Resarcimiento, PNR) have lacked continuity and have not seen any further development. The mental health program of the state is neither adapted to nor appropriately staffed for this task.

Dealing with the consequences of traumatic events of a political nature requires a strategy that combines spaces for individual support, group work, and the strengthening of networks. It also creates a need for services and professionals who can work with affected communities and individuals by establishing a committed relationship and providing space for confidence-building.

Psychosocial Accompaniment in Cases of Sexual Violence

All this is especially relevant in the case of sexual violence, which is one example of the challenges to be faced. In the following, a few criteria for psychosocial support in cases of sexual violence in the

context of the internal armed conflict in Guatemala are listed, which have been jointly defined by some of the teams working in this field:⁸⁰

- Violence against women as war booty, a form of humiliating the enemy, an assault on their dignity as women as part of military strategy. Internalized violence as part of the war or structures of domination over women even in the communities. Questioning the social response of blaming, isolating, marginalizing the women who suffered of sexual violence;
- Cultural bases for facing it:⁸¹
 - Aq'abal: Sunrise. Leaving the pain behind, the importance of breaking the silence.
 - Ajmaq: Transformation of what causes the pain and destruction. Healing.
 - Kawoq: Female energy, authority that gives people a voice and power;
- Implications of the characteristics of the violation (silence, stigma, naturalization...) and implications for contact and action: low profile, indirect approach, confidential relationship;
- Indirect communication strategy (networks of confidence);
- Typology of self-help groups and use of positive role models of women who were victims and have faced their situation;
- Interlocutors: language, gender, age;
- Need for time and space for building trust. Meeting places (other communities, neutral spaces etc.);
- Provide an adequate context within the Mayan culture: Create an comfortable environment, do not address the topic directly, act first and talk later;
- Mediators/midwives: Spread the contact message, support this network, provide a safe space (in the Mayan culture, the *temascal*⁸² offers contact without focusing);
- Focus on impact of the experience (rape or sexual violence) and not on person (raped woman);
- Avoid terms like 'sickness';

⁸⁰ Some of these criteria and concepts originate from the experience of women's groups that work with victims of sexual violence and have been shared at the Forum on Successful Latin American Experiences in Truth, Justice, and Reparation recently celebrated in Huehuetenango as well as in discussions on psychosocial support held in 2005 in the PNR.

⁸¹ The following Mayan terms designate signs for days of the cyclic ritual calendar, *cholq'ij* (or *tzolk'in*). Each sign has a meaning, and its day has an energy which offers the possibility of a personal development:

- *Aq'abal*: Sunrise, clarity, sunset, new beginning: reflection and promotion processes. This is the force of renovation, of a change of course.
- *Ajmaq*: The occult or hidden, will, rectification: connection with the forefathers, clarity, discernment. This day represents the wisdom of the ancestors.
- *Kawoq*: Two skirts or two women: perception, sixth sense. This is the day of unity, of the community, and of life. It is suited for healing.

Cf. S. Ch'umil, B.E. Alvarado, C.J. Coz 2003: *Usaqil k'olem. Tiempo y ser humano en la cosmovisión maya*. Guatemala: Maya Diversa Ediciones. (Translators note.)

⁸² Mayan sauna or vapor bath (translators note).

- Implications for reparations: The program must be flexible with regard to time and take into account the impact of the revelation. Avoid secondary victimization. Very careful registration and investigation. Support the process of the victims. Be aware of cultural differences, language, etc.

5.10 The Archives of Memory

As stipulated in a clause of the peace accords, which – in spite of the victims' right to truth – could not be revoked to this date, the files containing the information and testimonies compiled by the CEH are located in archives in New York and cannot be consulted by the victims' relatives for decades to come.⁸³ Only the archives of the REMHI project under the auspices of the Catholic Church and human rights organizations are accessible to investigators and relatives of victims.

Nevertheless, a few recent revelations prove the existence of relevant information. After the report of the CEH was published, 183 files of detainees 'disappeared' by the state military intelligence services were declassified by the US government. These documents contain details regarding the place of arrest and codified information about their fate ("was 300"; "was freed").⁸⁴

In 2005, the secret archive of the Policía Nacional (National Police) which had been permanently concealed, was found by accident. This constitutes a historic discovery with a total of eight thousand meters of documents, which are now being cleaned, systematically filed, and organized. It is a very important source of information regarding the patterns of violations and the structures of repression, as well as details about many individual cases. Among these documents, the victims' relatives will be able to discover facts detailing the detention, disappearance, or murder of their loved ones and information regarding the perpetrators.

This archive is protected by the PDH, but the challenge is how to preserve it integrally, how to offer access to investigators and relatives, and how to protect it from possible future attempts of destruction or control.

All this forms part of the right to memory of the victims and survivors, many of whom are still waiting for the possibility to access information. Although some details could be traumatic in their impact, many relatives prefer the cruel details to permanent incertitude. Psychosocial support should form part of the accompaniment of the relatives in these cases.

⁸³ Clause IV of Section "Operation" of the Agreement on the establishment of the Commission to clarify past human rights violations and acts of violence that have caused the Guatemalan population to suffer, signed in Oslo on June 23, 1994, reads: "The Commission's proceedings shall be confidential so as to guarantee the secrecy of the sources and the safety of witnesses and informants". (translators note).

⁸⁴ At the time of their appearance, the authenticity of the documents was denied. Later on, however, in connection with the friendly settlement of the case of the forced disappearance of the writer and teacher Luis de León Díaz before the Inter-American Commission on Human Rights, the state admitted that they were authentic.

6 Psychosocial Recovery in Bosnia – Herzegovina in the Aftermath of Violence

Irfanka Pasagic

6.1 Definitions

In 1948, the United Nations adopted the Genocide Convention, in which genocide is defined as:

“...any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such;

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.”⁸⁵

In principle, I dislike definitions. I have read many different definitions of genocide, but not a single one of them explains the long term suffering of the survivors.

6.2 Real Life is not a Definition

It is one thing to confront the victims of natural disasters and accidents and another to face victims whose suffering was caused by the will of human beings.

The terror they witnessed and endured changes their lives completely. For too many of the victims, the continuation of life means nothing more than a continuation of their suffering. Nightmares and flashbacks, thoughts and feelings as symptoms of the post-traumatic stress disorder from which most of them suffer, constantly return them to the center of the hell they survived. A great number of them, stuck in the past yet wishing to escape and avoid the recollections of their trauma, have sometimes reminded me of living ruins. Many of them bear the painful feeling of “survivor’s guilt”.

With such massive traumatization, such as was the case in Bosnia and Herzegovina, there are not enough professionals to provide help to all of those who need it. Many of the victims will not seek professional assistance on their own. It would be essential to have the support of their families and society for their healing, but very often it is non-existent in such massively traumatic situations. Not all of them require psychological or psychiatric treatment, but the lack of support from family and society, which is generally traumatized as well, aggravates the situation even more. Many of the victims and survivors develop somatic diseases, which are significantly increasing in many post-conflict countries and which are particularly evident and documented in Bosnia and Herzegovina. The number of suicides as well as the number of registered drug addicts are growing.

Many of the survivors have lost more than one of their relatives. Various psychologists and psychiatrists have tried to measure the levels of human pain. They all agree that the biggest loss is the loss of a child. The process of mourning in such cases sometimes lasts for a lifetime. In the massive killings in Guatemala, Rwanda, or Bosnia and Herzegovina, it is not unusual to meet persons who lost five or more children in addition to several other family members. I do not know if there is anyone sufficiently cynical to try to measure such multiplied pain. What kind of assistance

⁸⁵ See Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide. Available at: http://www.unhcr.ch/html/menu3/b/p_genoci.htm

could be given to such victims? Even with the most professional support, it is hard to expect complete recovery.

6.3 The Importance of Identifying the Dead

The large-scale disappearances of persons, for whom it is usually known that they were captured and then their traces were lost, are the cause of tremendous suffering for family members. The normal process of mourning cannot even start, although family members usually know that their loved ones have been killed. A majority may even maintain at least a glimmer of hope for a long time. Visiting Rwanda a few years ago, I had the impression that the country was one big mass grave. In many parts of Bosnia and Herzegovina, especially Eastern Bosnia, the fields are covered with mass graves as well. The suffering of family members is enormous because, with each new mass grave that is opened, their loved ones are sought among the nameless people buried together. In Rwanda, there is no identification, and all of the victims are buried in collective graves. I have personally witnessed the suffering of mothers and other people because they did not know in which of the graves their children were buried. The identification process in Bosnia and Herzegovina is certainly one of the most humane ways of helping the survivors. This process is slow and is additionally burdened by the criminal transfer of bodies to mass graves in different locations with the intention of covering up the traces and evidence of the crimes that were committed. It is not rare that the remnants of one body are found in several mass graves, or that only parts of the body are found and identified. The suffering of family members is enormous if they have to wait for the burial until the complete body is found, which is not at all certain, while parts are stored in a morgue, or if they have to decide to bury only part of the body.

In the aftermath of genocide, the society in which the survivors lived no longer exists as such. In its stead, a form of collective traumatization emerges: "If traumatic events dominate individual destiny to such an massive extent regarding the number of persons affected, the frequency, intensity, and duration of the events, we can expect a form of collective traumatization. Entire communities or people in general develop traumatic reactions that are difficult to identify."⁸⁶ Butolo et al. understand 'collective traumatization' to signify a "break of trust in the efficiency of one's own actions and planning, concentration on activities which maintain life, extreme exposure to stress in social systems and the tendency towards authoritarian-hierarchical organizations, the distancing from constructive political activities, alleviating of unresolved wounds through the abusive use of psycho-active substances, collective sarcasm and negative expectations of the future in state and political structures".⁸⁷

The support that could help individuals to get through these horrible experiences practically does not exist. The family structure under such circumstances is totally disturbed and has very significant negative consequences, in particular for children. Bearing in mind that it is mostly the male family members who are killed, the role of the woman in the family is the one that changes especially and she, with her own trauma, must assume new responsibilities. Often she is the only source of support for the surviving family members. It is evident in Bosnia and Herzegovina that most of the women do not have the education that is adequate to find jobs and be employed. The property they have is usually registered in the name of male members of the family. Thus, the position of women in post-conflict and post-genocide situations is very difficult. Trauma often results in aggressive behavior within the family, and it is the women and children who are re-victimized on such occasions. The threshold of tolerance for frustration is at a very low level, causing irritation and aggression. These

⁸⁶ Willi Butolo, Maria Hagl, and Marion Kruesmann, 1999: *Life after Trauma. A Workbook for Healing*. New York and London: Guilford Press.

⁸⁷ Willi Butolo et al. 1999: *Ibid.*

women were often victims of rape during the war. Hundreds of women suffered unimaginable torture and ill treatment. Many of them never leave their houses because of the shame they feel or they escape to foreign countries because of the fear that they might meet those who raped them again.

Denial of the crimes that were committed is present in all cases of genocide and all systems. This is always very painful for the victims. The fact is that both the victims and the perpetrators often want to forget what happened. The victim cannot do that regardless of how he or she tries, while the perpetrator is helped by the fact that often the whole society wants to forget. This is a source of additional traumatization for the victim.

Describing the cruelty involved in the conflict of interest between victims and survivors, Judith Herman in her book *Trauma and Recovery* cites Leo Eitinger, who studied people who had survived concentration camps: "War and victims are something people would like to forget. The veil of forgetting descends over everything painful and unpleasant. Thus two sides compete with each other. On one side victims who would like to forget, but are not able to and on the other side all those with strong and often unconscious motives, who not only intensively wish to forget, but also succeed in that. The contrast is often very painful for both sides. The weakest one always remains the loser in this mute and unequal dialogue..."⁸⁸

6.4 Truth and Justice as Preconditions for Psychological Recovery

Eleven years after the adoption of the Dayton Peace Accords, the fact is that many of the indicted war criminals are still free. As long as this is the case, the victims and survivors cannot integrate the past into their lives and continue living.

Surely one of the main goals in punishing war criminals is to prevent new and similar crimes. But, at the same time, it is essential to assist victims to survive psychologically the terrible things that were done to them. The victim must feel safe. To do so, the criminal must be isolated in some way. Only afterwards is it possible to speak about the renewing of the connection between the victim and the community. As Judith Herman says, "Remembrance and telling the truth about the terrible events are preconditions for order in the society and healing of the individual victims".

Thanks to the Hague Tribunal, some of the high ranking war criminals have already been brought to trial. But one of the reasons why Karadzic, Mladic, and others are still free is that criminals who have committed war crimes at 'lower levels' were not tried. We have witnessed in Bosnia and Herzegovina that only a few criminals have been actually prosecuted for war crimes. It is not unusual for direct perpetrators of crimes to still be in political power, and therefore it is not to their benefit to prosecute or even mention war crimes in this country. Such a situation is surely one of the reasons why Mladic and Karadzic are able to hide from international justice so successfully. For victims and survivors, it is very important that not only those on the top levels are indicted and prosecuted, but the direct perpetrators on the bottom of this 'pyramid of evil' as well. For the mother whose son was killed by a neighbor who is still free, it is not sufficient to arrest only the top leaders responsible for genocide because she would feel that justice had not been done.

The onset of the work of the War Crimes Chamber of the Court of Bosnia and Herzegovina meant a lot to the victims, and it brought some results. This was especially true in regions where certain individuals had been arrested, causing a natural differentiation between war criminals and other

⁸⁸ Judith Herman 1997: *Trauma and Recovery: The Aftermath of Violence – from Domestic Abuse to Political Terror*. New York: Basic Books. 2nd Ed.

citizens, when the former escaped to Serbia for fear of being brought to trial for the crimes they had committed. This was the case in Srebrenica in 2005. There are enormous tasks awaiting this Court, and it will not be easy to find witnesses to take the stand without providing the necessary level of protection for them, and without achieving trust with the population. It is significant that this need to support both the Court in Bosnia and Herzegovina and the Hague Tribunal was recognized by the NGO sector, which is now in the process of organizing a network of support for this essential work. The fact is that the work of the Court in Bosnia and Herzegovina will be difficult and challenging. There are still many problems to be faced in investigating and indicting alleged war criminals, which is obvious from the present situation in the country.

One of the most difficult problems in this respect is the denial that war crimes were committed, the objective being to maintain the status quo. It is a major obstacle for the judiciary, and particularly for the victims. Another problem is that, eleven years after the war, many victims, especially those who had been sexually abused during the war, left the country thinking that their suffering would diminish and the crime for which they felt guilty would be hidden. I have met many of them in different countries of the world. Their escape never brought them relief. On the contrary!

As Judith Herman wrote, "Recovery can start only when the truth is told".

The fact is that some war criminals will not be prosecuted, but the admittance of guilt may be very significant for reconciliation and the victim's recovery. Only then can we speak about reconciliation and forgiving, because it is very hard for the victim to forgive if somebody denies that the crime ever happened. War crimes are still glorified in certain segments of society and often in public discussions. Although the truth about Srebrenica is well known, graffiti such as "Knife, Wire, Srebrenica (Noz, zica, Srebrenica)" are visible.

They could even be seen at football games in parts of Bosnia and Serbia.

It is of utmost importance to establish the facts with regard to genocide and to punish the criminals. Otherwise guilt will not be individualized and responsibility could be seen as the collective responsibility of the people. It is necessary to individualize responsibility so that trust can be established among the different ethnic and religious groups that were involved in violent conflict.

Unfortunately, very few cases were tried in the entities of Bosnia and Herzegovina before 2005. According to Human Rights Watch, only two cases were prosecuted in the courts of the Republika Srpska, while there were about 50 cases in the Federation, including ten against the members of the dominant ethnic group in this Bosnian entity.

War criminals are still free in Bosnia and Herzegovina, while victims are not. There are many places in Bosnia and Herzegovina where victim and criminal live next to each other. Many children are growing up knowing that persons who killed their fathers or brothers live normal lives. In such an environment of insecurity, the victims continue to live in permanent fear. It results in a classic case of the 'Stockholm Syndrome' or in disassociation reactions, which are particularly present in the region of Srebrenica. Eleven years after the crimes, survivors are still in the position of victims, without the possibility of changing anything. Many children are now forced to go to schools in which crimes were committed during the war, their walls hiding blood under the new paint. Under these conditions, it seems ridiculous to speak about democratization and to expect children and adults to believe that democracy and human rights exist.

In Bosnia and Herzegovina, many people are not ready to admit to the evil that happened. Without an admission of guilt, it is not possible for victims to forgive and for their rehabilitation to succeed. As long as those who committed crimes against humanity are free, there can be no viable democracy in a society.

The victims of war lost family members, friends, all remembrances of their past and property. The horrible conditions under which they suffered even led to a loss of pride in many cases. Their rehabilitation is a long-term process, and one of the most important preconditions is justice. Results will only be achieved by prosecuting crimes at both levels – in The Hague and in Bosnia and Herzegovina. I have witnessed the relief on the part of the victims when one of the direct perpetrators was arrested. This means that it is just as important to bring low level war criminals to trial as it is a person like Karadzic. Only then will apologies and the reconciliation process itself become effective.

6.5 Dialogue Regarding the Past and the Process of Healing for Society

In spite of the many human rights and democratization projects in Bosnia and Herzegovina in recent years, we have witnessed daily conflicts and the contradictory truths presented by our politicians. On numerous occasions, meetings of those representing the different sides during the war have ended in confrontation when reference was made to the war. The unwillingness to confront the tragedy is one way of manipulating and falsifying the past, usually with the goal of gaining the submissive support of the people.

We cannot say that the silence that is so painful to the victims is only an expression of negation or underestimation of the crimes that were committed. Many years passed until some had the courage to try to assess the psychological consequences on both sides after World War II. Dan Bar-On, whom we were fortunate to host at Tuzlanska Amica in Tuzla in September 2006, worked with the second generation of Jews and Germans. He found that one of the strongest reasons for silence is the tremendous shame that even the second generation bears with difficulty.

We realize that without the possibility of discussing what happened, of listening to different opinions, of recognizing the suffering on the other side, it would be similar to building a house from the roof downwards.

One idea, resulting from this way of thinking, is a project known as “Democracy cannot be built with the hands of broken souls”, designed together with Dr. Yael Danieli. The main goals of the project were to establish a dialogue between the different groups at different levels and to prevent the conspiracy of silence. One of the activities is directed at providing assistance to members of the groups, especially in recognizing counter-transfer reactions, while another is targeted at a wider public and the media.

We decided to form a group consisting of people from both Bosnian entities – the Republika Srpska and the Federation of Bosnia - and to establish a dialogue between the two sides that had been at war until recently. We also realized that only a short period had passed since the end of war and that establishing a dialogue is a difficult process. Therefore we decided that the members of the groups should be psychiatrists, psychologists, social workers, human rights activists, and leaders of youth groups, believing that they have the greatest capacity for understanding and empathy.

The first meetings were held separately in the Republika Srpska and the Federation. After that, a joint workshop was held. We knew it would be difficult, but no one anticipated so many negative emotions. There were problems even in forming the group because there was a question of where to hold the first joint meeting – in the Republika Srpska or the Federation. Many members of the group were unable to bear the tension and often had to leave the room. At certain times it seemed as though we were playing a ping-pong game to prove who was the victim. The difficulty of facing crimes committed by your own people was evident. I am not sure whether the next meeting would have been possible if it had not been held in Berlin, until recently a divided city whose history was related in detail by the organizers and which improved the understanding within our group. The third joint meeting was held in Bosnia and Herzegovina, in Mostar, which is still a divided city. It

was followed by meetings in Brcko and Sarajevo. Every time when there is a meeting of the core group, a new group is formed in each town, thus creating a network. Activities are first undertaken in the old group, then in the new, and finally we work together with both groups. I must say that the way in which our core group became more tolerant in these joint meetings and showed better understanding and readiness for dialogue was visible. From time to time they serve us as a mirror. Interest for continuing the work in the new groups is evident, but financial limitations mean that the old group will not be able to accommodate all of the participants wishing to join.

Parallel to the work in the group, we have organized meetings with politicians and public officials, and lectures are held with the goal of promoting dialogue.

The fact that wars have repeatedly occurred in the Balkans almost every 20 or 30 years has created a stereotype that people in the Balkans are more inclined to warfare than others. Statistically this is not true. In addition to the promotion of dialogue, another goal of the project is to prevent the conspiracy of silence, which is always present in this region. After the recent war it is obvious that we are again confronted by this conspiracy in the area of former Yugoslavia. Thus, we have organized several public forums, roundtables, university lectures, as well as radio and TV programs to inform the public about the importance of breaking this cycle of the conspiracy of silence.

Many people referred to our core group as a "reconciliation group". It is strange because we never called ourselves that, although others have recognized this work as one of the ways of achieving reconciliation. An attempt was even made to initiate a Truth and Reconciliation Commission in Bosnia and Herzegovina, but it has been abandoned for the time being due to insufficient support from the main stakeholders – politicians who felt that their positions might be endangered if the process were realized.

The message I would like to convey is that a genuine dialogue in Bosnia and Herzegovina and in other post-conflict societies is extremely difficult and will require a great deal of time. The fact is that, 11 years after the war, there are still many people who are not ready and willing to face the past and to build the future on the basis of the lessons learned from the recent past.

Nevertheless, we must invest our best efforts in the process of restoring society, a society which will be able to live with the memory of past events. And, at the same time, we must build a more peaceful future in post-conflict communities that are able to accept differences of opinion. We cannot move forward as long as we are prisoners of the past.

7 The Role of External Actors: Guatemala – A Case Study

Mô Bleeker

A critical reflection on the role of external actors in the process of dealing with the past in Guatemala is certainly warranted ten years after the peace accords were undersigned. Not only did the international community play an important role in the negotiation of the peace accords themselves, but they have also been involved at various phases and in various degrees in their implementation. The Swiss Federal Department of Foreign Affairs, for example, has maintained a peace promotion program in Guatemala since 2003. In the following, I will focus my comments on some general questions relating to dealing with the past, which I will illustrate with examples drawn from the case of Guatemala.

To set the stage for my remarks, I will begin by quoting several passages from the final report of the Commission for Historical Clarification (CEH), which describe the structural dimension of the conflict. In the chapter summarizing its conclusions, the report makes reference to the historical roots of the conflict and states that “the structure and nature of economic, cultural, and social relations in Guatemala are marked by profound exclusion, antagonism, and conflict – a reflection of its colonial history.” It continues with the observation that *“the anti-democratic nature of the Guatemalan political tradition has its roots in an economic structure, which is marked by the concentration of productive wealth in the hands of a minority”* and that “due to its exclusionary nature, the State was incapable of achieving social consensus around a national project able to unite the whole population. Concomitantly, it abandoned its role as mediator between divergent social and economic interests, thus creating a gulf which made direct confrontation between them more likely.”⁸⁹

In 2005, the report from the intergovernmental Justice Studies Center for the Americas indicated that “Guatemala had lost more than 11.3 points since 1996 with regard to the rule of law, whereas a country like El Salvador had improved by 7 points. Guatemala was rated as one of the last five countries, close to Haiti, in terms of the quality of the rule of law” (see appendix 1). Citing statistics on governance indicators from the Country Data Report for Guatemala published by the World Bank, the report concluded that “Guatemala ranks among the more unequal countries of the world. There are significant inequities across ethnic groups. Although the indigenous represent 43 percent of the population, they claim less than a quarter of total income and consumption.”⁹⁰

The Myrna Mack Foundation, a partner of the Swiss peace promotion program in Guatemala, has published a report entitled “Crisis de gobernabilidad” (“Governance Crisis”), in which it notes that *“the permanent political confrontation is producing a profound lack of trust: the multiplication of unsolved social conflicts, the augmentation of violence and criminality, and the deterioration of the economic and social conditions”*. The Foundation adds that “the transformation of the anti-insurrection groups into clandestine groups that seem to have an important influence in political

⁸⁹ Comisión para el Esclarecimiento Histórico (CEH) 1999: Guatemala. Memoria del Silencio. Guatemala: F&G Editores. Available at: <http://shr.aaas.org/guatemala/ceh/report/spanish/toc.html>

An English translation of the conclusions and recommendations of the report is available at: <http://shr.aaas.org/guatemala/ceh/report/english/concl1.html>

⁹⁰ Justice Studies Center of the Americas (JSCA) 2005: Report on Judicial Systems in the Americas. 2004-2005. Available at: http://www.cejamerica.org/reporte/muestra_seccion.php?idioma=INGLES&capitulo=ACJU-030&tipeport=REPORTE2&seccion=INST_239

circles is adding to the dissemination of violence as well as corruption and impunity deep inside the state institution".⁹¹

Let us now end this disturbing review with some numbers: Guatemala, with a population of 14 million, has faced escalating murder and crime rates over the past five years: homicides increased by 40 percent between 2001 and 2004. In 2005, the murder rate amounted to 35 per 100,000 inhabitants. By comparison, the murder rate in the U.S. is 5.5 per 100,000.

The percentage of Guatemalan female murder victims has risen even faster. According to official police numbers from 2002, 163 women were murdered, accounting for 4.5 percent of all killings. By 2005, 665 women had been murdered, 12 percent of all murders. Most of the victims were between 14 and 35 years old.⁹²

Confronted with this reality, as an external actor, I have several questions in mind:

- How do you ensure that peace agreements lead to a sustainable peace and to the strengthening of the rule of law and the eradication of impunity?
- How can the most fertile combination of justice and human rights issues within the peace process be envisaged?
- How does one design the process of peace negotiations, with the participation of large sectors of society, in order to generate greater support and stronger alliances for peace?
- What should be done to generate political will in favor of a new societal contract?
- How can the inclusion of structural measures dedicated to overcoming structural exclusion be ensured in peace agreements?
- How do you combine priorities in the immediate post-war situation? How can development, justice, demobilization, reintegration, reparation, security sector reform etc. be financed?
- What is necessary to facilitate this delicate transformation from a culture of violence to a culture of the peaceful, democratic management of conflicts? To strengthen the emergence of a new political society?
- When exclusion is so markedly integrated into the system, how can this systematic exclusion be overcome? How do you generate a new dynamic of integration and inclusion?

I have no answers for these complicated questions. But the questions themselves act as guidelines when I consider the challenges faced by societies in transition from war to peace, from dictatorship to democracy. These questions are crucial when we, as external actors, accompany the processes of dealing with the past. And these questions were and are at stake in Guatemala.

In the following, I will try to illustrate some of these questions with elements of the Guatemalan process.

It is important to remember that the 1996 peace agreements were signed at a time of political and military stalemate in Guatemala and in the context of the 'pacification' of Central America. It is true

⁹¹ Translation MB. The report is available in Spanish at: [http://www.myrynamack.org.gt/archivos/Analisis/2006/Crisis percent20de percent20governabilidad percent20julio06.pdf](http://www.myrynamack.org.gt/archivos/Analisis/2006/Crisis%20de%20governabilidad%20julio06.pdf)

⁹² Bojana Stoparic 2006: Guatemala Pressed to Investigate Surge in Killings (6 December 2006). New York: Women's eNews. Available at: <http://www.womensenews.org/article.cfm/dyn/aid/2776/context/archive>

that these peace agreements are the most comprehensive peace agreements ever signed in the region. Nevertheless, with a certain distance, we can say that once demobilization had been realized, the actors felt quite satisfied without knowing exactly what would happen with the remainder of the agreements. In fact, they were not completely implemented and we know some of the reasons that prevented this.

7.1 The Racist Legacy: 'Us and Them'

A large part of the population, the 'non-indigenous' one, was afraid to allow the integration of the indigenous population into its society. The fear was that they would get a voice, that they would become equal. The 'us and them' dynamic was extremely strong.⁹³ 'They' (meaning the indigenous) were not considered as equal human beings. The horrible crimes committed during the war were a striking example of an extreme de-humanization. Once the peace agreements had been signed, there was the need for a profound change of culture and of structure, including a new ethical and political definition of citizenship and the common good. The right wing succeeded in strengthening these fears, mainly based on racist arguments and, during the referendum of 1999, the majority of voters rejected the idea of including important principles of the peace agreements in the Constitution. Since then, very little has advanced.

One of the first lessons to be learned in supporting a successful peace agreement process is that the real issue is not simply demobilization. This should not be forgotten and efforts should be concentrated on the reasons that allowed the conflict to develop into war. The latter are the core issues of sustainable transformation, and can become the biggest obstacle, if you do not deal with them.

For example, in the case of Guatemala, the long-term exclusion of the larger part of the population requires large-scale and intensive intervention in all spheres of society – structural, cultural, economic and political. The maintenance of exclusion engages important resources and demands continuous legitimization as well as the cooperation of different social sectors. You cannot overcome such a long-term mobilization for exclusion without creating a new pole of cooperation around a new societal contract. The results of the 1999 referendum expressed this failure, namely that the cooperation supporting exclusion was still stronger than cooperation supporting inclusion. And this is still one of the key issues in Guatemala.

7.2 Local Ownership of the Process of Dealing with the Past

In this last decade, international norms and standards concerning the struggle against impunity, accountability, and the rights of victims have started to prevail in an encouraging way. But each society has to find its own way of conjugating these imperatives, taking into account emerging international standards and norms.

⁹³ As the CIRMA exhibition "Por qué estamos como estamos" demonstrated very well, Ladinos have difficulty in understanding their own identity. This finding supports the thesis that the degree of racism could be in a direct relation to the degree of unclarity regarding one's own identity. A description of the exhibition is available at: [http://www.cirma.org.gt/es/index.php?module=ContentExpress&func=display&ceid=55&bid=16&bttitle=Menu percent20General&meid=83](http://www.cirma.org.gt/es/index.php?module=ContentExpress&func=display&ceid=55&bid=16&bttitle=Menu%20General&meid=83)

In the case of Guatemala, there was not only a lack of internal political will, but the institutional framework in charge of implementing the peace agreements was also very weak. The REMHI⁹⁴ and CEH reports proved that there had been wide-spread and massive human rights violations in addition to genocide. They revealed that these violations were not 'excesses', but were planned and systematically executed. Furthermore, the violence was an inherent expression of the institutional structures of the country and society. And after the war, it was necessary to take measures to overcome this 'system of producing violence'. A strong judicial system should have immediately brought those responsible for the most important and inhumane massacres to trial, demonstrating that these were unacceptable and inhumane actions. The state should have apologized in public, stating that the new post-war society adamantly rejected this behavior. There should have been a large-scale program of rehabilitation for the victims for the purpose of not only providing compensation, but also promoting a new citizenship. Special measures should have been taken to re-establish the full rights of the indigenous population, etc. But we know that this did not happen.

Other lessons learned concern: 1) The fact that more attention should be paid to the efforts needed to adapt dealing with the past or transitional justice mechanisms to a specific context; and 2) the more sophisticated the 'system of destruction', the greater the need for sophisticated, complex, and holistic measures for dealing with the past. Furthermore, it is imperative to integrate dealing with the past issues early enough and in such a way that they do not endanger peace talks and the peace process. They should contribute to strengthening the dynamics towards the emergence of a new and strong rule of law, a human rights policy, the promotion of accountability, and the avoidance of impunity.

7.3 Participation and Consultation of Local Actors

During the negotiations of the peace agreements, the ones who were talking around the table were men and military actors. The latter were thinking about finishing the peace talks as soon as possible and with as much advantage to themselves as possible. For years, after the peace agreements in Guatemala had been signed, there were 'mesas de dialogo' ('roundtable discussions') about different aspects of the agreements. If you read the results of these 'mesas', you cannot understand why their recommendations were not applied, as some of them were so good! The fact is that the recommendations of 'mesas de dialogo' were not binding for the government. When asked about this, one of the external actors responsible for the organization of the process told me, "but it is important that they talk together." Yes, talking is important, but if the nature of the conflict has been such, how can you be satisfied with such a statement? Why did external actors accompany these processes of dialogue without proposing truly binding mechanisms?

This is also part of the lessons learned: To overcome the inhumane system prevailing during the war, you need all of the active resources in the country. Mobilizing these resources is part of the reconstruction of a new political society. Rules of the game and decision-making processes should be very well-defined and accepted by all parties. Transparency should be the rule. Mixed commissions, or commissions based on parity, which are in charge of working on issues, should become familiar beforehand with the mechanisms of decision-making and monitoring with regard to their proposals. The same approach is also important for cooperation with civil society actors: Clarify the rules, be transparent about the decision-making process, propose monitoring mechanisms.

⁹⁴ Oficina de Derechos Humanos del Arzobispado de Guatemala (ODHAG) 1998: Guatemala. Nunca mas. Informe del Proyecto Interdiocesano de Recuperación de la Memoria Histórica, (REMHI). Vols 1-5. Guatemala: ODHAG. Available at: <http://www.odhag.org.gt/INFREMHI/Default.htm>.

For an English translation of the REMHI report, see: Human Rights Office of the Archdiocese of Guatemala (ODHAG) 1999: Guatemala. Never Again! Recovery of Historical Memory Project (REMHI). Maryknoll: Orbis Books.

7.4 The Difficulty of Strengthening the Political Will

In Guatemala, we recall that the peace agreements were signed at a time of military stalemate. Once the cease-fire and demobilization agreements had been fulfilled, who was going to take the responsibility for implementing them?

Indeed, we observe a lack of local ownership for the peace agreements. Furthermore, they did not generate a political will among the traditional sectors and did not generate a new 'political society'. The alliance between the traditional sectors and some segments of the military was never broken. They adapted to the new situation, but did not fully yield their power or change their way of thinking. The new 'political society' that should have emerged through new political parties and new actors did not do so.

In the meantime, it became clear in Guatemala that the agenda of the peace agreements had become almost exclusively the agenda of civil society and the international community. It was not the agenda of Guatemalan society at large and not the agenda of the ruling elite.

As an external actor, you are facing a tragic dilemma: What do you do under such circumstances? How can you continue to support the transformation of society without becoming the hostage of a false process? Some of the external actors became the 'voice of the excluded'. Some left; some pretended that everything was fine. The problem is that you may become part of the blockage. And even worse – some of the external actors began acting, as if they were local actors! The perverse side of it has been that it became easy for the government to avoid its responsibility. The international community was covering what was missing. In psychological terms, we would say that this is an example of the 'helper's syndrome' (l'appropriation du patient).

The human cost of ten years of lack of progress on structural issues, the rule of law, and impunity has been enormous and resulted in the decomposition of the social fabric, the repetition of violence at all levels, the fragmentation of society, and the destruction of social civic trust.

7.5 Concluding Remarks on the Implementation of Peace Agreements

In conclusion, I would like to mention several important elements with respect to the implementation of peace agreements:

- **Broad Local Civil Support for Political Agreements**

Cease-fire agreements negotiated between armed men are a small first step. Political agreements need to be supported by broader civil circles and groups of actors. Symbolically, the emergence of multiple actors representing a variety of interests and viewpoints itself indicates the degree of the demilitarization of culture and the emergence of a 'pluralistic nation'. These voices of dissent are chipping away at the monopoly of authority by the supporters of violence.

- **The Need for a New Leadership**

Once the first euphoria at the signing of the peace agreements has passed, one is frequently confronted with a major leadership crisis. Often, the leaders from all sides are still traumatized, suffering from deep antagonism, and occasionally even demonstrate the tendency to become very authoritarian. But it is precisely then that the lack of new leadership, both at the level of government and in civil society, weakens the dynamics of conflict transformation, hindering the development and implementation of strategies.

- **Multi-Track Mediation after the Peace Agreement**

The need to begin implementing peace agreements takes place at a time when the culture of confrontation is still active. The participation of broad range of civil society actors at this stage is an absolute necessity. Often, however, neither the government agents nor civil society actors have any experience with this kind of dialogue. External actors should help to provide the space for this kind of process negotiation, which can contribute to a sustainable peace.

- **Transitional Justice – a Resource for Renewal or a Source of Tensions**

Transitional Justice can strengthen a new dynamic for constructive dialogue if properly negotiated. Or it can generate a certain violence if the local actors face a crisis of legitimacy, lack the technical instruments, and if no space for formal dialogue exists during and after the peace accords. In such cases, transitional justice initiatives are vulnerable to political manipulation and may even become a threat to the entire peace process.

- **Dealing with the Past and the Participation of Victims**

Another challenge, therefore, is to facilitate the participation of victims in the development of strategies for dealing with the past. Efforts are rarely made to involve victims in political decisions about transitional justice and, adding insult to injury, many actors do not hesitate to speak on their behalf. Thus, when transitional justice measures are planned, instead of being directly involved, as should be the case, the victims are often not even consulted.

To be honest, however, I feel we are missing a link in any case. The more I work with the four pillars of transitional justice, the more I realize that we are lacking certain elements that could lead to reconciliation. If this is indeed the case, why is it so?

I believe that reconciliation, understood as the horizon of a new societal contract, could provide us with a vision, could provide us with the 'how', rather than the 'what'.

First of all, because the field of transitional justice seems to give only a partial answer, contributing to what could be called the 'holistic reconstruction' of a society: Renewed citizenship, societal contract, equality of opportunity on all levels, societal values, new (or renewed) civic trust, etc. - in other words, a flourishing sustainable peace.

Secondly, the majority of countries facing these transitions are not only facing impunity and lack of rule of law, they are also facing the question of re-defining statehood and citizenship and are continuing to pay a high tribute to colonization and/or peripheral, partial, unequal development. The point here is: Is there a sustainable existing nation-state in which the people are considered as citizens? Is there room for an inclusive, endogenous national development and definition?

Thirdly, the complex reconstruction of a post-war society includes all of these dimensions and levels, whether we want them or not. Past, present, and future are inextricably linked. Furthermore, often enough perpetrators and victims continue to share the same territory. In that sense, neither wiping the slate clean nor forgetting the past is an option, either for perpetrators and victims. In fact, there is an intensifying need for a collective re-definition of what the present and the future should and could be: The common denominator, the common goal, the common future, the common values, and the commonly acceptable ways to deal with (normally existing) conflicts, with the past and the future. But there are no effective measures for dealing with past, if they are not accompanied by measures to deal with present normative realities.

Fourthly, building trust is a central element of our reflection. Human beings change through experience and not through decrees, agreements, or laws. Any process of post-war rehabilitation must contribute to re-creating, or strengthening, the sense of belonging to a community as well as

to a larger society. This feeling of belonging has to be felt in both 'duty and rights' aspects, in material and 'ideal' aspects. Changing attitudes are not only linked to the perception of conflict, or even to the past, they are also linked to a *present feeling* of 'being equal', being 'included' or taken into account, being 'part of', of understanding the rules of the game. In this sense, the process of 're-creating community' should lead to a renewed 'investment in civic trust'.

Fifthly, the etymology of reconciliation can be traced to the Latin '*concilium*', which may be understood as 'counsel' or advice, but also as 'council' in the sense of the 'community of decision-makers'. In this regard, 're-conciliation' would mean the 're-creation' or the 're-building' of a community of responsible citizens.⁹⁵ Could that mean strengthening good governance and a feeling of belonging? Could we say that reconciliation has to do with a new concept of citizenship, a new understanding of being a member of a social, political, religious, cultural, and geographical community?

And finally, the spiritual, moral, and normative understanding of reconciliation is not universal. Reconciliation is, by essence, an '*ou-topos*'; an utopia. It is a vision and not a goal. It should guide us in the 'how', or how the process of transitional justice or post-war strategies should be developed, for example. Reconciliation, then, should not be seen as a goal, or a static situation (to be achieved), or a moralistic point of view. It is rather a dialectical '*topos*', a dynamic quest, a mobile configuration in which the past is integrated as a reality and becomes part of the architecture of the present, perhaps following the Mayan way of rebuilding temples by constructing the new one on top of the older one, rather than destroying the former ones to make room for the new.

To conclude on a positive note: I am convinced that the Guatemalans will succeed in building a peaceful and just Guatemala, free of impunity and violence. But there is a need for a profound and radical shift. Accepting to deal with the past efficiently and contributing to dismantling impunity will play an important role for the future. A new political will has to emerge in the national leadership.

Can external actors help it to emerge? This is our challenge.

⁹⁵ My appreciation to Jonathan Sisson for this etymology of reconciliation.

7.6 Appendix 1

Table Variation of Rule of Law Rankings between 1996 and 2004 (percent), World Bank			
Country	percent Variation 1996-2004	Country	percent Variation 1996-2004
Costa Rica	-7,8	St. Lucia	29,3 (1998)
Dominica	25,4 (1998)	St. Vincent and the Grenadines	30,7 (1998)
Dominican Republic	4,5	Surinam	25,3
Ecuador	-10,1	Trinidad and Tobago	-12,1
El Salvador	7,0	United States	0,1
Grenada	-5,6	Uruguay	-10,5
Guatemala	-11,3	Venezuela	-16,3

From: Rule of Law Index, World Bank.

Cited by Justice Studies Center of the Americas 2005: Report on Judicial Systems in the Americas. 2004-2005.

Available at: http://www.cejamericas.org/reporte/muestra_seccion.php?idioma=INGLES&capitulo=ACJU-030&tipereport=REPORTE2&seccion=INST_239

8 Dealing with the Past in Bosnia – Herzegovina: Challenges for the Future and the Role of External Actors

Nena Skopljanac

8.1 Introduction

The 1992-1995 war in Bosnia and Herzegovina (BiH) resulted in financial and human costs that completely devastated the country. During the war, more than one half of the country's population was forced from its homes, of which 1.3 million were internally displaced, ca. 500,000 became refugees in neighboring countries, and some 700,000 fled to Western European countries.⁹⁶ Over 100,000 people died and around 20,000 are still recorded as missing. Gross violations of international humanitarian law occurred, including murder, rape, torture and mass expulsion. The ICTY Appeals Chamber unanimously ruled that an act of genocide occurred in Srebrenica in July 2005 when some 8,000 Bosniak men and boys were killed.

The 1995 General Framework Agreement for Peace in Bosnia and Herzegovina, better known as the Dayton Agreement (DA), which ended the war in BiH, established a complex state and political structure. BiH comprises two relatively autonomous entities along ethnic lines: Republika Srpska and the Federation of Bosnia and Herzegovina, itself further divided between Bosniak- and Croat-controlled areas. The tasks related to civilian implementation were divided between different international organizations, including the Office of the High Representative (OHR), the Organization for Security and Cooperation in Europe (OSCE), the UN Mission in Bosnia–Herzegovina (UNMIBH), and the UN High Commissioner for Refugees (UNHCR). The International Criminal Tribunal for the former Yugoslavia (ICTY) was established by the UN Security Council in 1993, well before the DA was signed.

Nationalist parties continue to dominate. Economic development as well as political and social reforms have been very slow. Some progress has been made in returning refugees. The economy continues to be weak and unemployment very high. Although the prospect of future EU membership has been opened and the European Commission acknowledged that BiH has made progress, there is a long list of conditions set to be fulfilled. Currently, however, BiH has practically come to a standstill in its EU accession process.

Before addressing the issues related to the process of dealing with the past in BiH, it is necessary to list the causes of the conflict and deficiencies of the Dayton Agreement, as both are directly linked to challenges and obstacles for the current and future initiatives for dealing with the past.

8.2 Causes of the Conflict

The violent breakup of Yugoslavia was not inevitable and might have been avoided. Yet, a number of structural factors that emerged and persisted in the period after World War II and that were never addressed by the regime, provided a fertile ground for conflict escalation in the second half of the 1980s and for wars in the 1990s. The main causes of the conflict can be defined as follows:

⁹⁶ Statistics drawn from the Norwegian Refugee Council/Global IDP Project "Profile of Internal Displacement: Bosnia and Herzegovina. Compilation of the Information available in the Global IDP Database of the Norwegian Refugee Council (as of 24 March, 2005)" p. 13, cited in Marie-Janine Calic 2005: *Ethic Cleansing and War Crimes, 1991-1995. The Scholars' Initiative Confronting the Yugoslav Controversies*. Scholar's Initiative Team Four. Available at: http://www.salzburgseminar.org/ihjr/si/si/Team_4_Full_Text_Report.pdf

- Lack of democratic and legitimate political institutions as well as of democratic procedures to resolve state and political issues at stake in a peaceful and political procedure;
- Economic deterioration during the 1980s, making a large part of the population receptive to populist political leaders promising quick solutions for problems;
- Persistence of irreconcilable national and historical narratives and unresolved grievances from World War II helped to sustain separate identities while, on the other hand, a shared identity that would be broadly accepted had never really been established;
- Aggressive nationalism and populism, which employed unresolved grievances for ethnic homogenization and for the formation of exclusive ethnic identities.

8.3 The Dayton Peace Accords and their Main Deficiencies

The Dayton Agreement (DA) met with quite a high level of enthusiasm from the international community, being regarded as a great example of successful international policy. Although it was soon quite obvious that the Agreement was not a good one and that there was a lack of will on the part of the local political elite in BiH, Croatia, and Serbia to implement it, the international community continued to congratulate itself on the “peace” in BiH. The main deficiencies directly linked to the process of dealing with the past in a post-war period, which most of the experts and civil society actors throughout the area of the former Yugoslavia identified at the outset, can be briefly summed up as follows:

The Agreement was negotiated with, and signed by, the then presidents of BiH, Croatia and Serbia – political leaders who bear the highest responsibility for the policies that led to the wars. DA strongly promoted these leaders as ‘factors of stability and peace’ in the region. It must be noted here that one of them (Slobodan Milosevic) was indicted and tried by the ICTY, while ICTY investigations of the other two (Franjo Tudjman and Alija Izetbegovic) were well advanced and indictments were about to be issued at the times of their deaths.

The DA represents a typical example of power-sharing negotiations among the top political leaders without any involvement of a broader spectrum of other relevant politicians and players. There was also no public dialogue on the DA after it was signed. Civil society was put in a powerless position with regard to influencing the DA’s implementation.

The DA failed to address the core socio-political issues behind the conflict. On the contrary, some of them have been incorporated into the DA as the basic principles of the constitutional framework. The DA practically laid the groundwork for the partition of BiH along ethnic lines – from the state structure down to all spheres of political and social life. Still today, the DA represents the key obstacle to making BiH a self-sustainable and fully functional country.

The way in which Serbia and Croatia were embedded in the DA has proven to be highly counter-productive. Instead of signing separate agreements to settle the inter-state conflicts of Serbia, Croatia, and BiH, the DA involved the two neighboring countries as signatories of the agreement to settle BiH’s intra-state conflicts. Namely, signatories on behalf of Bosnia’s Serbs and Croats were not their respective political representatives but the presidents of Serbia and Croatia. This granted Serbia’s and Croatia’s state leadership the status of guarantors for the settlement of the intra-Bosnian conflict. Both have seriously misused this position for years and interfered in Bosnian affairs.

8.4 Achievements in the Post-Dayton Period and Major Current Obstacles

The Dayton Agreement did not contain a comprehensive set of policies and measures related to dealing with the past. As a consequence, the efforts undertaken so far have been sporadic, unsystematic, and incomplete. While some progress has been achieved with regard to retributive justice and vetting, truth-seeking and reparations have so far been largely neglected.

Main Achievements

The results of the ICTY's work have certainly been the key achievement. They have made a substantial impact in BiH, in particular in the Federation. Recently, the cooperation between the Tribunal and the government of the Republika Srpska has been improving. The ruling of the Appeals Chamber that the massacre in Srebrenica was an act of genocide represents a milestone in its work and should be a strong factor in combating still-existing denials of crimes and widespread impunity.

BiH has experienced a very comprehensive vetting process. Around 24,000 police officers were vetted between 1999 and 2002, and the appointments of some 1,000 judges were screened between 2002 and 2004. In spite of a couple of shortcomings, the process was an important step in re-establishing the trust of BiH citizens in their state institutions.

Two important initiatives with regard to truth-finding efforts have been undertaken. The first one is the report of the Commission for Investigation of the Events in and around Srebrenica between the 10th and 19th of July, 1995 (Srebrenica Commission), which was established by the National Assembly of the Republika Srpska (RS). It explicitly states that on July 10–19, 1995, several thousand Bosniaks were "liquidated" and the perpetrators and others "undertook measures to cover up the crime" by moving bodies away from the killing site.⁹⁷ Unfortunately, the Commission was established under pressure from the OHR and was heavily obstructed by the RS's authorities, which undermined its possible reconciliation impact. The second is the report entitled "Population Losses in Bosnia–Herzegovina 1991-95", written by the Research and Documentation Center in Sarajevo, which provided accurate data on the number of victims during the war in BiH.⁹⁸ Although it met with mixed public reactions, predominantly negative, the report does represent an important step forward in demystifying the politicized 'truths' that emerged.

Major Obstacles

There have been no real changes in the regimes in the post-Yugoslav countries. The political leaders who authored the policies that led to the wars and who have largely been responsible for the atrocities and human rights abuses are basically still in power. The "new elite", that in some cases came to power, are pursuing the same nationalistic ideology (e.g. the Alliance of Independent Social Democrats won the October 2006 elections in Republika Srpska playing on a strong nationalist card).

There is no process in place to establish a broadly accepted and officially acknowledged truth based on facts. The political leadership continues to block the process of facing the recent past and instead forges parallel truths along ethnic lines, largely based on myths. It defines its 'own' side as exclusively that of the victim and the 'other' as that of the perpetrator.

⁹⁷ The Commission for Investigation of the Events in and around Srebrenica between the 10th and 19th of July, 1995 2004: The Events in and around Srebrenica between the 10th and 19th of July, 1995. Republika Srpska. BiH. Available at: <http://www.vladars.net/pdf/srebrenicajun2004engl.pdf>

⁹⁸ Research and Documentation Center 2007: Human Losses in Bosnia and Herzegovina 1991-95. Available at: http://www.idc.org.ba/presentation/research_results.htm

Antagonistic truths are perpetuated in the educational systems, while the most influential media are still state-controlled and represent powerful promoters of such truths.

The exceptionally high demand for justice on behalf of the victims remains largely unfulfilled. Local courts, which should bring to trial hundreds of direct perpetrators and lower-ranking officers, are still unable to completely fulfill their tasks due to the high politicization, corruption, inefficiency, and insufficient competencies to prosecute war crime cases.

State institutions that were the most involved in atrocities and human rights abuses – military, police, and intelligence services – have, for the most part, not been reformed. In spite of a broad vetting process in police structures, there are still a number of persons who are responsible for, or were directly involved in, atrocities and human rights abuses among those of mid- and lower-rank as well as ordinary staff.

There is little trust in the ICTY and its ability to deliver justice, especially in the Republika Srpska where it is widely perceived as biased and anti-Serb.⁹⁹

8.5 Lessons Learned and Key Challenges for the Future

The ICTY and Local Trials

The attention of the international community has been focused for too long and almost exclusively on the ICTY, while the BiH's judicial system has been largely neglected. Reform and capacity-building of the country's judiciary in order to be able to process war crime cases started almost ten years after the war had ended. It was actually put on the agenda in the context of the ICTY 'completion strategy' and the transfer of some mid-level cases to the local courts, specifically to the recently established War Crimes Chamber of the State Court of BiH. However, there are many more cases to be processed than have been transferred by the ICTY. There are 846 cases that, according to the 1996 Rome Agreement, have been reviewed by the ICTY and selected as those that provide sufficient evidence according to international standards to issue an indictment against the suspect.¹⁰⁰ The cases are mainly linked to lower-level perpetrators.

There has been criticism by some international and local NGOs that the Chamber "appears to be based on short-term planning aiming to effect the quickest and cheapest possible withdrawal of the international community [from the ICTY]",¹⁰¹ that the international community is focused predominately on the Chamber, that international funding is being directed almost exclusively to the Chamber, and that donors as well as local authorities are less interested in funding trials of lower-level perpetrators.¹⁰² Hence, the BiH judiciary is still faced with an enormous challenge: Who will try the hundreds of perpetrators, whose just sentences are vital to improving the trust in justice among the victims and within what time frame? The BiH judiciary cannot respond to this challenge without the backing of the BiH's authorities and the international community. Another NGO criticism focuses

⁹⁹ According to a comprehensive survey conducted in 2002, trust in the ICTY is at 51 percent in the Federation and only 4 percent in the RS. See: International IDEA 2002: South East Europe Public Agenda Survey. Available at: www.idea.int/press/pr20020404.htm

¹⁰⁰ Natascha Zupan: "Facing the Past and Transitional Justice in Countries of Former Yugoslavia" In: Martina Fischer, ed. 2006: Op.cit., 329.

¹⁰¹ Amnesty International 2003: Bosnia and Herzegovina: Shelving Justice — War Crimes Prosecutions in Paralysis. AI Index: EUR 63/018/2003 (12 November 2003). Available at: <http://web.amnesty.org/library/Index/ENGEUR630182003>

¹⁰² Mark Freeman 2004: Bosnia and Herzegovina: Selected Developments in Transitional Justice. New York: International Center for Transitional Justice. Available at: <http://www.ictj.org/images/content/1/1/113.pdf>

on the procedure by which the Chamber has been set up, advocating for greater victim participation. This shortcoming imposes a considerable challenge for the Chamber's credibility, most of all among the victims.

The ICTY outreach program began its work in late 1999, six years after the tribunal itself had been established. However, the primary target has been judiciaries in the countries of the former Yugoslavia and their capacity-building in order to be able to legally process war crime cases. Work with media and non-governmental organizations has started only recently. The communication component has been very weak, almost non-existent. This is an important shortcoming, which has contributed significantly to the general lack of trust in, and support for, the ICTY among the local population. It also considerably reduces the ICTY's longer-term social impact and its possible contribution to reconciliation. Unfortunately, the War Crimes Chamber of the State Court of BiH seems to under-estimate the importance of the outreach program, and in particular its communication.¹⁰³ This is particularly worrying, as communication is essential for sustaining support for the trials and "demonstrating accountability and the rule of law in action."¹⁰⁴

The last, but not the least important point refers to the ICTY archives. Apart from certain proceedings and, in particular, testimonies of protected witnesses, the ICTY possesses a vast amount of material on various issues that has been researched by teams of highly competent international experts. Unfortunately, most of it has not yet been made available for public use. The issue should be more seriously addressed within the 'completion strategy'. Publishing these documents might be one of the ICTY's most powerful outreach mechanisms for a variety of potential users (media, scholars, students, movie-makers, etc.) and for the possibility of their affecting a large segment of society in many faceted ways.

Restorative Justice and Empowerment of Victims

The work of the ICTY with its emphasis on retributive justice has been clearly prioritized. Accordingly, dealing with the past and transitional justice efforts have been focused on perpetrators and crimes. On the other hand, victims have been marginalized and neglected. Their needs, until now, have been almost solely addressed by grass-root projects on micro-community levels, the majority of which can be considered as psychological support and trauma-healing work. Macro- and more structural approaches in dealing with the past have so far largely failed to include policies aimed at addressing the enormous needs of victims, most of all in terms of justice and reparation. As a consequence, victimization is still wide-spread, with thousands of victims bearing emotions of deep hurt and unresolved traumas that lead to their closure towards the past and, often enough, the reluctance to deal with it.¹⁰⁵

Work focused on psychological support and personal and group trauma should be complemented by broad, state-sponsored compensation programs. Inclusion of victims' associations in designing such programs is indispensable. The prompt and mostly negative reaction of victim groups to the Human Rights Chamber's decision that compensation for the Srebrenica case was to be paid to the

¹⁰³ For more details, see the report from the 3rd meeting of the Courts' Reporters Association in BiH available at: www.birn.eu.com/bih/news001.php The Association drafted a number of recommendations for concrete and cost-effective communication activities that can be set up in a relatively short period.

¹⁰⁴ Paul van Zyl 2006: The Challenge of Criminal Justice: Lessons Learned from International, Hybrid, and Domestic Trials. In: Mò Bleeker ed. 2006: Dealing with the Past and Transitional Justice: Creating Conditions for Peace, Human Rights and the Rule of Law. Conference Paper 1/2006 of the Swiss Federal Department of Foreign Affairs, Political Division IV. Dealing with the Past – Series. p. 23.

¹⁰⁵ Paul Stubbs 2003: Dealing with the Past in Bosnia and Herzegovina, Croatia, and Serbia & Montenegro. Post-Yugoslav Countries Program. Regional Synthesis Report. Zagreb: Quaker Peace and Social Witness. Available at: http://paulstubbs.pbwiki.com/ff/stubbs_dealingwiththepast.pdf

Foundation of the Srebrenica-Potocari Memorial and Cemetery and not to the victims themselves clearly indicates that future reparation programs must ensure victims' participation in order for them to be successful.

Another important challenge is the inclusion of victim groups and associations in initiatives carried out by other civil society actors, most of all human rights organizations. Cooperation has so far been punctual and sporadic. There is a lack of mutual understanding and trust. While the victims groups regard NGOs focusing on human rights as elitist, exclusive and distanced from their problems and needs, they are often seen by others as politically manipulated and not rarely nationalist oriented.

Establishing Truth

Together with the restoration of justice, truth-seeking efforts and society's acknowledgement of the abuses play a key role. The latter has a particularly important healing and peace-building effect. Creating shared memories can contribute to a shared frame of reference in divided societies. A preventive effect is also achieved by establishing the facts and identifying perpetrators of crimes and human rights abuses and the structures in which and through which the violent acts were committed.¹⁰⁶ Many civil society activists see a potential danger in different interpretations of the past, and conflicting official accounts becoming the seeds of future tensions in the region. Against this background, dealing with the past is seen as vital for a genuine sustainable peace in BiH and the region.

However, it is extremely difficult to establish a truth in BiH that is accepted by all former parties to the conflict. Even if it concerns mere facts. For example, the number of victims continues to be a matter of controversial debate on all sides, and figures presented often appear to be politicized. The example of the data on human losses recently published by the Research and Documentation Center in Sarajevo shows that challenging the inflated figures with hard data is not enough to demystify one important segment of the recent past and establish truth based on the facts. A key challenge for the growing community of domestic actors involved in fact-finding and truth-seeking efforts is how to translate facts and well-founded accounts into a narrative that is likely to be commonly shared by all sides in a still deeply divided society.

Furthermore, considering the intense feelings of victimization by large sections of the Bosniak population, there is a certain tension between 'collective guilt' often ascribed to Serbs and individual stories of victims who are Serbs. How much space actually exists across ethnic boundaries for mutual empathy and solidarity among the victims in BiH? Is there a readiness and ability to hear and acknowledge the suffering of the 'other'? If the intended aim of truth-seeking efforts is to rebuild mutual trust, proper answers to such questions are crucial. Unfortunately, there is no reliable research data in this respect.

Many NGOs and civil society groups emphasize the crucial role which the educational system and the mass media could play. Yet, civil society's capacity and knowledge to outreach to these sections remains rather limited.

Generally speaking, research, analysis, and the compiling of documentation on war crimes and human rights abuses has so far been the most successful type of truth-seeking efforts undertaken by a few NGOs in BiH, Croatia, and Serbia. However, most of the documentation has been used for the

¹⁰⁶ Sylvia Servaes, Natascha Zupan 2006: For the Sake of Peace ... Transitional Justice as a Field of Development-oriented Peace Work. In: Susanne Reiff, ed.: Briefing Paper 4 (12/2005). Bonn: Working Group on Development and Peace. Available at: <http://www.frient.de/materialien/detaildoc.asp?id=237>

work of these NGOs themselves and, so far, very little has been made available for public use. On the other hand, there is a vast need on behalf of journalists, the media and some scholars to access this data. Making the data bases accessible to interested individuals and organizations can be one of the most important efforts in achieving an extensive outreach and making a substantial impact on the general public.

Truth and Reconciliation Commission

Based on experience in other countries, there are two major lessons learned that are relevant for the initiative to establish a Truth and Reconciliation Commission (TRC) in BiH.

First of all, the initiative has so far failed to generate broad interest from civil society groups and general public support, in particular among the victims' associations and grass-root organizations in rural areas. The group of NGOs that launched it has largely been perceived as 'elitist' and 'exclusivist' by a large spectrum of other civil society actors. Although these critics have been present for some time, the initiators have not undertaken appropriate measures to address them. To push the draft law through parliament, the creation of a broad civil society coalition and a well-designed campaign focused on the TRC issue seems crucial.

Secondly, bearing in mind that the authorities on both BiH and entity levels are still dominated by nationalist parties and have proven highly reluctant to address the legacy of the recent past, there is the risk that the parliaments would fail to implement the TRC's recommendations in spite of its success. This would inevitably lead to a crisis of legitimacy for the TRC and an increased sense of re-victimization for those who suffered from the atrocities and human rights abuses.

In addition to these more general remarks, there is one specific point relevant to the TRC in BiH. The Draft of the Law on the TRC in BiH regulates the TRC's mandate to "examine, on the basis of the information obtained, events in Bosnia–Herzegovina and the Former Yugoslavia during the period from the elections of 19 November 1990 until the conclusion of the General Framework Agreement for Peace, signed on 14 December 1995" (Art. 6). Accordingly, the TRC's mandate with regard to truth-seeking is not limited to BiH, but is related to the former Yugoslavia. However, cooperation between the TRC and judicial and other agencies and organizations in other post-Yugoslav countries, especially in Croatia and Serbia, is not foreseen (Art. 8 and 9). If the TRC would be established according to these provisions, its work might have some negative impact on regional efforts of dealing with the past and reconciliation, as it can hardly be regarded as a truth-seeking mechanism that will be credible throughout the region.

Civil Society in BiH

Civil society actors involved in dealing with the past in BiH suffer from the same difficulties as civil society groups in BiH suffer in general. According to research, the various efforts undertaken are quite disparate.¹⁰⁷ Most of the players are not linked to any one group. There is even a lack of basic information as to who is doing or planning what. The actors often see themselves primarily as competitors for the limited and diminishing donors' funds, rather than as partners committed to advancing the cause of dealing with the past. There are very few common projects, and when they exist, they are more frequently implemented with NGO(s) from neighboring countries rather than with those in BiH.

There is a mistrust and gap between civil society actors from urban areas on the one hand and rural areas on the other, and between the major players established on the national level and those with

¹⁰⁷ Damir Huremovic 2003: Dealing with the Past. Country Report: Bosnia and Herzegovina. Post-Yugoslav Countries Program. Quaker Peace & Social Witness. (unpublished). See also: Paul Stubbs 2003: Op.cit.

grass-roots and local backgrounds. In both cases, the former are largely regarded as 'exclusivist' and 'elitist' and are often the subject of deep mistrust on the part of victims' groups and other small players.

There is also an especially deep gap between the role of NGO initiatives on the one hand and the victim and veteran organizations on the other. Even when working on projects directly focused on victims and veterans, NGOs tend to address individual beneficiaries directly and only rarely cooperate with the organizations that represent them. This significantly reduces their capacity to address the issues on a more structural level.

With this as a background, it is not surprising that there is little real coordination. Some joint initiatives do exist (e.g. Initiative for a TRC and certain others), but not across different sub-groups and civil society players. However, such coordination is necessary for successful work on political and structural issues.

While knowledge of general issues related to dealing with the past exists, very few actors are familiar with the different concepts and strategies. There is an ongoing confusion and debate among civil society groups as to whether the starting point for dealing with the past should be at the national or local level, and whether it should be focused on social structures or on individual attitudes and behaviors. Many rightly agree that those approaches and levels should be combined. However, they fail to accomplish it because the capacity for strategic planning and policy-making is largely missing.

Many actors think in terms of projects and lack the understanding for the issue as a whole. Therefore they are often unable to position their work within the on-going process as a whole. Linked to this is a strong tendency to overlap activities with other players instead of designing strategies for cooperation with them (many NGOs prefer producing TV productions of an amateur or PR quality, which do not meet professional standards for broadcasting to a larger audience, rather than cooperating with the media on such projects) and the inability to plan and subsequently achieve a significant outreach towards a broader public and substantial impact on the societal level.

Thus, it can be said that the civil society sector in general faces a number of structural and political challenges to its work, in particular those actors addressing painful and highly contested issues such as dealing with the past. The legacy of ethnic divide makes it difficult for civil society actors to cooperate on initiatives addressing the state-level institutions. In addition, BiH citizens are generally quite mistrustful of the activities run by civil society actors. Still, civil society organizations are the "only organizations which can take on the nationalist forces and whose activities transcend inter-ethnic boundaries and ethnic division."¹⁰⁸

The Role of External Actors

We can easily agree that initiatives to address the legacy of the recent past have to come from within Bosnian society, that they cannot, and should not, be imposed from the outside. National actors should take the lead in setting the agenda for the concrete aspects of the process that need to be addressed and in shaping approaches and policies for carrying it out as well as possible. However, external actors also have an important role to play.

¹⁰⁸ Ismet Sejfića : "From the 'Civil Sector' to Civil Society? Progress and Prospects. In: Martina Fisher, ed. 2006: Op.cit. 137.

Based on the achievements until now, the lessons learned, and the challenges outlined above, external actors should have the following issues in mind when working with the actors in BiH who are already playing an important role in the processes of dealing with the past.

From the perspective of donors and their interest in BiH, one can say that dealing with the past has become a priority at a rather late date, when most of the donors have significantly reduced funds allocated for Bosnia and are either in the exit phase or have pulled out. On the other hand, dealing with the past is quite a complex and rather slow process which demands a long-term commitment. In-depth analysis of the roots of conflict and the local context are essential for designing a proper strategy, an assessment of the relevance of internal partners and a selection of those with whom to work. In a situation of limited resources, there is an increased need for such an approach in order to achieve higher efficiency.

The ICTY will continue to depend on the political backing of powerful international players, most of all the EU, in securing cooperation from the states of the former Yugoslavia. However, there is a certain danger in the way that the 'stick and carrot' is being used – especially the latter – as it can undermine the efforts of domestic actors committed to dealing with the past and weaken prospects for justice and reconciliation. Governments in the region are applying a general pattern for accepting cooperation so that they can advance in the EU accession process, and not for the sake of justice and reconciliation. There are a number of examples to confirm this. Let me mention just one of the most recent: The EU applauded the accomplishments of the Serbian government with regard to its cooperation with the ICTY in 2005 and rewarded it with the start of negotiations on stabilization and the accession process. Indeed, a dozen persons who had been indicted were extradited. However, literally all of them were proclaimed as great "patriots" and even "heroes" by the government; their circumstances were praised as a sign of "high responsibility towards the Serb people"; all were accompanied to The Hague by various ministers and were sent off with pompous official ceremonies. It seems that the fact that such acts hurt and humiliated thousands of victims, especially in BiH, and diminished their hope that full justice would ever be achieved, was not seriously considered. Why is the cooperation with the ICTY one of criteria for accession to the EU, and not for the purpose of justice and reconciliation?

There is a certain imbalance in the support provided by external actors so far. There has been a focus on the socio-political and juridical aspects, while initiatives aimed at establishing the truth about what actually happened in the war have been neglected. As the issue is increasingly perceived by domestic actors as crucial for the process of dealing with the past, there is a growing community of various civil society players who are becoming involved in this particular field. There are also initiatives for regional cooperation and networking. External actors should use the momentum and increase support for the initiatives.

Only a few domestic players have managed to obtain external assistance. The lion's share goes to human rights groups and initiatives located in urban centers. External actors should reach out to a wide range of domestic actors that play, or could play, a role in dealing with the past. Recent surveys among activists dealing with the issue indicate the following actors as particularly worthy of being involved: victim groups and associations, churches and religious organizations, media and youth.

External actors play an indispensable role in supporting civil society groups involved in dealing with the past initiatives. In addition to providing funds, the following assistance is very much needed as well:

- Facilitation of links, trust-building, and coalitions among players to enable more effective and united action at country and regional levels. In particular, it will not be possible to integrate the victim organizations and veterans groups into broader civil society networks without the assistance of external actors. A comprehensive survey of victims' needs and expectations might serve as a good basis to facilitate their inclusion;
- Capacity building in strategic planning, policy thinking and advocacy;
- Technical assistance in developing a far-reaching strategy for campaigning and ways of generating greater involvement from a wider range of social actors;
- External supervision and evaluation so that future initiatives can be based on best practices and lessons learned;
- Exchange of expertise and experiences with actors in countries that have encountered similar challenges, in order to combine best practices and lessons learned from international experience with domestically-rooted initiatives;
- Technical assistance in solid and coherent project planning, in particular with regard to defining criteria and indicators for measuring achievements;
- Counseling and coaching in the outreach of projects and initiatives towards a general public, as well as in cooperation with the media.

Civil society actors should be strongly encouraged to work more on the political and structural levels – for example with political leaders, local authorities, school authorities, universities, and the like – in order to mainstream their dealing with past projects and initiatives.

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