

Springer Series in Transitional Justice

Olivera Simić  
Zala Volčič *Editors*

# Transitional Justice and Civil Society in the Balkans

 Springer

# Springer Series in Transitional Justice

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Olivera Simić • Zala Volčič  
Editors

# Transitional Justice and Civil Society in the Balkans

 Springer

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in Šuto Orizari” in *Peace Psychology in the Balkans: Dealing with a Violent Past while Building Peace* (2012); “Intimité communiste: revendication de justice transitionnelle” in *Studia Europaea*, 3/2011; “Negotiating the name, renaming the nation-state,” in *Renaming machine* (2010); “Identités translationnelles et perspectives postcoloniales” in *Identities: Journal for Politics, Gender and Culture*, 1/2006; “Le retour à la poussière” in *Identities: Journal for Politics, Gender and Culture* 3/2002; “Transition trouble” in *Capital and gender* (2001); “(Re)situating the self: nation, gender and multicultural perspectives” in *Komski-kapicik, culture and politics* (2000). Her book *The dramaturgy of decentrement: Bernard-Marie Koltès, a voyage toward the edges* was published by Az-buki, Skopje, in 2010.

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# Chapter 1

## Localizing Transitional Justice: Civil Society Practices and Initiatives in the Balkans

Zala Volčič and Olivera Simić

### Introduction

In the early twenty-first century, we are faced with processes of globalization, different forms of transitions, post-communist conditions, and increased violence along ethnic and class lines. We live in times of endless transitions, fragmentations, insecurities, and uncertainties, during which individuals and entire nations struggle to overcome the legacies of suffering “ranging from rape and domestic violence to collective atrocities of state-sponsored dirty wars, genocides, and ethnic conflicts” (Scheper-Hughes 2004: 374). In such times, a question of how to recover from episodes of mass violence demands to be addressed. Transitional justice is a growing field, which responds to dilemmas over how successor regimes should deal with past human rights abuses of their authoritarian predecessors. Transitional justice as such is a process, by which a state seeks to redress the violations of a former regime. It is clear that transitional justice scholars have much to learn from civil society literature, which argues that the notion of civil society encompasses various (political) entities, including institutions such as media, and associations based on voluntary agreements among citizens together with a public sphere, where citizens can engage in public activities and debate.

This book attempts to cover various transitional justice processes within civil society engagements in the Balkans. The Balkans are positioned in South-Eastern Europe and in most scholarly accounts they include the former Yugoslavia as well as Albania,

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Greece, Romania, and Bulgaria. The Balkans, as a region, are marked by the post-communist and post-conflict transitional turmoil. Selected chapters here represent a series of empirically oriented and theoretically grounded reflections upon the transitional justice and civil society projects, written by local and international scholars.

The collapse of communism and the Yugoslav wars left the Balkan countries in an ambiguous state economically, politically, culturally, and psychologically. Economically, they are going through the process of transition from centralized, socialist, state-run economies to privatized, market-driven economies, while the region as a whole faces decline in economic security. The contradictions are rife: new economic opportunities and the emergence of economic elites coincide with rampant unemployment, the dismantling of a once taken-for-granted social safety net and the widening gap between the wealthy few and the struggling many. Importantly, we suggest, the question of how the region is addressing its past must be viewed in relation to other sociopolitical developments such as the rise of neoliberalism. Politically, the Balkan states are involved in building a specific type of (ethno) national identity, while, at the same time, seeking to address dilemmas of traumatic past, migration, and multicultural past and present. Culturally and psychologically, the Balkans are going through the painful process of reconciliation with the traumatic past. The nations involved are faced with the challenge of creating a shared cultural memory of the communist times and of fostering reconciliation between various ethnic groups, while attempting to build a strong civil society and a durable form of peaceful co-existence.

While the term “civil society” is a centuries-old product of European political thought, it has, especially over the last 20 years, enjoyed renewed popularity. The idea of civil society has gained a polemical power in Western societies (due to the decline of public institutions) and in Eastern European societies, including the Balkans, (due, in turn, to the collapse of communism). The disintegration of communist regimes in the Balkans paralleled increasing interest in the notion of civil society not only in the newly post-communist countries, but in the Western nations as well. The ideals of civil society have been praised by Western and non-Western scholars alike. But in spite of its almost universal appeal, the term “civil society” is replete with tensions and paradoxes. In general, civil society denotes spheres of social life “between household and state ... which affords (the possibility) of concerted action and social self-organization” (Bryant 1995: 399). There is the implicit normative element in almost all analyses of civil society, which connects the term with some form of ideal and “authentic” democracy. It is argued, however, that “civil society exists where there are free associations that are not under the tutelage of state power” (Bryant: 402). A more forceful argument, however, suggests that civil society can be said to exist where those associations that constitute civil society can determine or redirect the course of state policy (Taylor 1994: 208). As Giner (1995: 304) argues, civil society is a historically evolved sphere of individual rights, freedoms, and voluntary associations whose politically undisturbed competition with each other in pursuit of their respective private concerns, interests, preferences, and intentions is guaranteed by a public institution, called the state. Any mature civil society exhibits at least five prominent dimensions: individualism, privacy, market, pluralism, and class.

Today, in the Balkans, it is precisely around these notions of individualism, privacy, market, pluralism, class, and, in addition, democracy, national interest, and civil society, that the past is being redefined and reshaped. In response to these developments, our collection foregrounds the relatively unexplored and under-researched role of civil society groups and social movements such as local women's groups, as well as the role of art, theater, and other grass-roots transitional justice mechanisms and initiatives. Grounded in specific case studies, the unique contribution of this volume is not only that it covers a part of the world that is not adequately represented in transitional justice and civil society fields, but also that the volume is the first project originally researched and written by experts from the region independently or in collaboration with international scholars. It brings together innovative scholarship that examines interdisciplinary aspects of transitional justice in Serbia, Bosnia and Herzegovina, Bulgaria, Romania, Macedonia, Croatia, Kosovo, and Albania. Our authors have sought to engage with a combination of theories that would allow for an in-depth examination of the specific cases of dealing with the past. To that end, theories of civil society, transitional justice, nationalism, and transnationalism guide their entry and discussion. The richness of the available literature both within theories of civil society *and* transitional justice studies provides room for the two to be brought together to produce an analysis that can effectively ground investigations into how communities deal with the past. The analysis relies on documenting, discussing, and inferring from the intersections between these different bodies of literature. By bridging these intersections and incorporating diverse theoretical and methodological approaches, the work here attempts to fill the research lacuna of transitional justice, while exploring issues of dealing with the past in a particular region.

Because the Balkans should be understood as a specific transnational space, we pay attention both to the concepts of transnationalism and to the processes that coalesce around nationalism. Our engagement with the Balkans is especially concerned with the region's unique positioning: it has been understood by some as marginal, but by others as a crossroads—all our authors see the Balkans as historically a region that represents the crossroads of different cultures and civilizations. Specifically, for example, the disintegration of Yugoslavia in the 1990s helped transform what had once been a national culture into a transnational one and significantly altered the broader cultural and social context of the region. After the wars and the subsequent fall of Serbian president Slobodan Milosevic in 2000, new transnational cultural relations and practices emerged between the seven resulting states (Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Montenegro, Macedonia, and Kosovo). The authors in this volume are interested in how transitional justice is being "localized," and in that, they pay special attention to the formation and theories of civil society. All authors agree that survivors of both communism and the Yugoslav wars on the whole feel the need to share their stories and memories, and they want to learn from others about what actually happened during the times of violence and unrest. The authors suggest that inclusion of local communities increases the impact of transitional justice initiatives. Rowen (this volume), for example, argues that civil society initiatives in the former Yugoslavia that focus on investigating, documenting, and publicizing information provide crucial insights into how transitional justice initiatives develop and take shape. Similarly, Jones,

Jeffrey, and Jakala (this volume) focus on how transitional justice is practiced, since the fostering of civic virtues, trust, and civically minded behavior is vital for supporting transition toward democracy. Their research challenges a vision of the transitional citizen as a passive recipient of new legal or political programs and points to the emergence of an alternative understanding of justice and democracy through public outreach programs in the region. Some of the contributors to this volume employ more national lenses to explore specific case studies, while some adopt a transnational approach in their analysis.

In this introductory chapter, we attempt to engage with and provide theoretical arguments about civil society and transitional justice. Civil society can be a slippery, broad and overused term, which means that to consider the questions it raises for our examination of the Balkans requires that we first situate it in a historical and theoretical context. We will situate notions of civil society and transitional justice, within the Balkan context and identify their historical origins. Civil society is understood, firstly, in its modern Western variant, as the antithesis of “the state” (Wood 1990: 63). It is often defined in terms of simple oppositions: the state and the non-state or political vs. social power (Wood: 63). The modern conception of civil society differs from its definition in classical political philosophy, where civil society was seen as co-existing with the state. Before the mid-eighteenth century, civil society and the state were interchangeable notions (Keane 1988: 35–36). In that, the concept was used simply to draw the distinction between the “civilized” and “uncivilized” conditions of “humanity:” “whether in a hypothesized state of nature or, more particularly, under an “unnatural” system of government that rules by despotic decree rather than by laws” (Kumar 1993: 376).

For our discussion of transitional justice and ways of dealing with the past, conceptual distinction has to be made between the role of public sphere and the role of civil society in transitional justice. Two questions are crucial to this discussion: whether the elements of state and society are essential components of a strong civil society and which element—state or society—is to prevail. Calhoun (1994: 309) claims that the idea of civil society describes the possibility of a society to organize itself without being organized by a state: “If society had such capacity, then “the people” integrated in that society could better be seen as the source of political legitimacy rather than merely the object of rule.” The arguments of this book are aligned with Calhoun’s (1993: 276) argument that a strong public sphere where the past can be addressed depends upon a favorable organization of civil society. The most appropriate definition of civil society which fits former communist-European context can be found in Gellner’s argument (1995: 32)—civil society is that set of diverse non-governmental institutions, which is strong enough to counterbalance the state, and which, while not preventing the state from fulfilling its role of keeper of the peace and arbitrator between major interests, can nevertheless prevent the state from dominating the rest of society. According to Keane (1988), the democratic changes in the Balkan countries emerged (at the beginning at least) on the border between the economy and the state and were motivated by ethical and cultural dimensions, not by profit or a pursuit of political power: the ultimate aim was to create a public sphere based on democratic principles. Similarly, transitional justice requires an existence of a public sphere, where different projects and initiatives—the ones, which converge around questions of judicial responses to human

rights abuses, repressive regimes, and war, and the ones that focus on memorialization, public apology, and the work of forgiveness—connect the work of the state to a broader context of transforming social, economic, and political conditions. Furthermore, as transitional justice scholars argue, attention has to be paid to the unofficial local practices of remembering, commemorating, and responding to the violence of the past.

## Mapping Civil Society

Since the nineteenth century, the idea of the separation of the state from civil society has become a basic conceptual framework in the social sciences. The notion of civil society has a complex history. There are two historically different lines of the discourse on civil society. One focuses upon its economic character: for example, Scottish moralists such as Ferguson and Smith, who call for free markets and private property as a condition for the citizen to be part of a public sphere. The other stresses social relations: for example, arguments found in the work of Tocqueville and Rousseau. Calhoun criticizes today's overlapping of the two characteristics of the civil society:

Capitalism did historically and can still play a special and crucial role in the growth of a civil society. The early growth of capitalist business relations provided essential support to the development of a sphere of political discourse outside the realm of state control. The development of a public discourse in which private persons addressed public issues was made possible, in part, by both the policy issues posed by the growth of the non-state dominated market-activity, and the creation of settings for such discourse in coffee-houses, journals, and other forums operated as businesses (Calhoun 1994: 311).

With the question “who may be members of a discursive public or a civil society (1994: 311),” Calhoun points to the heart of the problem of the public sphere—not all the people are citizens who participate. This can be fruitfully applied to today's Balkans—we need to consider at length who participates and why in current projects within civil society, and who is symbolically allowed or encouraged to debate and reflect upon the traumatic past. Some of the articles in this volume address this question of inclusion and exclusion within civil society: Simic, for example, writes about the project “Pillar of Shame” launched by “Mothers of Srebrenica” and the German “Centre for Political Beauty,” which aimed to construct a permanent monument from the collected shoes as a reminder of United Nation's shame and responsibility for not preventing the Srebrenica genocide. While the project was successful in collecting the shoes transnationally, it failed to engage citizens of Serb origins in either Bosnia and Herzegovina or Serbia and in that, it reinforced the principle of ethnic exclusion of participation in civil society.

Importantly, the notion of civil society has a contested historical meaning. At the beginning of the modern era, civil society stood dichotomously against the state, as described in John Locke's contract theory. Locke did not see civil society as an autonomous sphere, but more as a sphere, where private rights and freedoms and individual

ownership can be expressed. Similarly, the civil society posited by Hegel stands in the dichotomous opposition to the state. Hegel conceived of the civil society as the sphere of social relations not controlled by the state. It is, in Hegelian philosophy, an “anti-state,” which contains both the economic labor and the exchange process as well as incorporating the free opinion-building process and the private sphere. From Hegel on, civil society came to mean the domain of civil rights and freedoms guaranteed and protected by the state. Further, Hegel’s civil society is formed by individuals who had become independent of traditional loyalties, and were able to meet their own needs. His civil society is an essential condition for individual freedom. This civil society is equivalent to the whole of the public sphere in the case of Habermas’s conception of civil society. Habermas (1992: 453) claims,

It (the concept “relations of association”) also recalls the new current meaning of the term “civil society,” which no longer includes a sphere of an economy regulated via labor, capital and commodity markets and thus differs from the modern translation, common since Hegel and Marx, of “*societas civilis*” as “bourgeois society.”

In other words, the institutional base of civil society is constituted by voluntary unions outside the realm of state and the economy. Habermas provides examples ranging from churches and cultural associations to independent media, sports, and leisure clubs, debating societies, groups of concerned citizens, labor unions, and political parties. He sees the public sphere as a place of appearance, representative publicness, and publicity among private citizens, including the public sphere of politics. Habermas views civil society as *an organizational construct* within this public sphere that brings together people with common interests, and “as a corollary of a depersonalized state authority” (Habermas 1989: 19). He places public sphere between the state and civil society. Most of the authors in this volume address this historical tension—Stan, for example, writes in depth about the state, civil society and public sphere in Romania, and about how state actors have generally blocked—while civil society actors have supported—the quest for transitional justice.

As Gramsci was the first to adopt a three-part conceptual framework consisting of civil society, economic power, and state power, we will focus on the Gramscian definition of civil society. Gramsci’s work clearly shifts civil society from the sphere of economic necessity to the sphere of social superstructure, and, as a result, his ideas allow us to reinvigorate discussions about the importance of both civil society and transitional justice.

## **Gramsci: Civil Society as a Hegemonic Project**

Gramsci viewed the particular substance of civil society as the outcome and object of class struggle. For example, when the middle-class is hegemonic in this struggle, civil society takes on middle-class values and cultural norms. In spite of this rather schematized view of civil society as either bourgeois or socialist, Gramsci’s tripartite scheme does avoid the economic and political reductionism that usually befalls simpler distinctions between the public and private sectors (Rowe 1997: 65).

The modern conception of civil society ignores Gramsci's understanding of the term, which was "unambiguously intended as a weapon against capitalism, not an accommodation to it" (Wood 1990: 63). What Gramsci recognized—and what makes his understanding more compelling than the modern liberal-democratic conception of civil society—is that the market is not a freely formed association like any other. When it comes to the market, participation is mandatory on the terms required by the system itself (Wood 1990). So the use of "civil society" that equates the term with the free market or freedom in the marketplace is misleading because it fails to understand the ability of the capitalist system to affect the exercise of personal freedom as significantly as that of state power.

Gramsci argued that both civil society and political society exercise the same functions: while political society organizes force, civil society organizes consensus (hegemony) by non-violent means in support of the groups that profit most by the maintenance of the liberal capitalist state (Buttigieg, 1995: 5). Thus civil society in the modern liberal state "is not some kind of benign or neutral zone where elements of society operate completely freely and openly" (Buttigieg 1995: 27). Unlike freely formed associations of civil society, argued Gramsci, "laissez-faire liberalism . . . must be introduced by law, through the intervention of political power: it is an act of will, not the spontaneous, automatic statement of economic facts or social will" (Buttigieg, 28). Some of the articles within this volume point to this very fact. Kurze and Vukusic, for example, focus on regional transitional justice activities of a number of NGOs across the former Yugoslavia. They write about how existing retributive justice mechanisms have been unsuccessful due to internal obstacles, such as controversial structures of regional truth committees or multiple and conflicting narratives of victimhood. In particular, they point to problematic retributive justice and fact-finding initiatives among specific war victims' groups in Bosnia and Herzegovina. Banjeglav (this volume) writes about civil society organization Documenta (Centre for Dealing with the Past from Zagreb), while, at the same time, considering the effect of a desperate economic situation on the attitudes of the Croatian public toward various ways of dealing with the region's past.

In their misuse of the notion of civil society, liberal democrats also tend to misuse Gramsci's insights so as to divert attention away from his critique of the liberal/capitalist state. What modern interpretations of Gramsci and modern uses of the idea of civil society ignore is the fact that civil society is such an important concept precisely because it acts as a critical force against the power exercised by both the state and the capitalist free market. In that, Angelovska's work (this volume) is of great import: in her contribution, Angelovska evaluates the civil society efforts in dismantling the totalitarian Communist heritage and in negotiating normative transitional justice practices. She writes about how Macedonian lustration, initially conceived as a response against the communist misdeeds and purges and as an attempt to overcome the totalitarian past, has, for now, failed to provide the necessary transparency for the confrontation with the past. Similarly, Elbasani (this volume) analyzes the reasons for the failure of the post-communist Albania to enforce the transitional justice for the abuses committed during communism. Elbasani points especially to the weak civil society and the very limited number of actors engaged in transitional justice projects as the factors, which have allowed economic



exploitation to occur and have not, as a whole, led to the society-wide confrontation with the crimes of the past.

The market economy has been included, prior to Gramsci's definition, in the base of civil society, and, according to Walzer (1992), globalization and corporatization of the economy significantly change their relation to both the state and civil society and lead to the decline of civil society. Economic monopolies lead to political ones, and political ones turn into economic ones: democratic life can be heavily limited by concentrations of private ownership.

Alexis de Tocqueville provided the strongest case for a civil society made up of articulated associational groups that could rely on an informed leadership to shape public opinion in a positive manner. To bring the discussion of civil society back to the stated aims of this volume, it is important to stress that the contributing authors are careful to ground their analysis of civil society in the particular context of the Balkans. More specifically, the concept of civil society popularized during the 1980s—the concept, which denotes those forms of communal and associational life that are organized neither by the market nor by the state—introduced new arguments into both the theory and practice. For activists, the discourse around civil society still offers the language of freedom, while for social scientists and political theorists everywhere it is an important reminder that even in the modern world there is more to social life than political economy. In the non-Western world, the idea of civil society has gone from theoretical and academic conceptualizations to the rhetoric of politicians, investors, and “builders” of democracy.

## **Particular Uses of Civil Society in Contemporary Social and Political Thought**

We focus here on the conceptual analysis of civil society in contemporary political thought, covering its meaning and its role in democracy. It is noted that a recent explosion of studies on the notion of civil society often draw on unclear conceptualizations. In this volume, civil society is understood as the realm of ordinary citizens, who join and participate in organizations based on their own interests and needs without directly seeking power or profit (even though they sometimes seek political influence and often need financial support).

The concept of civil society was revitalized in the 1980s and 1990s by the opposition movements in Eastern Europe and the Balkans and by the wave of democratization around the world. In the past decade, civil society as the object of study has grown, and today it is commonly applied to very different contexts throughout the world. In the new post-Cold War period, in which many countries have undergone various forms of transitions, civil society is seen as one of the main contributors of democratization. Almost every large foundation, association or institute has established some kind of “civil society initiative” with the express purpose of creating, monitoring, and strengthening civil society in countries across the globe, especially in the Balkans. Most scholars, who write on the subject or are civically active, argue that civil society exerts a positive influence.

The term refers to a peaceful, moral, and idealistic vision, which essentially stands in opposition to “un-civil society.” In this framework, two fundamental “virtues” of civil society are generally emphasized: the first has to do with the ability of the organizations of civil society to protect citizens against a potentially aggressive state; the second posits the ability of civil society to serve as a “school for democratic values” (Levy 1999: 2). To put it simply, the existence of autonomous organizations allow citizens to interact with one another outside of the private sphere, thereby developing trust and tolerance, which is then transferred to the public sphere. Acting in civil society allows people to gain a greater sense of their own political role, thereby creating a more engaged citizenry. The more people participate in civil society, the more they internalize the norms of participatory democratic citizenry and the more they create their own political reality and are, as a result, able to deal with the traumatic pasts. Participation in civil society organizations is an important attribute of democratic performance. In this sense, we see it as essential for scholars to concentrate on the topic of civil society and transitional justice in contemporary Balkans.

Much of the literature has tended to focus on this problem of a sharp analytical dichotomy between state and civil society (Gellner 1995), but, especially in the case of the Balkans, this relationship was actually viewed as an opposition between two social forces.. In recent contributions, some scholars have introduced compelling counter-arguments to challenge the dichotomy of state and civil society in a democratic context. Another conceptual “gray area” has to do with the definition of less structured types of mass organization. Are demonstrations excluded from civil society? Unlike other forms of citizen activity and participation, civil society requires a degree of institutionalization that is usually absent in such forms of activism. Does civil society refer only to membership and participation in a formally organized group? This line of thinking leads to the necessary differentiation between civil society and social movements. Social movements generally consist of some combination of spontaneous and loose organizations. When they are formally organized, they are seen as belonging to civil society. However, what is distinctive about social movements is that their leaders often resist the institutionalization of their movement for a whole range of reasons, including a problematic transformation of their organization into a political party and, therefore, its incorporation into the establishment.

Another complex issue concerns those organizations where membership may not be completely voluntary, or where there is a lack of complete autonomy. For example, would a labor union, where all workers become members automatically, be defined as a part of civil society? What about labor unions in former communist countries, where they were controlled by the political party? Under communism, most people were members of multiple organizations, but their membership was often of a coercive nature.

A final and crucial problem for our analysis here is connected with those organizations and movements that fit the general definition of civil society—organizations, where ordinary citizens come together according to their common interests—but where those interests are undemocratic and intolerant, and, in some instances, call for a racial, ethnic, or gender-based exclusion. In this respect, Stan (this volume) writes

about the vast diversity of Romanian civil society groups with a stake in the transitional justice process: these include groups that support, groups that oppose, and groups that are indifferent, to the politics of the past. Her chapter provides an overview of civil society efforts to promote Romanian post-communist transitional justice since 1989 by surveying methods such as lustration (the banning of communist decision-makers from post-communist public life), court trials against communist perpetrators, ordinary citizens' access to the files compiled by the secret political police, the Securitate, the presidential history commission, the citizens' opinion tribunal, property restitution, and memorialization. She also discusses state-independent groups that have opposed any meaningful reckoning with the recent past.

It is also important to point out that mainstream liberal assumptions about civil society, diversity, and multiculturalism tend to invoke stereotypical contrasts between the (peaceful, democratic, tolerant) "civic nationalism" of the West and the (aggressive, authoritarian) "ethnic nationalism" of the East (see Ignatieff 1993); or between the (ethnically inclusive) "constitutional patriotism" of the West and the (ethnically exclusive) "Balkanization" of the East. In so far as anyone starts with these dichotomies, they automatically interpret (ethnic) conflicts in the Balkans as a consequence of premodern tribalism that must be overcome if liberal democracy is to be achieved. These conflicts then become used as evidence that the Balkans are not suitable for liberal democracy and cannot sustain the functioning of civil society. However, some recent theorists of liberal pluralism have disputed these stereotypical dichotomies (Kymlicka 2001). The assumption that Western "civic" nations and Western form of civil society have surpassed all forms of ethnocultural particularism has been, we believe, strongly challenged by Kymlicka and some other liberal theorists (see Walzer 1992).

## Transitional Justice

The field of transitional justice is relatively new, emerging in the wake of the Cold War (Hinton 2010: 2). Over the past 20 years, transitional justice has grown into a globalized form of intervention following civil war and political repression (Teitel 2003). There are various definitions of transitional justice, but, most commonly, transitional justice is defined as "a response to systematic or widespread violations of human rights that seeks recognition for victims and to promote possibilities for peace, reconciliation and democracy" (ICTJ 2011). Initially, transitional justice was narrowly focused on justice and retribution, but over the years "it has encompassed the study of how human rights abuses are confronted by societies emerging from violent conflicts or transitioning from authoritarian rule to democratic forms of government." (Crossley-Frolick 2011: 33)

In order to confront legacies of abuse, a variety of transitional justice mechanisms have been developed. They fall within two broad categories—judicial and non-judicial. The former focuses on civil or criminal trials either at local, national or international level, while the latter encompasses activities such as truth and reconciliation commissions, vetting, amnesty, lustration processes, reparation, institu-

tional reform, reconciliation, memorialization, security sector reform as well as demobilization, disarmament, and reintegration.

Despite the plethora of transitional justice mechanisms, Weinstein et al. suggest that “it is time to reconsider whether the term *transitional justice* accurately captures the dynamic processes unfolding on the ground,” and whether “we have limited our array of options, prematurely becoming closed to other interventions” (2010: 32). As Simic and Daly argue, “a sustainable peace will often require more than trials, prosecution and punishment of a relatively few high-placed officials; it will require more than state-sponsored or administered forms of truth-telling and reparations” (2011: 479). Such peace may require civil society justice mechanisms, which encourage citizens to reflect and remember the past in direct and meaningful ways and to participate in activities that can transform social relations in the places and societies they live in.

As Shaw and Waldorf argue, transitional justice has recently “undergone a shift toward the local” (2010: 4). As such, local justice mechanisms are an emerging area of research in the transitional justice literature (Lundy and McGovern 2008). One of these mechanisms is explored by Irvine and McMahon and by Kurze and Vukusic (this volume) who critically examined the establishment of the Regional Truth Commission for the Former Yugoslavia (RECOM) as a regional mechanism of truth seeking and truth telling. The authors conclude that, although the founders of RECOM support the formal judicial mechanisms for trying and punishing war criminals, these mechanisms could not fully satisfy the victims’ need for information and truth telling; at the same time, any efforts to establish a comprehensive understanding of human rights abuses during the wars would necessitate a regional approach.

It has become widely acknowledged that it is critically important to engage survivors and those people, who live in conflict and post-conflict areas, in discussions about transitional justice. “Once size fits all” solution has become unacceptable, replaced by the recognition that local justice mechanisms need to correspond to people’s priorities and local circumstances. The contributors in this volume explore ways, in which these mechanisms function in particular places and times and consider their interaction with local practices and experiences.

While initially the transitional justice field was the domain of primarily legal and human rights scholars and practitioners, it is now the concern of scholars, practitioners, and activists coming from a whole range of disciplines and contexts (Bell 2009). This interdisciplinarity is reflected in this volume: in it we bring together human rights scholars, sociologists, media scholars, social psychologists, criminologists, political scientists, practitioners, and activists.

## The Balkan Region

The term “Balkan” has contested meanings. Todorova (1997) argues that the Balkans were and are seen as the dark side of Europe—an identity that the people of the Balkans themselves are eager to eschew. Bakic-Hayden and Hayden (1992) argue in a similar vein that the Balkans are identified with violence, incivility, and barbarism.

Historically, from a Western European viewpoint, the Balkans represented the cultural and religious “other.” Furthermore, Bakic-Hayden and Hayden argue that during the Cold War the ideological “other”—communism—temporarily replaced the geographical or cultural “other”—the Balkans. However, at some level, the symbolic image of Balkan inferiority was preserved and reinforced throughout this period as well. Hammond (2004) echoes this argument by suggesting that during and after the 1990s wars in the region, the Balkans again became a symbol of intolerance and barbarity. Sandwiched between the end of the Cold War and 9/11, it was the Balkans that functioned as the uncivilized “other” in Western discourse.

The historical and present construction of the Balkan identity is discussed in depth by Todorova (1997). She argues that the negative connotations derived from the term are primarily linked to the Balkan wars (1912–1913) with little regard for the actual historical and cultural context of these wars or, in fact, for the level of violence elsewhere within the “civilized world.” Todorova investigates the emergence of the Western image of the Balkans and queries its possible functions. She argues that at the beginning of the twentieth century “Balkanization” came to denote the parcelization of large political units into small ones, synonymous with the regression back to the tribal, the backward, and the barbarian. In the same manner as the Orient, the Balkans became “the other” of Europe. Even further, while the Orient was constructed by the West as “the other” located elsewhere, an anti-world, the Balkans had been continuously viewed as a dark side of Europe itself: in other words, it is the darkness within. The stigmatization of the Balkans could be conceivably interpreted, therefore, as an attempt to control the dark side of within Europe (Wolff 1994).

## Nationalism and Transnationalism

The post-1989 enthusiasm for globalization has prompted many to deny the importance and endurance of nationalism, and to promulgate idyllic visions of a post-national, cosmopolitan society. Nation states and national belonging, we have been told, are merely anachronistic remains of the past, bound to disappear with the onset of a global modernity. On this account, if we are to truly understand the nature of the increasingly globalized industries, of transnational cultural flows and transitional justice, we need to dispense with our old vocabularies, steeped in methodological nationalism, and instead learn to think beyond the nation. Such account of the death of the nation-state and the forms of nationalism with which it is associated are premature. Research indicates that, for example, media continues to be one of the crucial sites of the reproduction of nationalism, despite the ongoing intensification of global media flows (Volcic 2011). Nation-states and national identities continue to function as the main building blocks of worldwide systems. The national lenses are the optics most of our authors deploy in their analysis of transitional justice developments in Bosnia and Herzegovina, Romania, Kosovo, Macedonia, Albania, Croatia, and Serbia.

At the same time, some of our chapters focus on transnational and regional approach in their exploration of civil society and transitional justice. The growing popularity of the concept of transnationalism stems, in part, from a general dissatisfaction with nation-state-centric understandings of society, identity, and politics. Scholars within traditionally state-centric disciplines, such as International Relations and political geography, have increasingly advocated new conceptualizations of justice, identities, political community, and territory that reflect the realities of globalization. These scholars argue that sociopolitical life often escapes the constraints of the territorial nation-state, and that new spaces of interaction are forged across and between many territories. The nation-state remains important for understanding forms and meanings of political identity, but in the case of transitional justice, the primary space of the political cannot be assumed to be circumscribed by the nation-state. Kurze and Vukusic, for example, explore the continuous struggle of human rights activists to create a transnational extra-legal space to deal with past atrocities across the former Yugoslavia. They survey recent fact-finding and documentation projects, in particular, the regional truth commission initiative (RECOM). In addition, they argue that the multiplicity of narratives of victimhood have emerged in response to the transnational character of restorative justice efforts in the post-conflict Balkans and explain why these recent efforts to establish a transnational fact-finding mechanism have been unsuccessful.

Transnational approach allows scholars to open up alternative ways of analyzing the implementation of transitional justice in post-conflict settings.

Throughout this volume, contributors strive to offer an insight into the complex realm of civil society engagement with transitional justice mechanisms in the context of Balkans. By taking a more critical look at national strategies, local practices and priorities, and by closely examining international transitional justice agendas, the authors in this volume explore the complex and unpredictable justice processes currently underway in the Balkans. They suggest lessons to be learned from those engagements and identify future directions that may be taken in order to bring a sustainable peace to the region.

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**Part I**  
**Initiatives Within the Nation States**



## Chapter 2

# Civil Society and Post-communist Transitional Justice in Romania

Lavinia Stan

### Introduction

In the only text that examined the impact of state-free groups on the process of reckoning with the communist past in Romania, Grosescu (2007) argued that civil actors “were unable to build coherent methodologies and long-term projects” regarding transitional justice (p. 183). The statement rings true when applied to judicial methods. Nevertheless, Romanian civil society groups have been instrumental in maintaining the need to come to terms with the communist past in the public eye and on the policy agenda, and in proposing key methods designed to redress communist human rights violations. True, during the first two decades of post-communism, these groups faced a general public mainly concerned with its economic survival and political elites preoccupied with their narrow group interests (*Atitudini și opinii despre regimul comunist din România. Sondaj de opinie publică*, 2012). In addition, as Grosescu (2007) noted, these groups were unable to come together and support common projects, and often criticized each other as much as they criticized state authorities.

This chapter provides an overview of civil society efforts to promote Romanian post-communist transitional justice since 1989 by surveying methods such as lustration (the banning of communist decision-makers from post-communist public life), court trials launched against communist perpetrators, ordinary citizens’ access to the files compiled by the secret political police, the Securitate, the presidential history commission, the citizens’ opinion tribunal, property restitution, and memorialization. Whereas most authors working on Eastern Europe have assumed that civil society generally promotes transitional justice, this chapter also discusses state-free groups that have opposed any meaningful reckoning with the recent past.

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## Civil Society Groups Involved in Transitional Justice

Most of the crimes perpetrated by the Romanian communist regime occurred from 1945 to 1964, when many pre-communist political leaders and industrialists, anticommunist opponents, disgruntled army officers, students attempting to illegally cross the border, peasants resisting collectivization, and disgraced communist leaders were arrested and imprisoned often without observing minimal due process requirements (Deletant 2000; Judt 2005). The regime of Nicolae Ceaușescu (1965–1989) was restrictive even by Eastern European standards, although repression took the form of widespread surveillance by the Securitate more than outright killings, torture, and disappearances (Deletant 1996; Tismăneanu 2003). Decades of communist policies limiting freedom of speech, religion, and association, together with Ceaușescu's own brand of sultanism-cum-totalitarianism (Linz and Stepan 1996), decimated the civil society, and brought most churches, labor unions, and voluntary associations under the regime's firm control.

As such, when the communist regime collapsed in 1989, there were few state-free groups (Howard 2003; Ignatieff 1995). These groups lacked strong leadership and financial resources, and were mostly confined to the town where they originated, having weak representation in the country and constituting a “retarded civil society” facing an inefficient and incompetent state (Carothers 1999, p. 20). Groups created around pre-communist political and union leaders could draw on these leaders' expertise, but were also disadvantaged by their leaders' advanced age and serious health problems acquired in communist jails. By comparison, the most successful state-free groups have been constituted along the lines of communist-era associations and unions, but those were also the closest to the state and the least likely to confront it or propose policies that could hurt the interests of the new post-communist rulers. Transitional justice was among those policies because the new rulers were former second echelon Communist Party officials like Ion Iliescu, who got a new lease on political life in the 1989 revolution (Stan 2010).

A number of state-free groups constituted after 1989 have supported transitional justice. Some of them represent former political prisoners and owners of abusively confiscated property. Others include humanistic intellectuals concerned with the quality of the new democracy, the persistent legacies of communism, and the collaboration of post-communist politicians with the Ceaușescu regime. Both former victims and the intellectuals have called for resolute transitional justice in the form of property restitution, lustration, court trials against communist officials, the public identification of former Securitate part-time informers, access to secret archives, commemoration of victims, and research on and publications about communist repression. As public debates on the need to honor the victims and identify the perpetrators of communist crimes unfolded in the 1990s, civil society actors inimical to transitional justice started to organize.

Three main types of civil society groups are relevant in this context. The first includes former victims of communist human rights violations, who support resolute, prompt, and comprehensive transitional justice. The Association of Former

Political Prisoners in Romania (Asociația Foștilor Deținuți Politici din România), constituted in 1990 in Bucharest, has branches throughout the country and a membership that reportedly diminished from 98,700 in 1990 to 45,000 by 2009 (Asociația Foștilor Deținuți Politici din România 2009). It has been the most important group of communist-era political prisoners, deportees, and their relatives. In the mid-1990s, the smaller Association of Former Political Prisoners and Anticomunist Fighters (Asociația Foștilor Deținuți Politici și Luptători Anticomuniști) was created by communist-era political prisoners with ties to the inter-war fascist Iron Guard, which subscribed to nationalism, Orthodoxy, and anti-semitism. It commemorates mostly Iron Guard members imprisoned, tortured, or killed by the Securitate, keeping silent on the crimes in which the Guard engaged during pre-communist times. The Association of Owners of Property Abusively Confiscated by the State (Asociația Proprietarilor Deposezați Abuziv de Stat) was set up in 1999 in Bucharest by property owners, their descendants, and legal representatives to fight for property restitution and equitable compensation. With an initial membership of 11,000 and a current membership of 1,500, the Association is Romania's most important and vocal organization of initial homeowners (Oțoiu 2006; 2009). Constituted in 1991 in Bucharest, the ICAR Foundation provides medical rehabilitation for victims of communism. Besides the Bucharest clinic, it opened centers in Iași in 1995, and Craiova in 1998 (ICAR Foundation 2010a).

Other associations have local, not national, membership or represent smaller victims' groups. Created in 2009, the Association of Owners Abusively Deprived of Their Property, Former Deportees and Refugees (Asociația Persoanelor Deposedate Abuziv Foștilor Deportăți Refugiați din România) represents property owners, deportees, and refugees seeking compensation and redress for the injustices they suffered. In mid-2009, it had 210 members, exclusively drawn from the town of Craiova (Asociația Persoanelor Deposedate Abuziv Foștilor Deportăți Refugiați din România 2009). Former owners are also represented by the Association for Private Property (Asociația pentru Proprietate Privată) and the Community of Legitimate Owners and Descendants in Romania (Comunitatea Moștenitorilor și Proprietarilor Legitimi din România), both headquartered in Bucharest, and the more obscure Association of Victims of the Bolshevik Communist System and Its Legacy (Asociația Victimelor Sistemului Comunist Bolșevic și a Sechelelor Sale) in Râmnicu-Vâlcea. Since 1997, the Bucharest-based Association of the Victims of Magistrates (Asociația Victimelor Magistraților din România) represents those who believe they suffered as a result of court decisions handed down by corrupt communist and post-communist judges. Former owners residing in France and Germany are represented by the French Association for Defending Property Rights in Romania (Asociația Franceză pentru Apărarea Drepturilor de Proprietate în România) of Paris and the Restitution in Romania (Interessenvertretung Restitution in Rumanien) of Munich.

To these voluntary associations, add the Gheorghe Ursu Foundation (Fundația Gheorghe Ursu), set up by relatives of the engineer who was murdered in the Bucharest Militia jail in 1986. Ursu was arrested after being denounced by two workmates for keeping a journal critical of the communist leadership and policies. The Ion Gavrilă Ogoranu Foundation (Fundația Ion Gavrilă Ogoranu) was set up in

2008, 2 years after Ogoranu's death, to commemorate the leader of the Făgăraș anticommunist fighters group, active between 1947, when Romania became part of the communist bloc, and 1956, when the Securitate arrested most of the group's members.

The need to adopt transitional justice methods in view of addressing the legacy of communism has also been underscored by organizations uniting the victims of the 1989 revolution, which nonetheless remain preoccupied primarily with finding the truth about the revolution, publicly unmasking the involvement of post-communist leaders in those events, and securing financial benefits for their members. Best known among these groups has been the Association 21 December 1989 (Asociația 21 Decembrie 1989), set up in 1990 in Bucharest by some of those protesters who, during the revolution, took to the streets and defied the police and army forces deployed by the Ceaușescu regime. The Association has advocated in favor of resolute transitional justice, including radical lustration.

Last, this category further comprises the country's main religious denominations, especially the dominant Orthodox Church and the minority Greek Catholic Church. Compared to victims' groups, these denominations had been constituted well before 1989. Similarly to victims' groups, they faced persecution, confiscation of property, discrimination, and surveillance at the hands of the communist authorities. During the first decade of communist rule, many Orthodox leaders, priests, faithful were imprisoned, and the state requisitioned church property (Leuștean 2009). Afterward, the Orthodox Church was placed under extensive surveillance by the Securitate, which recruited some priests as secret agents (Stan and Turcescu 2005). In 1948, the communist state dismantled the Greek Catholic Church, imprisoned its bishops who refused to convert to Orthodoxy, and transferred the Greek Catholic churches, chapels, parish houses, and cemeteries to the Orthodox Church.

The second category includes the country's humanistic intellectuals and former anticommunist dissidents, who have lent support to some transitional justice methods (the truth commission, lustration, and access to secret files), but have mostly rejected efforts to unveil collaborators from among their members, the intelligentsia, and the political parties close to them. The Group for Social Dialogue (Grupul pentru Dialog Social) of Bucharest and the Timișoara Society (Societatea Timișoara), located in the town where the revolution first started, were both created immediately after December 1989 to "promote real democracy" by providing viewpoints alternative to those proposed by the former communists turned into the country's first post-communist rulers (Ștefănescu 1995, p. 47). While few in number and elitist in view, the intellectuals have been very vocal and able to propose some of the most coherent political programs advanced by the civil society. This category also includes the Civic Alliance (Alianța Civică), created in 1990 by 216 respected writers, philosophers, and anticommunist dissidents in order "to channel social energies supporting faith, humanism and democracy" (Ștefănescu 1995, p. 104). The Alliance was most active during the early 1990s, when some of its members gained seats in Parliament, as representatives of the Civic Alliance Party. Most of its transitional justice programs have been run through the non-profit Civic Academy Foundation, led by two Alliance leaders, poet Ana Blandiana and writer Romulus Rusan.

The third type of civil society groups includes the tenants who occupied confiscated dwellings with the authorities' permission before and after 1989. While some tenants were poor workers who moved from village to town in order to work in the new industrial factories built throughout Romania, many others were privileged Communist Party leaders and nomenklatura members who had access to special food stores, medical clinics, and holiday resorts. Until 1989, all these tenants rented dwellings from the state, paying extremely low rents that did not reflect the real market value of the property. Most of these dwellings were large historical houses, located in leafy residential areas (Stan 2006). The Association of Tenants Living in Nationalized Dwellings (Asociația Chiriașilor din Casele Naționalizate) has branches in the country's most important towns. The Association of Tenants Who Acquired Ownership through Law 112/1995 (Asociația Proprietarilor pe Legea 112/1995) represents tenants who bought the confiscated dwelling in which they lived in virtue of Law 112/1995 (Benea 2008).

Tenants and secret agents were not the only ones to benefit from the communist-era infringement of other people's rights. Since 2003, the Motherland and Honor Solidarity Foundation (Fundația Solidaritatea Patrie și Onoare) has provided financial help to former Securitate officers and post-communist information service agents, and protected their interests (Andreescu 2003). Former Communist Party leaders, party activists, political officers, militia officers, and communist prosecutors and judges have not created civil society associations, since they could face public condemnation as a result and after 1989 they have retained enough political clout to advance their personal interests without feeling the need to create new political vehicles. In addition, former communist perpetrators have gained a public voice as members of formations successor to the Communist Party and the Communist Youth League: the Social Democratic Party (which formed the government in 1990–1996 and 2000–2004), the Democratic Party (which has ruled the country in 2004–2012), and the Greater Romania Party (represented in Parliament in 1990–2008). Both tenants and former perpetrators have consistently blocked transitional justice attempts.

## Transitional Justice Methods

In Romania state actors have generally blocked, and civil society actors have supported, transitional justice. At the same time, after 1989 former perpetrators have retained considerable political influence, exerting far more leverage over the political process than former communist-era victims. This is why victims have promoted mostly non-judicial, and often local, reckoning processes of limited impact, Romania failed to enact radical lustration, and court trials have been few in number and deficient in procedure. The wavering and self-interested position of the intellectual groups and the dishonesty of some prominent civil society actors, who hid their own former collaboration (Grosescu 2007, p. 190), explain why the Romanian transitional justice program has been politicized and delegitimized in the eyes of the general public.

## *Lustration*

The civil society has promoted lustration without convincing political elites to fully implement it. On 11 March 1990, the Timișoara Society made public its Declaration, whose Article 8 called for the adoption of electoral law amendments banning Communist Party leaders, state dignitaries, and Securitate agents from running in presidential elections and from being included on party lists for the first three consecutive legislative cycles, that is, 12 years (The Timișoara Declaration 1990). The Declaration was the first Romanian document to urge for the adoption of a method considered key to working through the communist past. It indelibly set the parameters of the lustration debate in Romania by promoting radical lustration. The German and Czech lustration programs, launched immediately after the collapse of the communist regime, were radical because they targeted many people and involved job loss (David 2011). By contrast, Poland and Hungary, which implemented lustration later, allowed former decision makers, party leaders, and secret agents to retain their post-communist public posts if they admitted to their past in written, signed declarations. While in the Czech Republic 10,000 people lost their positions because of lustration, in Hungary and Poland less than 500 were affected (Stan 2009). The Timișoara Society has always understood lustration as radical lustration, and has called for lustration even after Romanian public officials were repeatedly asked to disclose their tainted past, signaling that Hungarian-type lustration was not what the Society envisioned for Romania. Almost all the above-mentioned associations representing victims and intellectuals have shared this view.

Lustration came to the forefront on 7 December 1993 when senator Constantin Ticu Dumitrescu, the Association of Former Political Prisoners chairman, introduced in Parliament a simple motion on secret informers that amounted to a lustration proposal allowing “nobody to be blackmailed or smeared by false accusations” of collaboration with the Securitate (Ședința Senatului din 25 martie 1992, p. 2). Compared to the Timișoara Declaration, this proposal targeted only the Securitate part-time informers, but not the full-time officers who recruited them or the party leaders who masterminded repression and surveillance. While 74% of senators and 46% of deputies supported it, the motion had no effects, because the Senate leaders forbade the Romanian Information Service, heir to the Securitate domestic repression branch, to disclose the identity of former Securitate agents for fear of endangering national security (Ședința Senatului din 3 februarie 1994, p. 4).

Afterward, Dumitrescu promoted lustration through his Bill on Access to Files and Unveiling the Securitate as a Political Police which, in its original version, permitted citizens to read the secret files compiled on them by the Securitate and asked public officials and electoral candidates unveiled as former secret agents to give up their posts or renounce the electoral race. After bitter debates, Parliament stripped the bill of its lustration stipulations. When the bill was adopted as Law 187/1999, Dumitrescu was so dissatisfied with the changes operated by the house that he refused to accept the text’s paternity (Stan 2000).

Civil society groups also brought lustration into the public eyes in 2005–2007, when the country was ruled by the Truth and Justice Alliance, which included the Liberals and the Democrats. Inspired by Bulgarian efforts, in 2006 Romanian journalists launched a Clean Voices campaign to identify secret agents from among television reporters, press contributors, and talk-show hosts. In response, Liberal legislators presented a lustration bill, the opposition lodged its own anti-nomenklatura legislative proposal, intellectuals, academics, and civil society representatives called on former and current spies to unveil their ties to communist and post-communist intelligence services, and many politicians admitted to past collaboration or were unmasked as former spies. More importantly, civil society groups convinced the Chamber of Deputies leaders to jointly organize a public debate on “Lustration: Principle or Instrument” on 25 May 2006. Besides legislators and ordinary citizens, representatives of 10 civil society groups—including the Timișoara Society, the Civic Alliance, and the Association of Former Political Prisoners—stated their position on this important transitional justice practice (Stan 2011).

### *Court Trials*

Court proceedings related to communist human rights abuses have been few in Romania. Since 1989, civil society actors have repeatedly called for former Securitate officers, prison guards, and Communist Party leaders to be indicted, and for the “Trial of Communism” to be organized. Press campaigns, street demonstrations, and roundtable talks have been used to promote court trials. The civil society has also endeavored to collect the information needed to indict some of the most notorious communist crimes, to locate former perpetrators, and to bring them to justice. In 1991, the Association of Former Political Prisoners submitted to prosecutors a list of notorious communist perpetrators, including deputy head of the Securitate Alexandru Nicolschi and Minister of State Security Alexandru Drăghici. In 1998, the name of Gheorghe Crăciun, former head of the Aiud prison (1958–1964), was added to the list. All three accused died before the courts heard their cases (Muraru 2011). The Gheorghe Ursu Foundation collected evidence and applied pressure on the judiciary to indict Marian Clita, Ursu’s assassin (Macovei 1999). In July 1999, Clita was sentenced to 20 years in jail, but his jail term was halved in virtue of a 1988 amnesty decree. When his sentence was handed down, Clita had already served 8 years in jail. As such, he was released in September 1999 (Artene 1999).

Since 1989, 20 different complaints have been submitted to military prosecutors by civil society representatives against former communist perpetrators, primarily Securitate officers, heads of detention centers, and prison guards. All these complaints were included in the so-called Case File 35 (titled the “Trial of Communism”), together with seven other complaints filed between 2006 and 2008 by the Bucharest-based Institute for the Investigation of Communist Crimes in Romania (Institutul pentru Investigarea Crimelor Comunismului în România), a transitional justice



governmental agency. None of these formal complaints and the evidence they brought forth have been used to launch any court proceedings against human rights violators (Grosescu and Ursachi 2009; Muraru 2011). Unfortunately, few perpetrators are still alive today and most of the surviving ones are very old, so their future prosecution is highly improbable.

In Romania, the scarcity of court trials launched against communist perpetrators resulted not only from the constant opposition of the judiciary to hear such cases promptly and to recognize communist human rights violations as crimes for which the statute of limitations did not apply, but also from the support the civil society has provided to the generic “Trial of Communism” more than to specific court cases. The preference for an all-encompassing “Trial of Communism” was first voiced on 29 November 1990 by the Civic Alliance, which “in the name of the people, asks for a trial of the leftist ideology of communism, which inspired, generated and covered up crimes, protecting the perpetrators” (Ștefănescu 1995, p. 110). The call had little legal value, since only individuals, not abstract concepts such as an ideology or a political regime, can be put on trial. The Civic Alliance recognized this point in its March 1991 Declaration on National Reconciliation, which stated that “the Communist Party leaders, not all of the four million party members, should be considered morally responsible” for communist crimes. Whereas “any reference to a person should include his/her actions, not mere party membership,” “former Central Committee members, party activists and Securitate agents should be banned from occupying public positions until year 2000” (Ștefănescu 1995, pp. 130–131). The preference for the generic “Trial of Communism” as opposed to specific cases stemmed from the civil society representatives’ lack of legal expertise (Grosescu and Ursachi 2009, p. 182).

### *Access to Secret Files*

Access to secret files was the brainchild of Dumitrescu, who almost singlehandedly convinced Parliament to legislate it. In his quest, Dumitrescu drew resources and support from the Association of Former Political Prisoners, the Group for Social Dialogue, and several other victims’ groups. In 1997, the Senate amended the above-mentioned Bill on Access to Files and Unveiling the Securitate as a Political Police to include three changes not present in Dumitrescu’s original proposal. First, personal files were made public only if their contents did not endanger national security, which was exclusively defined by the Romanian Information Service, recognized for its vested interest in keeping as many files as possible out of the public eye. Second, the leadership of the governmental agency in charge of file access (the National Council for the Study of Securitate Archives, Consiliul Național pentru Studierea Arhivelor Securității) included no longer prominent citizens, but nominees of the political parties represented in the Senate. Last, the archives remained with the institutions that produced them and wanted to keep them under lock to avoid exposing their links to the institutions and agencies of the communist regime (Stan 2000).



The Senate amendments provoked the ire of former victims and intellectuals. Before the Chamber of Deputies was scheduled to discuss the amended bill, in September 1998 the civic organizations and victims' groups collected signatures on a petition that called on deputies to consider Dumitrescu's original draft, as they believed that the amendments made it impossible for the truth about communism ever to be known. The petition was ignored, as the deputies decided to consider the Senate's modified version, not Dumitrescu's original proposal, and to ask two of their standing committees, not one, as it was customary, to review the bill. While unsuccessful, the petition clearly showed that civil society actors were able to come together in support of a transitional justice project, if and when they wanted.

### *The Presidential History Commission*

Undoubtedly, the civil society scored its greatest success in the field of transitional justice in 2006, when it convinced Democrat-Liberal President Traian Băsescu to create the Presidential Commission for the Study of the Communist Dictatorship in Romania (Comisia Prezidențială pentru Analiza Dictaturii Comuniste din România), better known as the Tismăneanu Commission after its chair, the University of Maryland political science professor Vladimir Tismăneanu. In December 2006, weeks before the country's accession into the European Union on 1 January 2007, President Băsescu officially condemned the communist regime in front of the Romanian Parliament in a speech broadcast live by television stations. The condemnation was based on the Commission's 660-page-long final report, which detailed the mechanisms of repression in communist Romania, the ties between the Securitate and the Communist Party, as well as the continuity between the regimes of Ceaușescu and his predecessor, Gheorghe Gheorghiu Dej (Tănășoiu 2007; Tismăneanu 2008). The Commission was created in response to civil society calls to renew the self-interested and corrupt political elites by legislating radical lustration. Under pressure from the Timișoara Society, the Association 21 December, and different victims' groups, President Băsescu declared that his ruling Democrat-Liberal Party could not support lustration without first condemning the communist regime as criminal and repressive. That was because those who had collaborated with the communist regime did nothing wrong, as they obeyed an internationally recognized regime and the laws in effect at the time. Only the exposure of the regime's repressive character could lay down the moral ground for a blanket policy like lustration. To condemn communism, President Băsescu needed a scientific expert report detailing the crimes of the 1945–1989 period in a systematic and dispassionate manner. As Parliament was divided between supporters and opponents of lustration, the civil society called on President Băsescu to create the commission as a presidential, not parliamentary, body. This is how the Tismăneanu Commission, which included representatives of the Association of Former Political Prisoners (Dumitrescu) and the Group for Social Dialogue (Radu Filipescu, Sorin Iliesiu, and Horia Patapievici), appeared.

## *The Citizen's Opinion Tribunal*

Frustrated with the judiciary's unwillingness to organize a Nuremberg-type trial to condemn communist criminals, on 7 September 2006 civil society groups organized an opinion tribunal in Cluj-Napoca. This domestic tribunal, resembling opinion tribunals created in other parts of the world (Klinghoffer and Klinghoffer 2002), was composed of nine former victims of communist repression representing different Romanian counties, one councilor each for the prosecution and defense, and 150 audience members who acted as jurors. Charged with genocide and crimes against humanity (including premeditated murder, extermination, forced deportation, arrests, torture, disappearances, and ethnic and religious persecution), crimes not protected from prosecution by the statute of limitations, the communist regime was found guilty of all charges after the opinion tribunal discussed a summary of communist human rights abuses (Curtea Penală de Condamnare Juridico-Morală a Crimelor Regimurilor Comuniste 2006).

The opinion tribunal had little public echo inside and outside Romania, and was disregarded by the public, the political elite, the local press, and the main associations representing communist-era victims and intellectuals. Not only has the public remained reluctant to support a "Trial of Communism" that would indirectly implicate the four million ordinary party members, but former communist-era victims have argued that the post-communist state—the legal successor to the communist state that perpetrated those atrocities—should acknowledge responsibility for communist crimes through its regular courts of justice. The Romanian judiciary has ignored these demands, pointing to the statute of limitations applicable to those cases.

Victims' and intellectual groups challenged the legitimacy of the opinion tribunal, calling instead for a "Trial of Communism" in the courts of law, although the judiciary cannot indict an ideology or a political regime *in toto*, as already mentioned. In 2003, the ICAR Foundation filed with the Bucharest Court a complaint asking the government to acknowledge the "communist Holocaust" of 1945–1989, to officially apologize to the victims for the abuses they suffered, and to admit that the Securitate was a political police. According to the Foundation, the "Trial of Communism" is "a duty to the victims who died with the hope that justice would be done and to those who survived and are still waiting for this justice to be done," "a necessary and expected acknowledgement of the state abuses of the past, and a sign of maturity for the Romanian democracy" (ICAR Foundation 2010b). President Iliescu and the Social Democrat government ignored the request. After the 2004 elections, President Bănescu received ICAR representatives at Cotroceni, the Bucharest-based presidential offices. During the meeting, the representatives convinced the president of the power of an official apology, coming from the country's most important state dignitary, for communist crimes addressed to the victims and the Romanian society at large. Bănescu agreed to deliver the apology, after an expert commission attested to the crimes of the communist regime, which the Tismăneanu Commission later did (see above). The apology never came, and the work of the presidential commission became a substitute for the "Trial of Communism" advocated by the civil society.

## *Property Restitution*

The restitution of dwellings is an area where groups supporting the process have publicly clashed with groups opposing it. Since 1989, organizations representing the initial owners (most notably the Association of Owners of Property Abusively Confiscated by the State) have asked for the return of the property they lost to communist authorities or for fair compensation, when restitution in kind was not possible. They have been opposed by the Association of Tenants Living in Nationalized Dwellings and the Association of Tenants Who Acquired Ownership through Law 112/1995, which represents the tenants who rented the confiscated dwellings from communist authorities. All these groups have tried to influence public policy through street demonstrations, open letters addressed to the government, and press campaigns.

In 2000, Eugen Pleșa, the leader of the Association of Tenants Living in Nationalized Dwellings, joined the opposition Greater Romania Party in the hope of influencing legislation. That year, he entered Parliament, where he championed the interests of his Association, and convinced the house to accept as valid and legal the contracts through which tenants bought nationalized dwellings from the state. As a result, Law 10/2001 on the Legal Status of Property Abusively Taken Over by the Communist State during 6 March 1945–22 December 1989 allowed for the return of all dwellings except those bought by tenants in “good faith.” The Association of Owners of Property Abusively Confiscated by the State warned that all tenants knew that the houses they occupied had been illegally confiscated by the communist state, in nationalization drives that ran counter even to the 1948 communist Constitution, which guaranteed the right to property. However, Law 10/2001 did not annul the provisions of Law 112/1995 which allowed tenants to buy nationalized property. In 1999, the Association addressed an open letter to all political parties represented in the Chamber of Deputies, but its plea for recognizing the property rights of initial homeowners remained unanswered (Oțoiu 2009, p. 70). The Association continues to monitor the activity of the Property Fund (Fondul Proprietatea), set up in 2005 to provide compensation to initial owners, and the cases lodged by Romanian owners with the European Court for Human Rights.

In Romania, property restitution also extended to ecclesiastical property, including the churches, chapels and cemeteries transferred in 1948 by the communist state from the minority Greek Catholic Church to the majority Orthodox Church. The Orthodox-Greek Catholic property dispute has been one of the bitterest disputes of post-communist times (Stan and Turcescu 2007). Since 1989, the two churches have behaved as latent interest groups that have mobilized to lobby the political establishment and to engage in high-profile public campaigns each time when their interests dictated such actions (Dickerson and Flanagan 2006). While their main institutional goals remain religious, both churches launched media campaigns against each other, wooed the public in support of their restitution demands, and lobbied the government for legislation and political action aimed at protecting their interests and hurting those of the other denomination.

At the pressure of the Orthodox Church, throughout the 1990s the post-communist authorities refused to get involved in the property dispute on grounds that it was a purely religious issue and denied the Greek Catholics their right to seek justice through the Romanian courts. In turn, the Greek Catholics complained to the Vatican and foreign governments sympathetic to their plight, and approached the European Court of Human Rights, which recognized the infringement of their rights. That decision obliged the Romanian state to allow the courts to hear cases of Greek Catholic church restitution starting in 2006. As it commands the loyalty of as much as 86% of the population and remains a key electoral ally for all political formations, the Orthodox Church has become the most important civil society actor shaping the politics of the past.

### *Memorialization*

In the absence of a museum dedicated to the victims of the communist regime, the Sighet Memorial of the Victims of Communism and of the Resistance (*Memorialul Victimelor Comunismului și al Rezistenței*) remains the most significant memorialization project in post-communist Romania and the country's only museum opened in a communist-era political prison. Created in 1993 by the Civic Academy, the Memorial includes the Museum located in the Sighet prison (a small town in Northern Romania) and the International Center for the Study of Communism (*Centrul Internațional de Studii asupra Comunismului*) located in Bucharest. Through them, the Civic Academy seeks "to promote civic education and revise the country's history falsified by the communist regime" (Ciobanu 2008, p. 60). Since 1997, the Memorial has received some funding from the Romanian government, but its most important donors have remained the Romanian diaspora, foundations such as the Konrad Adenauer Stiftung, and the Council of Europe. Besides a series of ongoing oral history programs, the Memorial organizes a yearly summer school for pre-university teachers and students, publishes a scholarly journal, and commemorates each year on the day of the Ascension a Day of Memory, dedicated to all those who opposed communism and suffered in communist prisons (*Fundația Academia Civică* 2009).

Victims' groups have also funded a large number of memorials. By 2004, for example, the Association of Former Political Prisoners had helped to erect hundreds of monuments, crosses, and commemorative plaques in every Romanian county (*Asociația Foștilor Deținuți Politici din România* 2004). Some of these memory projects mark the site of former political prisons or murders of anticommunist fighters, others remember the struggle of prominent local anticommunist heroes, while still others are dedicated to the Romanian people's opposition to the communist regime. Given the reluctance of successive post-communist governments to honor the victims and condemn the communist perpetrators, most important have been the Association's efforts to mark each and every political prison, regardless of whether it has remained a prison, was converted to some other use, or was demolished.

## Conclusion

In the South African case, civil society efforts at redressing the past have been “undercut by the existence of a new democratically elected government that had high levels of legitimacy [and] served to discourage the need for active and unified action” by non-governmental organizations part of the civil society (Hamber et al. 1997, p. 1). By contrast, Romanian civil society efforts to ensure that victims have the right to reparation and redress (what the Germans call *Wiedergutmachung*, making right again) have been instrumentalized by successive post-communist governments interested in short-term electoral gains and largely indifferent to the victims’ plight. Civil society groups have been listened to, and their projects have been supported, only when and for as long as political parties have anticipated possible gains from reevaluating the communist past. These groups have been promptly abandoned, ignored, or even silenced when their demands for justice threatened the careers of powerful political gate-keepers, the relative electoral advantage of the ruling party, its policy priorities, legitimacy, or popularity.

The Romanian civil society groups with a stake in the transitional justice process are quite diverse, spanning groups that support, groups that oppose, and groups that are indifferent to the politics of the past. The groups discussed in this chapter represent only a fraction of all civil society organizations in the country, most of which show no interest in decommunization. The numerous groups indifferent to transitional justice face similar difficulties related to organization, leadership, and resources as do groups interested in the politics of the past. Organizations that oppose de-communization, while much fewer, have benefited from convergence of goals with powerful post-communist politicians and parties. The challenge facing the pro-transitional justice civil society groups is to find common ground, a common voice, and a common platform to promote various methods, processes and practices of coming to terms with the past as new generations with no direct experience with the communist regime and its crimes come on the political stage. This implies more concerted action, a redesigned agenda and tool kit, and the political acumen needed to bring the public and the political elite behind the larger decommunization project.

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# Chapter 3

## Dealing with the Past in Post-war Croatia: Perceptions, Problems, and Perspectives

Tamara Banjeglav

### Introduction

*Documenta*—Centre for Dealing with the Past<sup>1</sup> is a civil society organization from Zagreb, which was established in 2004 in an attempt to encourage the processes of dealing with the past and the establishment of factual truth about the war. As part of its work, the organization conducted research concerning attitudes of the Croatian public about dealing with the past and the perception of victims of the 1991–1995 war. Multi-dimensional research of the public opinion in Croatia was conducted in the summer of 2006, and research results were collected, analyzed and published in October 2010<sup>2</sup> under the title “Dealing with the Past in Croatia: Attitudes and Opinions of Post-War Actors and Public”. This research tried to cover some of the basic thematic units concerning dealing with the past in contemporary Croatia as a phenomenon which social scientists in Croatia have not found particularly relevant for researching so far.

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<sup>1</sup> *Documenta*—Centre for Dealing with the Past is a civil society organization from Zagreb which aims to develop social and individual processes of dealing with the past in order to build sustainable peace in Croatia and the wider region, through deepening of public dialogue and initiating debate on public policies which stimulate dealing with the past, gathering and publishing documentation and research of war incidents, war crimes, and violations of human rights; as well as monitoring judicial processes at local and regional level as a contribution to the advancement of judicial standards and practices in the processing of war crimes. Results of the survey mentioned in this chapter have been analyzed, and the chapter written, during my employment with *Documenta*.

<sup>2</sup> Although conducted back in 2006, this research is still relevant for understanding dealing with the past processes in Croatia, since it usually takes longer time for changes in this field to take place and for people to change their attitudes and opinions as a result of certain public activities and processes. Moreover, no similar scientific research has been done in the meantime. The research was published as late as 2010 due to difficulties in securing financial funds for its publishing.

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Results of this first comprehensive research on this important subject in Croatia enabled a wide view on the relation of citizens and various public actors to many aspects of this issue. This book chapter offers a review and an analysis of these results, but also opens up a discussion on the meaning of these results for the process of dealing with the past in Croatia. Moreover, it gives an overview of the developments and improvements that have occurred since the time when the research was conducted.

Furthermore, the chapter discusses transitional justice mechanisms which foster reconciliation in post-war Croatia. It looks at mechanisms such as war crimes trials, regional commission for truth-telling (RECOM), but also at public apologies and memorialization practices, and gives a brief overview of the latest events in these fields, as well as an assessment of their role in post-conflict reconciliation and dealing with the past.

The hypothesis of this book chapter is that progress has been made in the field of transitional justice in Croatia during the past decade, particularly in war crimes trials, and that political will to deal with the past has also occurred since president Ivo Josipović was elected in 2010. However, much work still needs to be done. The chapter concludes with recommendations for future actions that need to take place in Croatia in the upcoming period, in order to foster reconciliation and speed up the process of dealing with the past.

## **Dealing with the Past and Transitional Justice: A Theoretical Overview**

The term “dealing with the past” refers to coming to terms with violent history and violence committed against all victims, regardless of their ethnic, political, or any other background. This process usually needs to occur on a number of different levels, “from the micro-level of an individual in a small community, to the macro-level of national, regional and global political bodies” (Stubbs 2003). In this chapter, “dealing with the past” is understood as coming to terms with the events that took place during the war of the 1990s and with the consequences they have had for post-war reconstruction and reconciliation.

In former Yugoslavia, it has been often argued that failure to deal with the past after WWII left the people with a legacy of mistrust and with different and conflicting “truths” about past events, which were passed from one generation onto another. This legacy enabled political elites from different ethnic groups to use the power they had to change and influence the meaning of historical facts and to create different myths, producing, in this, way, their own “truths” at the beginning of the war of the 1990s. David Bruce Macdonald argues that “these ‘stories’ proved to be absolutely essential in creating and supporting war” (MacDonald 2002, p. 214). Such interpretations of history served to bring back into public memory past events which the public never dealt with and which were never publicly discussed or acknowledged. Each side portrayed themselves as the greatest victims, and managed, by

manipulating public opinion within their own countries, to create an atmosphere of victimhood. Self-identification which is grounded in a collective victimization can end in dangerous results, particularly in terms of the group's relations with others and their reconciliation. Initiatives in the area of truth-telling, justice, and reparation contribute to the definition of who will be included in the category of victims. These initiatives, along with many others, are usually put under the common denominator of "transitional justice" and have the overall aim to serve society as a means to deal with past human rights abuses. A key goal of transitional justice is to contribute to sustainable peace and the rebuilding of a society based on the rule of law and respect for human rights (Teitel 2003).

According to Louis Bickford, "transitional justice refers to a field of activity and inquiry 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" (Bickford 2004, p. 1045). Transitional justice seeks recognition for victims and promotion of possibilities for peace, reconciliation, and democracy. Since the Nuremberg trials, it has been possible to trace the genesis and history of politico-legal organization of international memory of victims and perpetrators of war crimes (Savić 2006).

Although the concept of transitional justice<sup>3</sup> has been constantly and dynamically developing, it usually includes a combination of different mechanisms such as war crimes trials, establishing of truth commissions, developing reparations for victims' families and survivors, memorialization initiatives for remembering the victims, etc. Possible combinations of the abovementioned mechanisms keep rising, but at least some of these mechanisms (not necessarily all of them) are applied in each particular case and they are in many respects complementary (Mobekk 2005, p. 280). Transitional justice has, however, often been criticized for being too normative and abstract, and lacking context and historical background. For this reason, the effectiveness of each of these measures depends on the broader context in which it unfolds, including its relationship with other dimensions of transitional justice (Orentlicher 2007). Thus, for example, public apologies made by high-ranking state officials do not make a great effect unless they are accompanied with other actions. These can vary from public campaigns, which would raise the public awareness about the suffering of all victims, to their inclusion in school text-books in order to make them part of educational materials.

Recently, the literature on transitional justice has focused less on perpetrators and more on the explicit goal of "healing" the victims (Andrieu 2010). Thus, some authors argue that the focus of transitional justice research has recently shifted more to the victims and their concerns, and has been less focused on political questions. "Victims and reparation for victims have become quintessential elements in the debate on transitional justice and how to deal with the past" (Rombouts 2002, p. 217).

Transitional justice initiatives, such as prosecutions and truth-telling, challenge distortions of the truth that allow groups only to see their own members as "victims".

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<sup>3</sup> According to Louis Bickford, the term itself is misleading, as it more commonly refers to "justice during transition" than to any form of modified or altered justice. See (Bickford 2004, p. 1045).

They can also challenge claims of historical “victimhood” of entire groups and help to demonstrate the fact that members of other groups have been abused as well, which contributes to reconciliation among different groups and helps them deal with the difficult past.

## Public Opinion About Dealing with the Past in Croatia

In order to put an end to elicitation and manipulation of war crimes for political purposes, human rights organizations and victim associations in Croatia have grown very insistent about dealing with the past. The key reason for this initiative emerged from the experience of the concealment and forgery of war crimes and other war events, which influenced the more recent past of the former Yugoslavia and post-Yugoslav societies.

In Croatia since the end of the war there has been a widespread public understanding of the nature of the 1991–1995 war as “just and legitimate, defensive and liberating, and neither aggressive nor conquering” (Declaration on the Homeland War 2000). A radical understanding of its nature was given by a Supreme Court judge and former president of the Supreme Court, Milan Vuković, who said in an interview that no war crime could be committed in a defensive war (Ivanišević 1995). Although much progress has been made since this statement, the opinion that there were no crimes in this war committed by “our side” is still present in the Croatian public. This shows that the problem of not understanding or having sympathy for “the other side” still remains present in Croatia. In order to answer the questions why this lack of sympathy and understanding for the victims from “the other side” occurs, why persons accused of war crimes still enjoy support among the Croatian public, even years after the war had ended, and what the public opinion on war crimes and violence committed during the 1991–1995 war in Croatia is, *Documenta* conducted, in 2006, a survey among the Croatian public.

The research consisted of three parts: qualitative research of the public opinion conducted with the use of focus groups method, qualitative research of the attitudes of public opinion creators conducted with the use of in-depth interviews method, and quantitative research of the citizens’ attitudes conducted with the use of a survey. The research was conducted on a sample of the general population of Croatian citizens (regardless of their nationality), as well as two additional sub-samples. The first sub-sample consisted of citizens of Serbian nationality from war-affected areas, while the second sub-sample consisted of citizens of Croatian nationality from war-affected areas. The basic goals of the quantitative research included:

- Attitudes and level of awareness on dealing with the past, i.e., on the events and experience of the “Homeland War”<sup>4</sup>

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<sup>4</sup>The “Homeland War” is the official name of the war fought for state sovereignty and territorial integrity of Croatia, which took place between 1991 and 1995.

- The general public's perception of victims and survivors
- Attitudes of the general public on the support to victims and survivors
- Perception of war crimes committed during the war
- Attitudes on processing of war crimes<sup>5</sup>

Survey results showed that, in general, the majority of Croatian citizens and actors supported dealing with the past in Croatia: they thought that dealing with the past was important for future stability of the Croatian society, as well as for sustainability of peace in Croatia and the region. Those who were directly affected by war and suffered its consequences more often felt that the term carried negative connotations. Thus, when analyzing survey results, it can be seen that, among the general population, 14% felt the term “dealing with the past” had an exclusively negative meaning, but for the majority, 41%, the term had a neither positive nor negative connotation (Kardov et al. 2010, p. 54).

Considering the perception of victims of the war in Croatia, more than half of the general population respondents (52%) thought victims of the war were exclusively Croats. Almost a third (31%) thought that victims from the Croatian side were far more numerous than Serbian victims, while none of the respondents from the general population said they thought there had been more victims on the Serbian side (Kardov et al. 2010, p. 69). There is also a significant difference in the perception of war victims between two target sub-samples, between Serbian respondents from war-affected areas and Croatian respondents from the same areas. The majority of respondents of Serbian nationality (84%) felt that Croats and Serbs were equally primary victims of the war, while only 12% of respondents of Croatian nationality felt the same (*ibid.*).

It is also interesting to look at the answers to the question which war crimes have the respondents heard about. Almost all of the general population of respondents (99%) have heard about the bombing and devastation of the town of Vukovar, while almost the same percentage (97%) have heard about killings of captives from the Vukovar hospital at Ovčara.<sup>6</sup> The same respondents have heard to a far lesser extent

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<sup>5</sup>The research included a sample of the general Croatian public and two sub-samples. In the sample of general population, 700 people were interviewed. In each sub-sample (people of Serbian nationality from war-affected areas and people of Croatian nationality from war-affected areas) 150 people were interviewed. All respondents were older than 18.

<sup>6</sup>Ovčara is an agricultural property near the town of Vukovar where a war crime was committed by members of the Yugoslav National Army and Serbian paramilitary forces in the night between November 20, 1991 and November 21, 1991. More than 200 civilians and soldiers were killed, who were mostly patients at the Vukovar hospital from which they were taken and brought first to a camp and then killed at Ovčara. It is considered to be the largest slaughter of individuals committed during the war in Croatia. Thirteen people were found guilty in March 2009 before the War Crimes Council of the District Court in Belgrade for the war crime committed at Ovčara. They were sentenced to between five and twenty years in prison. Moreover, the ICTY sentenced, in the third non-appealable verdict made in December 2010, Yugoslav National Army major Veselin Šljivančanin to 10 years in prison for helping and supporting the crime at Ovčara. He was granted an early release on July 5, 2011. Mile Mrkšić was sentenced in 2009 to 20 years in prison for “having aided and abetted the murder and torture of prisoners” (ICTY 2007).

about killings of Serbian civilians during the operation “Storm”<sup>7</sup> (68%) and about seizure of property from Serbs in Croatia (58%), while the smallest percentage has heard about killings of Serbian civilians in the town of Sisak (44%) (Kardov et al. 2010, p. 86).

The survey also showed that only 22% of the general population was sure that Croatian citizens and army members committed war crimes against Serbs, while 64% of Serbian respondents from war-affected areas thought that the Croatian side had committed war crimes. However, it should also be emphasized that a quarter of respondents of Serbian nationality did not know or did not want to say whether they thought crimes had been committed against Croatian citizens of Serbian nationality by the Croatian army (Kardov et al. 2010, p. 83).

Support was expressed for punishing perpetrators of all war crimes and for prosecuting those responsible for crimes at war crimes trials. Thus, the majority of general population respondents (61%) thought that perpetrators of all crimes should be punished, while a third of Croatian citizens (32%) thought there were some crimes committed which could be justified and their perpetrators need not be punished. The majority of respondents of Serbian nationality (87%) believe all perpetrators should be punished, while only 8% feel that some crimes are justifiable (Kardov et al. 2010, p. 89).

The general support of the prosecution of all war crimes does not, however, mean that citizens supported every individual war crime prosecution. This could be best seen at the example of Croatian general Ante Gotovina, who was accused by the International Criminal Tribunal for the former Yugoslavia (ICTY) for committing war crimes against Serbian civilians after the operation “Storm” and for whom an indictment was issued after he had left Croatia and went into hiding in 2001. A poll conducted in early 2005, while Gotovina was still on the run,<sup>8</sup> during the broadcast of one of Croatia’s most popular political TV shows *Latinica* showed how this war crimes suspect was considered to be a hero rather than a war criminal.<sup>9</sup> Viewers were asked if they were to encounter Gotovina, would they report him to the police or help him hide. Only 8% of the respondents said they would turn him in, while

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<sup>7</sup> During the military operation “Storm,” which happened on August 5, 1995, all of the occupied Croatian territory was brought back under the Croatian legal order, except for Eastern Slavonija which was peacefully re-integrated later. “Strom,” next to the “Flash,” was the crucial military operation, which led to the end of the war. During the operation, some 18.4% of Croatia’s territory was liberated. In April 2011, the ICTY brought a first degree verdict against two Croatian army generals Ante Gotovina and Mladen Markač, who were sentenced to 24 and 18 years in prison respectively for war crimes committed against Serbian civilians during the operation “Storm.” The verdict also directly identified President Franjo Tuđman as part of a joint criminal enterprise dedicated to expelling Serb residents of the country’s Krajina region. The ICTY, however, did not rule that Operation “Storm” as a whole was a “joint criminal enterprise.” Rather the judges ruled that some aspects of the military offensive violated international law (ICTY 2011).

<sup>8</sup> Ante Gotovina was arrested on the Canary Islands and extradited to the ICTY in The Hague in December 2005.

<sup>9</sup> For an extensive analysis of the “hero” and “martyr” symbolism of Ante Gotovina in the perception of the Croatian public see (Pavlaković 2010).

92% said they would help him avoid arrest. Of those who said they would help him, 76% said they believed he was innocent (Latinica 2005). Moreover, according to a poll conducted in 2006, after his arrest, 64.8% of respondents said they had had a “positive” or “mostly positive” opinion of Gotovina, while only 4.7% had a “negative” or “totally negative” view of him (Đula 2006). This testifies to the fact that socially constructed versions of Croatia’s past and its role in the 1991–1995 war, which were firmly established in the collective public memory of the war through political propaganda and media reporting<sup>10</sup> and which were implemented in the public sphere during and after the war, are still relatively strong and powerful.

In accordance with such an interpretative framework, the survey showed that respondents mostly viewed crimes committed by “their” ethnic group as individual incidents which happened by accident and were directed at individuals, while they viewed crimes committed on the other side as hate crimes directed at the whole nation (Kardov et al. 2010, p. 74–91).

This problem’s full capacity is understood when one takes into account that citizens primarily rely on their own experience and that collective memory, for many, comes before historical facts. A lack of information and of willingness to learn about victims “on the other side” and the reluctance of political structures to deal with the past contribute to slow pace of determining facts about the war. What also proved to be widespread among the Croatian citizens according to this survey is a lack of knowledge about already established facts, as well as low familiarity with the ongoing war crimes court proceedings.

It should be emphasized that, for these results to acquire full meaning, it is necessary to take into consideration that dealing with the past is a long-term and dynamic process which takes place at different levels in a society and that many activities that accompany it differ in their efficiency and extent. The dynamics of this process is not connected only to changes on the institutional and general support, but also to specific demands that dealing with the past puts before each member of a society. Thus, difficulties in meeting those demands result in different meanings which citizens attach to the term “dealing with the past.”

## **Recent Developments and Changes Brought by Transitional Justice Mechanisms and Their Effect On Dealing with the Past in Croatia**

### ***War Crimes Trials***

First war crimes trials in Croatia started already during the war in 1992, at the county courts in the towns of Karlovac, Šibenik, Sisak, and Varaždin. However, the

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<sup>10</sup> For a more detailed discussion on the role of the media during the war in former Yugoslavia see (Đerić 2008), (Skopljanac Brunner et al. 2000), and (Thompson 1999).

trials were often characterized by ethnic partiality, lack of witness protection, and unprofessional court proceedings (Subotić 2009). Indictments which included a large number of persons were being issued exclusively against members of the Serb military and paramilitary formations. Those indictments were imprecise and insufficiently supported with evidence. Verdicts were pronounced, in most cases, in the absence of accused persons (464 persons were found guilty *in absentia* in 118 cases) (Stojanović and Kruhonja 2011).

A turning point in war crimes trials is related to the opposition coalition's coming to power in 2000,<sup>11</sup> when the Croatian Parliament, under the pressure from the EU, adopted the Declaration on Cooperation with the International Criminal Court in the Hague (2000).<sup>12</sup> The State Attorney's Office dropped charges against 1,403 members of the Serb military formations; the number of trials in the absence of accused persons was significantly reduced, and trials were also instituted for crimes committed by members of the Croatian military units (*ibid.*). Cooperation with the Prosecutor's Office of the Republic of Serbia and the Prosecutor's Office of Montenegro was established. Regional cooperation between Serbia and Croatia started officially on October 13, 2006 by signing an agreement which allowed transfer of war crimes trials to the country of the accused, which is not necessarily the country where the crime had been committed (*ibid.*).

Moreover, in order to fulfil the requirements for accession to the EU, concerning judicial reform, the Croatian parliament adopted, in October 2003, the Law on the Implementation of the Statute of the International Criminal Court and on the Prosecution of Crimes against the International Law of War and Humanitarian Law.<sup>13</sup> According to that law, four specialized war crimes chambers were set up at county courts in Zagreb, Osijek, Rijeka, and Split.<sup>14</sup>

Since 2001, war crimes committed by Croatian military forces members have also been investigated and prosecuted, while in 2010 the number of such cases has

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<sup>11</sup> The so-called "coalition of six" won the parliamentary elections in 2000 against the ruling HDZ party (Croatian Democratic Union), which had been in power for 10 years. The coalition consisted of six left-oriented parties: Social-Democratic Party (SDP), Liberal Party (LS), Croatian Social-Liberal Party (HSL), Istrian Democratic Party (IDS), Croatian Peasants' Party (HSS), and Croatian People's Party (HNS).

<sup>12</sup> See Narodne novine [the Official Gazette], 41/2000, April 18, 2000.

<sup>13</sup> See Narodne novine [the Official Gazette], 175/2003, November 4, 2003.

<sup>14</sup> However, war-crimes cases were not transferred exclusively to war-crimes chambers at these four courts, and such cases continued to be prosecuted at other county courts. Human rights organizations, however, continued insisting that exclusively these four courts needed to be authorized for prosecuting and trying war crimes, in order to make trials more professional, unbiased, and more effective. See (Stojanović and Kruhonja 2011) This was made legally possible due to the amendment to the Law on the Implementation of the Statute of the International Criminal Court and on the Prosecution of Crimes against the International Law of War and Humanitarian Law, which was adopted in October 2011 (Stojanović and Sjekavica 2012).



significantly risen.<sup>15</sup> Thus, for example, the trial of General Mirko Norac before the county court in Rijeka, which started in 2007, for war crimes committed against Serbian civilians in the town of Gospić and the renewed trial of officers of the military police for war crimes against prisoners of war at the military prison “Lora” in Split,<sup>16</sup> marked a break with the practice which existed in Croatia up to that moment to exclusively indict and try persons of Serbian nationality. In the course of the trial, Serbian victims testified for the first time.

However, trials still take place in an atmosphere of tolerance for “own” war criminals. Thus, for example, a county court judge in the town of Sisak, while reading a verdict to four Croatian army members tried for war crimes against a Serbian family, said she was sorry Croatian soldiers had to stand trial before Croatian courts for odious crimes which we were used to have been committed by “the other side”, “especially in the days when we light candles for the victim of Vukovar” (Charges for War Crimes 2010). Moreover, the public space has been dominated by support for Branimir Glavaš, who was sentenced to 8 years in prison for war crimes against civilians committed in Osijek in 1991. The support came mostly from his own party (HDSSB), which nominated him in 2008, while he was still standing trial for war crimes, a member in the Parliamentary committee for human rights and rights of national minorities (Božić and Rešković 2008). Furthermore, in more recent events, Glavaš, although sentenced to prison by a non-appealable verdict, was named in October 2011, the head of HDSSB parliamentary elections list, which was possible due to a loophole in the Law on the Election of Representatives to the Croatian Parliament (2003).

The culture of non-prosecution of crimes also includes a lack of political responsibility for committed crimes, as for example former deputy Speaker of the Croatian Parliament, Vladimir Šeks, remained on duty despite the fact that the non-appealable verdict determined and proved the existence of a secret military troop, which was taking away, torturing and killing civilians, at the time when he was the head of the Regional Crisis Headquarters (Stojanović and Kruhonja 2011). Instead, the media speculated that he would be appointed coordinator for closing Croatia’s EU negotiations in Chapter 23,<sup>17</sup> but this did not happen in the end. On the upside, in 2010, an investigation was launched against Tomislav Merčep the Croatian Interior Ministry Adviser during the war, and commander of reserve police units in Pakračka Poljana and at the Zagreb Velesajam, for executing 43 civilians, while performing these duties (ibid.).

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<sup>15</sup> According to the State Attorney’s Office, quoted in their annual report on monitoring war-crimes trials by three human rights organizations, *Documenta*—Centre for Dealing with the Past, Civic Committee for Human Rights and Centre for Peace, Non-Violence and Human Rights Osijek, by the end of 2011, 104 members of Croatian army forces have been tried, while 29 have been convicted based on non-appealable verdicts. See (Stojanović and Sjekavica 2012).

<sup>16</sup> In March 2006, after the Croatian Supreme Court annulled the acquittals from August 2004, all eight accused were convicted and sentenced to 6–8 years in prison.

<sup>17</sup> Chapter 23 was a chapter in Croatia’s negotiations on the accession to the European Union, which related to the state’s judiciary and fundamental rights.



A serious setback happened in October 2011, when the Croatian Parliament adopted a law according to which all legal acts related to the 1991–1995 war, which find Croatian citizens accused or indicted of war crimes, became null. This was a direct consequence of Serbia sending Croatia a list of indictments against Croatian citizens charging them with war crimes. Croatian president Ivo Josipović publicly criticized this law as something which called into question Croatia’s readiness to prosecute war criminals (President Josipović on the Occasion of Passing the Annulment Law 2011).

Further improvements in processing war crimes were stalled due to the lack of political will to strengthen the independence, expertise, and efficiency of judicial bodies through specialization of courts and state attorney’s offices. The problem that was prevailing until the end of 2011 was the continuation of holding trials before local courts, in areas where crimes occurred, instead of before four specialized war crimes chambers (Centre for Peace, Non-Violence and Human Rights Osijek 2008). Legislations related to war crimes trials and trial proceedings mainly improved due to the EU accession process,<sup>18</sup> although the EU has made no serious conditions for progress in the accession process on domestic war crimes trials, as compared to the ones on cooperation with the ICTY (Human Rights Watch 2004). As Jelena Subotić argues, this allowed Croatian elites “to preserve almost intact the Croatian national understanding of the character of the war and Croatia’s role in it” (Subotić 2009, p. 121).

However, in Croatia, no broader strategy in which war crimes prosecution is connected and supplemented with other key elements of transitional justice, such as truth-telling mechanisms, reparations to victims, public apologies, or institutional reform, is developed.

### ***Truth-Telling Projects***

The truth about past war crimes and human rights abuses has to be promoted by other mechanisms of transitional justice and peace-building and not just through war crimes trials. National legal instruments are not enough in order to achieve truth-telling and truth-seeking. What is needed is a regional level public agreement about the mechanisms for establishing and telling the facts about the past.

For this reason, civil society organizations from Croatia and other post-Yugoslav countries have been advocating joint strategies to address past human rights abuses: prosecution of perpetrators, addressing reparations and compensation issues, efforts to honor the memory of victims, analysis of institutional culpability, and efforts to reform institutions. A few years ago human rights and peace organizations have started discussing the possibility of establishing and eventual usefulness of a truth

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<sup>18</sup> A discussion on the role of the EU accession process and EU conditionality on transitional justice processes in Croatia falls outside the scope of this chapter. For an extensive analysis see (Subotić 2009), (Batt and Obradovic-Wochnik 2009) and (Rangelov 2006).

commission. Recognizing the importance of systematic regional cooperation, on level of documenting war events and advocating justice for victims, a protocol on cooperation between three non-governmental organizations<sup>19</sup> was signed, followed with work on joint regional projects. At the First Regional Forum on transitional justice held in Sarajevo in May 2006, partners launched consultation process on the regional truth-telling mechanism leading to an initiative for the establishment of a Regional Commission mandated to establish and disclose the facts about war crimes committed in the former Yugoslavia (hereinafter RECOM) (Kostovica 2009). At the Fourth Regional Forum, held on October 28 and 29, 2008 in Prishtina, Kosovo, more than 100 organizations and individuals, including victims and victim associations from Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia, as well as associations of citizens, human rights organizations, media associations, and other civil society groups from across the region, formed a Regional Coalition for RECOM (Consultation Process 2011).<sup>20</sup>

In April 2011, civil society activists across the region started collecting signatures for the establishment of RECOM, with the aim of handing in the signatures to governments and parliaments in the region, which are supposed to support it and adopt a decision on its establishment. The forming of RECOM has so far been publicly supported by Presidents of Croatia, Serbia and Montenegro (Ivo Josipović, Boris Tadić and Filip Vujanović), as well as President of BiH Federation Živko Budimir, Prime Minister of the Autonomous province of Vojvodina Bojan Pajtić, and Prime Minister of Montenegro Igor Lukšić (Political Support 2011).

In Croatia, the initiative received first strong public support by President Ivo Josipović at the Transitional Justice Forum held in Zagreb in October 2010. The President stressed the importance of “determining the faith of the missing and paying respects to victims, which is where I see the capacities of the future regional commission and it is necessary for the society as a whole to make additional efforts in order for families of victims to receive satisfaction” (Political Support 2011). A petition for the establishment of RECOM and the RECOM Statute proposal were submitted to the Croatian President on June 21, 2011, when he said he would promote the Initiative for RECOM as part of his regional activities and in communication with the Republic of Croatia government and political parties (Public Advocacy 2011).

However, a survey on the public opinion, conducted in March 2011 by an agency for public opinion research, showed that only 55% of Croatian citizens would sign a petition on the establishment of RECOM, as opposed to 95% of Kosovo citizens, 85% of BiH Federation citizens, and 63% of citizens of Serbia (Survey of Opinions 2011). Moreover, citizens of Croatia were the most pessimistic about the success of RECOM, compared to citizens of other post-Yugoslav states, while the largest

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<sup>19</sup>These are: *Documenta*—Centre for Dealing with the Past from Zagreb, Humanitarian Law Centre from Belgrade, and Research and Documentation Centre from Sarajevo.

<sup>20</sup>For an extensive discussion about RECOM initiative see Jill Irvine and Patrice McMahon. *A Movement in the Making? The “REKOM” Coalition and Transitional Justice in the Balkans* in this volume.

percentage of citizens from Croatia never even heard about the initiative (only 6% have heard about it, compared to 25% of Montenegro's citizens or 11% of Serbia's citizens) (ibid.). Furthermore, a report issued by the Youth Initiative for Human Rights from Croatia, which coordinated the collection of signatures for the establishment of RECOM, showed that only some 20,000 signatures were collected in Croatia in the period April 26–June 30, 2011, as opposed to some 122,000 signatures collected in Bosnia and Herzegovina and some 100,000 collected in Kosovo (Youth Initiative for Human Rights Report 2011).

It is not surprising that Croatia's citizens did not show a high degree of interest in a regional initiative for dealing with the past, if we take into account that *Documenta's* research on public attitudes on dealing with the past in Croatia showed that 41% of respondents felt the term had neither a positive nor a negative meaning, which points to low-level familiarity of respondents with the concept and low-level interest in it and its meaning (Kardov et al. 2010, p. 54).

Moreover, it has to be taken into account that low public support for RECOM in Croatia depends on a number of different factors, the most influential of them being the ICTY sentence to general Ante Gotovina from April 15, 2011,<sup>21</sup> when he was found guilty and sentenced to 24 years in prison for participation in a criminal enterprise the aim of which was to permanently remove the Serbian population from the Krajina region (ICTY 2011). Prime Minister Jadranka Kosor called the verdicts "unacceptable" and promised that the government would do everything it could to overturn them on appeal, and even President Ivo Josipović expressed his shock with the verdict (Kosor: The Verdict is Unacceptable 2011). The ruling provoked protests by, mainly, war veterans, as the indictment was perceived in the Croatian public as an indictment to the entire "Homeland War", and not just the accused generals. Most of the people in Croatia believe that the offensive was a legitimate military action taken to regain territory that had been seized by the Serb forces. What sparked the protests was a wrong interpretation of the indictment, which was understood as labelling the entire "Homeland War" as "a joint criminal enterprise". This was mostly due to the propaganda of the Croatian media, which did not ground its reporting in factual information and thus created a very biased and misleading picture of the indictment and its meaning.<sup>22</sup>

Public reactions after the reading of the indictment showed that Croatia was not yet ready to acknowledge and face the crimes committed by its army generals during the "Homeland War", mostly due to the existence of a strong public narrative about the war as a "just and legitimate defence...to defend its internationally recognized borders against Greater Serbia's aggression." (Subotić 2009, p. 91)

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<sup>21</sup> However, many other factors which influenced low support to RECOM need to be taken into consideration, such as a hard economic crisis in the country and high level of unemployment of the population, which left people more concerned with problems of everyday survival, rather than with regional cooperation on fact-finding and reconciliation.

<sup>22</sup> For an extensive analysis of Croatian National Television's (HRT) reporting on the indictments to generals Ante Gotovina, Ivan Čermak, and Mladen Markač see (Preliminary Results 2011).

## *Public Apologies*

Acknowledgment of crimes committed on every side during a conflict is crucial for reconciliation of all warring sides.

Acknowledgment is an act, or, more precisely, a process of responding to the crime, whereby we publicly express and recognize our knowledge of the fact that killing and other forms of most brutal harming of the innocent people took place in the recent past, and that these atrocities were carried out in our name (Dimitrijević 2011)

Official apologies are expressions of regret issued by political elites in power, which represent a community or group in the name of which atrocities were committed.<sup>23</sup> The first official apology came from President Stjepan Mesić in September 2003, during his visit to Belgrade. Mesić said he apologized “to all those who have suffered pain or damage at any time from citizens of Croatia who misused or acted against the law” (Presidents apologize over Croatian war 2003). After his successor, Ivo Josipović, became president in 2010, more apologies followed. In mid-April 2010, Ivo Josipović visited Sarajevo and delivered a speech in which he expressed deep regret for Croatian politics toward Bosnia-Herzegovina in the early 1990s. He followed this apology with a visit to the Bosnian village of Ahmići, where Croat forces carried out a notorious massacre of Bosniak civilians in 1993. He was the first Croatian official to pay tribute to the Bosniak victims of the Ahmići massacre. However, the ruling party, HDZ, condemned President’s speech and apology, saying they had a potential of “adding Croatia to the list of aggressors” in the wars of Yugoslav disintegration of the 1990s (Jović n.d.).

The next apology happened in the village of Paulin Dvor near Osijek, where members of the Croatian army killed 18 Serbian and one Hungarian civilian in December 1991. Josipović said that “the crime deserves to be condemned, the victims deserve to be respected, and those who were left behind the victims deserve our apology” (Presidents Josipović and Tadić Laid Wreaths at Paulin Dvor 2010). This apology followed Serbian president Boris Tadić’s apology at Ovčara, who laid a wreath on the monument at Ovčara and expressed his regret for the crime committed there.<sup>24</sup> Part of the Croatian public saw the Serbian and Croatian presidents’ visits as a new chapter in Croatian-Serbian relations and as a great contribution to the reconciliation process. However, the other part of the public condemned Josipović’s apology seeing it as an attempt to belittle the tragedy that happened at

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<sup>23</sup> Due to the number of official apologizes that can be heard, Nenad Dimitrijević remarks that “we seem to be living in an age of political apology” (Dimitrijević 2011).

<sup>24</sup> President of Serbia, Boris Tadić, is the first high-ranking Serbian official who apologized in June 2007 to citizens of Croatia and members of the Croatian nation for crimes committed in the past war by some of his co-citizens, in the name of the Serbian people. He apologized while appearing on the TV show “Nedjeljom u 2” (Sundays at 2) on the Croatian National Television. Moreover, some more informal apologies should also be mentioned, such as the one given by a non-governmental organization Women in Black from Belgrade. Members of the organization went to Vukovar in November 2006 to ask families of victims of crimes committed in Vukovar for forgiveness (Tadić ponovio ispriku Hrvatima zbog rata 2007).

Ovčara and as an attempt of relativizing the guilt for crimes committed in the war. Low-level support to public apologies by state representatives could already be discerned from *Documenta's* survey, in which only 3% of the respondents said they thought an apology would help family members of war victims to deal with their losses (Kardov et al. 2010, p.73).

It could be, thus, concluded that, as much as they play an important role in facing the past and reconciling the sides in a conflict, apologies have to be understood and viewed in the context of other actions and efforts made by political elites. In case they are not accompanied with a real and strong political will for establishing dialogue and acknowledging all victims of a conflict, apologies face the danger of becoming empty gestures, void of any real importance and meaning in fostering reconciliation.

### ***Monuments and Memorialization***

Other actions which help recognizing the suffering of all victims during a conflict are monuments and memorials erected in the memory of victims. Public memorials after conflict can contribute to acknowledging the harm caused to victims and to restoring their dignity. However, they can also cement divisions between communities and strengthen barriers to communication across the conflict divide.

From the perspective of the state, the goals of public memorials are more often, in the words of Benedict Anderson, related to nation-building and defining an "imagined community" (Anderson 1983). Public monuments can play an important function in telling the story of a national group, which reinforces the group's chosen self-image. Through erecting monuments, the goal of states, therefore, may be to assert particular identities in the public space that support narratives needed for political legitimation, and these narratives may even be harmful for victims. It is, thus, interesting to note that the Croatian Law on Marking Sites of Mass Graves of the "Homeland War" Victims problematically defines victims of the "Homeland War" as "Croatian war veterans and civilians who died in mass executions during Serbian and Montenegrin chetnik aggression and aggression of the Yugoslav army on the Republic of Croatia" (Law on marking sites of mass graves of the Homeland War victims 1996).

Rare memorials to Serbian war victims in Croatia exist in two villages in the Dalmatian hinterland, Gošić and Varivode, where the Council of Serbian National Minority erected in August 2003 wooden crosses and plaques on which victims' names were written in Cyrillic. However, in April 2010 unidentified perpetrators damaged the monument to nine civilians killed in Varivode in August 1995, during the operation "Storm". The new, restructured monument was opened in October 2010 by President Josipović, who said that a terrible crime had been committed against them and that they were innocent victims of revenge which should not have taken place (President's Office Press Release 2010).

That the Croatian public is still not ready to face crimes committed by Croatian army members during the operation "Storm" can also be seen at the example of an

attempt made by a civil society organization, Youth Initiative for Human Rights, which put up, in August 2010, a plaque in the memory of all civilians who had to flee their homes during operation “Storm”, many of whom never returned. The plaque was put up at the exit from the town of Knin, through which refugees fled in August 1995. The plaque read that it was put up “at the 15th anniversary of the Croatian army action “Storm”, (...) by Croatian citizens who offer their apology to victims, due to the lack of an apology from the responsible” ([www.yihr.org](http://www.yihr.org)). It also stated that its erection was financed by the Croatian government, but the government’s human rights office immediately reacted denying financing the plaque. The plaque was removed by city authorities within 24 h, with the explanation that no permission had been issued for its erection.

Another controversial example happened in September 2011, when local population of the village Golubić near Knin put up a monument in the memory of all local Serbs from Golubić who died during the war. The controversy stemmed from the fact that some of the victims whose names were listed on the monument died in 1991 and 1992, which left the public speculating if those were members of rebel Serbs’ army who died in fighting. Opening of the monument was banned by the interior ministry, saying it was put up unlawfully on state’s property, but the monument was left standing, since names and dates of victims were removed and the new plaque read it was being erected in the name of all people from Golubić who died in wars, without mentioning when or in which war they died.

Thus, the scarcity of monuments to victims “of the other side” (and destruction of the few existing monuments) reflect the results of *Documenta*’s survey, in which more than a half of the respondents (52%) of the general population said they believed that victims of the war in Croatia were exclusively Croats (Kardov et al. 2010, p. 69), while 34% of the respondents felt that Serbian civilian victims and their families should not be given any reparations (ibid., 73). Moreover, only 5% of respondents from the general population felt that a memorial or a monument erected in the memory of victims would help victims’ families to deal with their losses (ibid.).

The mentioned examples of erected monuments also point to how complicated, and potentially how dangerous, memorials are in terms of post-conflict reconstruction. New public memorials built after the war in Croatia are mainly ethnically exclusive and reflect the view that the role of victim belongs exclusively to the majority community. Although there are examples of allowing victims of “the other side” to enter commemorative practices in the memory of war victims, it seems that some time will still need to pass before official narratives start talking about and remembering all innocent victims of the war, regardless of their ethno-national and religious belonging.

## Future Perspectives

Dealing with the past in post-war societies has an important role for reconciliation, because denial of violent past and refusing to take responsibility for past war crimes prevents full social, economic, and political development of a society. The prospect

of further normalization, as well as insuring preconditions for social and economic development in Croatia, seems to be largely dependant on increasing the capacity of the civil society, political leaders, academic community, media, as well as of the judiciary, to deal with the past.

One of the mechanisms to achieve this is prosecution of war crimes at domestic courts. In Croatia, these trials have significantly improved in the last decade, although problems still exist. Trials are still conducted in the context of social tolerance toward “one’s own” criminals, particularly in the context of the 2011 parliamentary elections. Moreover, in war crimes trials, the focus of public interest still lies on perpetrators instead on victims, while the general public still lacks compassion toward victims from other ethnic communities. Since the political will to prosecute criminal acts committed by members of Croatian army units was lacking, there was no awareness about the need to pay respects to the victims of those crimes either.

During the last several years, however, the situation has changed. Steps forward undertaken by the highest-ranking state officials during 2010 might significantly influence the creation of a political and public opinion which condemns crimes while at the same time supports reconciliation processes.

Thus, erecting monuments and paying respects to all victims by the highest state officials on the sites of detention and killings of innocent people not only represents an act of paying respects to all war crimes victims, but it is also necessary in order to make those sites become places of remembrance, with a clear message of condemning the crimes committed there.

However, a national perspective is not enough in order to achieve truth-telling and truth-seeking. A regional cooperation is necessary in all post-war societies of the former Yugoslavia, since a regional approach could have a better chance at dealing with the past than a national one. For this reason, it would be of great importance to the former Yugoslav states to form a regional commission, which would make efforts to establish facts about all crimes committed and all victims who suffered during these wars, so that these crimes could never again be manipulated for political purposes and would not lead into another conflict. A regional commission will certainly not be able to fulfil its mission without a clear and direct support from all states, which is why advocating for its establishment seems particularly important at the moment.

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# Chapter 4

## The Failure of Macedonian Post-communist Transitional Justice: Lustration, Between Cleansing and Parody

Despina Angelovska

### Introduction

Due to the wars in the former Yugoslavia (1991–1995), the fall of the Communist regime in Macedonia was not closely followed by a process of decommunization and a search for transitional justice, as was the case in other Communist countries such as Eastern Germany, the Czech Republic, Albania, Bulgaria, or Romania. Even though Macedonia did not take part in these wars, the sanguinary crimes in its neighborhood drew attention away from the misdeeds of the Communist regime. Furthermore, the war in Kosovo, NATO's intervention, as well as the large number of refugees that fled to Macedonia in 1999, were acute problems that had to be tackled without delay. In 2001, Macedonia confronted another important crisis, this time on its own territory, the armed conflict between the Albanian National Liberation Army and the Macedonian security forces that resulted in the Ohrid Framework Agreement adopted the same year. This permanence of crises contributed to the postponement of the transitional justice processes in Macedonia, similarly to those in other countries of the former Yugoslavia. Additionally, as highlighted by Lavinia Stan regarding Slovenian lustration (2006, p. 10), the Yugoslav “socialism with a human face” also explains to some extent why, at first, those countries were not very much interested in sanctioning their Communist officials. In this regard, the Law on Lustration, adopted by the Macedonian parliament only in 2008—17 years after the country's independence—was denounced by many political and civil actors as arriving too late.

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This chapter analyzes how this late Macedonian lustration, aiming at screening public officials for their past involvement in the Communist regime, in particular collaboration with secret services (Sadurski 2003, p. 3), rapidly became not only an object of political revenge, but also of parody and distrust. Originally conceived as being only a part of larger processes of transitional justice, lustration, eventually, transformed itself into the complete opposite of its primary normative goals such as those defined by the guidelines of the Parliamentary Assembly of the Council of Europe (PACE) (1996a, b) based on the respect of human rights and the rule of law.

In this chapter, I consider how Macedonian lustration—intended as a response against Communist crimes and purges, and as an attempt to overcome the totalitarian past—only unveiled that the same dangerous authoritarian logic of surveillance and cleansing still operates in post-Communist Macedonia. In the first part of this study, I consider the introduction and turbulent evolution of the Macedonian law on lustration. In the second part, I address its controversial applications and designated deficiencies. Finally, in the last part, I focus on the contribution of civil society not only in the promulgation of lustration, but also in the critique and correction of this latter. The aim of the present chapter is to evaluate the civil society efforts in dismantling the totalitarian Communist heritage and in negotiating normative transitional justice practices. Furthermore, by placing at the center the reflection of some engaged citizens and intellectuals on lustration's processes and paradoxes, this study highlights the importance of their critical thought for the transitional justice scope. By focusing thus on the unexplored role of civil society engagements within transitional justice and lustration processes in Macedonia, and by also reflecting on the difficulties and ambiguities underlying their application on the ground, this chapter aims to contribute to the enrichment of transitional justice research.

Although there has been significant research done in the field of post-Communist transitional justice (Letki 2002; Dvořáková and Milardović 2007; Stan 2009; Nalepa 2010), there is a lack of academic studies on the controversial Macedonian lustration, both nationally and internationally, regardless of the fact that this precise subject had received close media and press coverage, while provoking huge debates in the public sphere. Because of this lack of academic and systemic studies of Macedonian transitional justice, wishing to provide a timely and in-depth analysis of the ongoing lustration, this study draws on field research and personal interviews with key local actors. At the same time, the analysis of the Macedonian case is situated within the larger scholarship of transitional justice.

The term “transitional justice,” as analyzed by Christine Bell, emerged in late 1980s and early 1990s with reference to the transitions from authoritarian rule in Eastern Europe and Central America, while it was only consolidated as a field after 2000 (2009, p.7). Even if its definitions differ, Bell argues that transitional justice is generally viewed as “the attempt to deal with past violence in societies undergoing or attempting some form of political transition” (2009, p.7). Furthermore, in his anthropological approach of transitional justice, Alexander Laban Hinton defines it as the process of “redressing past wrongs committed in states shifting from a violent, authoritarian past toward a more liberal, democratic future” (2010, p.2).

## **Introduction of Lustration in the Context of Transitional Macedonia**

### *Lustration in Post-communist Countries*

Ruti Teitel interprets transitional justice more as the “conception of justice associated with periods of political change”, stressing its “legal responses to the wrongdoings of repressive predecessor regimes” (2003, p.69). It is after the collapse of the Communist block between 1989 and 1991, that Teitel situates the beginning of the “post-Cold War phase of transitional justice” (2003, p.75). Conceived as a wide range of inter-related processes of coming to terms with the recent dictatorial past (Stan 2009, p.1), transitional justice, in post-Communist countries, ushered in lustration. Lustration received its name from the Greek and Roman ceremony of purification (Merryman and Tafel 2009), but even if this word seems to cover very effectively the problems of reckoning with the past, there has been no unanimity about its meaning and the form it should take (Letki 2002). Nevertheless, as defined by the guidelines of PACE (1996a, b), lustration has been conceived as the politics of disqualification and reduction of the participation of those associated with abuses of human rights under the Communist regime in state-appointed offices, where they could represent a threat for the newly emerged democracies. The first countries to introduce lustration, in 1990 and 1991, were, respectively, East Germany and Czechoslovakia (Ellis 1996; Stan 2006), followed, with different delays and scopes, by most of the Central and East European countries. However, although lustration is the most common form of transitional justice in post-Communist Europe, used for “screening and ‘prosecuting’ former communist leaders, candidates for office, and selected public employees” (Ellis 1996, p.181), it remains controversial and often criticized by the national and international community (Letki 2004).

### *Macedonian Law on Lustration*

Aiming at disclosing past misdeeds in order not to repeat the authoritarian abuses of the previous regime, lustration has also been linked to the opening of the Communist secret service archives. Preceding the Law on Lustration, the Law on Handling Personal Files kept by the State Security Service (Закон за Постапување со Досијеа за Лица Водени од Службата за Државна Безбедност 2000) was adopted in 2000. Later, after the parliamentary elections and the ascent to power of the coalition presided by the right wing VMRO-DPMNE party, and closely following PACE’s Resolution 1481/2006, Need for International Condemnation of Crimes of Totalitarian Communist Regimes, the Macedonian Assembly, in 2006, approved the Declaration of Apology to the Victims of Repression by the regime between 1945 and 1990. By the end of the same year, Stojan Andov, the leader of the Liberal Party and a member of the coalition in power, proposed a draft-law on lustration, which

took two more years to be approved. Finally, at the end of January 2008, the Assembly, with a large consensus among all political parties, adopted the new “benchmark”, the Law on Lustration, officially called the Law on the Establishment of an Additional Condition for the Performance of Public Office (Закон за Определување Дополнителен Услов за Вршење Јавна Функција 2008).

This law forbids former secret collaborators, secret informants, those delivering orders, as well as the users of information obtained in such a way to hold public office. The covered period starts from August 2, 1944 and ends on the date of the adoption of the Law. Articles 1 and 2 of the Law stipulate that every candidate for public office or holder of public office should submit a Statement of Non-collaboration with the Secret Services for the period specified by the Law. The statement is to be processed by the Commission for the Verification of Facts, conceived as an autonomous and independent body, elected by the parliament. The additional condition for the performance of public office is fulfilled if the Commission has verified this statement of non-collaboration. The law was amended on May 22, 2009, with the amendments mainly concerning the status and working conditions of the Commission. The Commission started to implement the Law in September 2009.

### *Evolution and Revision of the Law*

In a broader sense, transitional justice measures have often been criticized as allowing dangerous “legal exceptionalism” and thus creating legal controversies (Bell 2009, p. 12). In this respect, as argued by Alan Uzelac, it is the very principles of the rule of law that may be one of the important barriers to the success of lustration (2007, p.48). Indeed, on March 24, 2010, the Macedonian Constitutional Court contested four articles of the Law on Lustration as unconstitutional, among which was Article 34 stipulating that political parties, journalists associations, NGOs, as well as religious communities and association, could also demand the fulfillment of the additional criteria from its members and candidate members (Одлука на Уставен Суд на Република Македонија У. бр. 42/2008. У. бр. 77/2008, April 1, 2010). In its decision, the Court argued that this signified involvement of the State in the functioning of civil associations, violating the constitutional guaranties of citizens’ freedom of association as well as the separation of the State from the Church and religious groups. The Court also abolished a paragraph of Article 2 of the Law, reducing the period covered by lustration, thereby limiting it to 1991, the year of Macedonian independence and of the adoption of the Constitution in power, when a democratic system was established based on the separation of powers and the protection of the rule of law and human rights. The Court concluded that the period after 1991 could not be subjected to lustration, since this process aims at reckoning with the abuses of Communist past and not with those of the democratic system, which has other correspondent legal mechanisms. The Court also abolished, because of violating the dignity as well as moral and personal integrity of

citizens, the part of Article 8 that stipulated that the names of those who have not filed a Statement of Non-collaboration with the Secret Services would be published in the Official Gazette.

On November 10, 2010, a few months after this ruling, contested by the governing party VMRO-DPMNE, the first official to be disqualified by the Commission as an informant and to lose his position was precisely the presiding judge of the Constitutional Court, Trendafil Ivanovski, a choice denounced by some as being clearly politically motivated. On February 25, 2011, the Law on Lustration was amended a second time. The amended version—avoiding, among other things, to implement the Court’s decision regarding the period covered by the law, and additionally introducing new pecuniary sanctions (Article 35-a) for those not filing a Statement of Non-collaboration—was described by some legal experts and civil society members as in contempt of the Constitutional Court and of the Constitution (Najčevska 2011b; FOSM 2011). Most recently, with its ruling from January 25, 2012, the Constitutional Court decided to review the anti-constitutionality of 12 articles of the latest Law of Lustration (Решение, У. Број: 76/2011-0-0).

## **The Failure of the Law on Lustration and its Application: Lustration, Between Cleansing and Parody**

### *Lustration as Parody and Object of Distrust*

As I have already argued, post-Communist lustration has provoked legal and moral controversy in many countries. Moreover, the question has been put forward whether this process supports or undermines democratic transition (Horne 2009). In a broader sense, this investigation joins an emerging body of research that reflects on whether “transitional justice works and whether it delivers the political goals to which it lays claim” (Bell 2009, p.10). In this respect, the “imperial dimension” of universal transitional justice goals and its “exceptional justice”, with disturbing consequences for local justice and democracy more generally, have been stressed lately by academic research (p.12). Additionally, the application of Macedonian lustration seems to reinforce the dilemma about the “unintended consequences” often provoked by the translation of the normative goals of transitional justice into a particular context (Hinton 2010, p.17).

Indeed, lustration, rapidly after entering into force, became an object not only of political manipulation, but also of parody and distrust. From its very first implementation, it was followed by political scandals and mutual accusations between the principal political parties. On one occasion, secret files “fell from the sky”, incriminating politicians and senior officials from one of the Albanian governing parties: in December 2010, the Lustration Commission received three secret files charging senior officials from the Democratic Union for Integration party (DUI), delivered by

a professor from the city of Tetovo, claiming to have found them in his yard. Furthermore, the lustration procedure itself seems to have lost a great deal of its credibility, since some of the secret files, on which the allegations were based, have been denounced as falsified. More recently, and for the same case, on January 23, 2011, the criminal court sentenced to conditional discharge the former secret agent accused of having falsified the files compromising the senior officials from DUI. Even so, the accused declared himself a victim of an unprecedented politically mounted process.

Indeed, as pointed out by Stan (2009), an important element of lustration, linked to the reliability of the process, is its dependence on access to the archives of secret services. More generally, this reliance on information fabricated by the secret services has also been one of the main reasons for the doubts and criticism surrounding lustration. That is why legislation on file access is crucial for lustration, whose well-regulated implementation depends directly on “the quality of the basis for the screening process, i.e. the quality of the files of the secret service archives” (Letki 2004, p.8). In this regard, Stan also argues that the later a country launches lustration, “the more tampered the archives, the harder to identify the implicated and the more disputed the official findings” (2006, p.15). In this respect, the late Macedonian Law on Handling Personal Files, providing only very restricted access to the files, and the even later creation of the Lustration Commission, left great possibilities for their tampering and did not contribute to the successful implementation of lustration.

### *Lustration as a “Witch-Hunt”*

As emphasized by Natalia Letki, lustration, in post-Communist countries, has often been used as a political tool for dealing with opponents, thus reinforcing non-democratic and manipulative political solutions (2004, p.6). In this sense, before it was even adopted, but especially afterward, the Macedonian Law on Lustration has been often qualified by civil society organizations, experts, and media as a “witch-hunt” (Milčin 2007, 2011; Najčevska 2011a). In this respect, the question that has often been asked is, whether lustration is at all possible in a society determined by party affiliation.

In this section, I will explore the way in which, in its first implementations, Macedonian lustration has appeared as used mainly for discrediting political opponents and civil society organizations. In this regard, the Lustration Commission’s choice of the individuals to be disqualified could be easily interpreted as politically oriented. Indeed, the first to be designated as an informant, as we already saw, was presiding constitutional judge Ivanovski. The second to be disqualified was Tito Ugrinovski, a member of an opposition party and a counselor of the City council of Skopje. More recently, in Summer 2011, Vladimir Milčin, the executive director of the prominent civil society organization, the Foundation Open Society Macedonia

(FOSM), who was also one of the most virulent critics not only of the abuses of the central authorities, but also of those of lustration, was declared an informant. Denying the allegations, Milčin, at a press conference held on July 25, 2011 at the club of the association of Citizens for a European Macedonia (CEM), denounced his alleged lustration as an attempt to politically lynch and discredit FOSM as “one of the few persistent defenders of democracy, human rights, and the rule of law in Macedonia” (FOSM 2011b).

### **The Omissions of the Commission Procedure**

As indicated in the Support for Improvement and Government Management (SIGMA) assessment on Macedonia (2009), unless lustration processes are truly professional and impartial, they may be easily misused. Therefore, the legitimacy of those who are supposed to be the implementers of the lustration practices on the ground is crucial. In this respect, the professionalism and objectivity of the Macedonian Lustration Commission has been often questioned, since the Commission was accused of violating the procedure defined by the Law.

In the case of judge Ivanovski, he claimed the Commission lustrated him without the necessary signed proofs of collaboration as stipulated in Article 4 of the Law (Dimitrioska 2011). The same criticism was formulated by Milčin. Furthermore, according to him, the Commission seriously violated the procedure since, although bound by the Law to protect the identity and dignity of persons subject to verification, in his case, as in the previous cases, this was not done (FOSM 2011b). Additionally, the Commission has been criticized for violating the procedure, since, instead of determining facts, it reached its verdicts by voting (CEM 2010, 2011a). Finally, the lack of competence of the Commission members, in regard to not only the functioning and mechanisms of the secret services, but also the nonexistence of forensic expertise for documents in Macedonia, was addressed as making the process more vulnerable to manipulation (CEM 2011b).

Lustration has thus provoked great controversy. Moreover, the process has not only failed in accomplishing its transitional justice goals, but also been transformed from “a mechanism of prosecution of abuse, to abuse of prosecution” (Naj evska 2011c).

### **Civil Society and Lustration**

As argued in recent analysis, Macedonian civil society still needs to reinforce its capacities and independence. In its latest report on local civil society from 2008 to 2011, the Macedonian center for international cooperation, among other things, indicates the deficiencies of this sector and the need for its further development. According to this study, the civic participation in Macedonia remains low, while the influence of



civil society on policy making is insufficient. Additionally, the non-sustainability of the civil sector diminishes its possibilities of action (Klekovski et al. 2011, p.3). This lack of financial resources and the strong dependence on foreign funding of the civil sector have also been quoted in the latest report of the European Commission on Macedonia (2011, p.17). Furthermore, as argued by the executive director of FOSM, Milčin, the deep polarization of Macedonian society by party, ethnic and religious affiliation also extends to the civil sector. While some civil society organizations seem to have been created directly by the current government in order to endorse its policy, other critically oriented associations have been publicly attacked and discredited by officials of political parties and Members of Parliament (Milčin 2010, European Commission 2011, p.17).

Despite those deficiencies and internal divisions of Macedonian civil society and despite the increasing political pressures suffered, it has played an important role in the process of lustration: firstly, in its initiation and promulgation, and secondly, in pointing out its dangers and abuses.

### ***The Role of Civil Society in the Promulgation of Transitional Justice and Lustration***

The debate on the taboo subject of lustration was initiated in Macedonia by civil actors, following the adoption of Resolutions 1096 and 1481 of PACE (1996, 2006). Effectively, one of the most active promoters of the adoption of a lustration law, and later its consultant, was the blogger and columnist Ivica Bocevski (2006), who later became a spokesman and a minister of the Government. Nikola Gelevski, the co-founder of the citizen association *Kontrapunkt*, published an article titled “The World of the Ghosts and the Sleeping” (2006), in which he addressed the essential need for Macedonian society to establish transitional justice mechanisms in order to stop the political manipulation of the issue of Communist crimes in the present. Furthermore, theorist and writer Jasna Koteska, the daughter of the poet Jovan Koteski, a victim of the Communist secret services, was one of the first to address this repressed subject. In 2005, after she began to speak publicly on her father’s persecution, she even started receiving threats (Koteska 2008, p.41). Still, she persevered and published a text with extracts of her father’s file in *Margina* (Koteska 2006). Her public interventions and her personal testimony had a great influence on raising awareness about the subject and have been often quoted in support of the promotion and application of lustration.

As outlined by Tchavdar Marinov (2009), the Law on Lustration itself was inspired by the NGO sector and the project entitled “Disclosing hidden history: Lustration in the Western Balkans,” which was run from 2004 to 2006 by the Center for Democracy and Reconciliation in Southeast Europe (Hatschikjan et al. 2006). Yet, after the adoption of the Law and its first implementations, it was also the civil society voices that were the first to point out its dangers for democracy.

### *The Critique of Lustration: The Contribution of Civil Society as a Transitional Justice Watchdog*

It is primarily in the denunciation of the abuses of lustration that Macedonian civil society has contributed the most, constituting itself as a defender of human rights and justice.

Indeed, in 2007, when the proposal of the Law was submitted by Andov, it was civil society representatives that were the most critical towards it entering into force. In this regard, the Helsinki Committee for Human Rights of the Republic of Macedonia (HCHRRM), under the presidency of Mirjana Najčevska, in its analysis of lustration (2007) criticized the proposal for containing important deficiencies and for endangering human rights and the rule of law.

In a television debate on lustration in 2007, Najčevska also pointed out the risks of the proposed Law, since the Lustration Commission competences went beyond the law and allowed it to sentence a person without a trial (MS Television, 2007). In this respect, Najčevska's critique outlines existing critical examinations of transitional justice denounced often as promoting "legal exceptionalism" and putting itself "beyond the law" (Bell 2009). The Law's proposal was also opposed by FOSM, while its chief executive, Milčin, labeled it as a "political and ideological purge" (2007).

As argued by Letki (2004, p.5), lustration should be proposed, discussed, and passed by the legislative body, and it should be approved or corrected by the Constitutional Court. On that point, it is on the basis of petitions submitted by engaged citizens and NGOs that the Constitutional Court, in 2010, abolished four contested articles. More recently, in 2011, petitions against the Law have been submitted again to the Court by FOSM representatives (2011) and by Filipov and Najčevska (Najčevska 2011b). It is in response to this civic initiatives that the Constitutional Court, on January 25, 2012, decided to review the anti-constitutionality of 12 articles of the Law on Lustration (Решение, У. Број: 76/2011-0-0). Those initiatives underline the importance of civil society and active citizenship for correcting transitional justice processes.

After the controversies provoked by the first applications of the Law, once again, civil society responded to the need for further discussion and consideration. Moreover, by critically examining the very concept and goals of lustration, the complexity of reflection on transitional justice has been broadened. In this respect, the cycle of public debates on lustration, organized by CEM, in which numerous experts, intellectuals, and citizens took part, enriched the democratic dialogue on lustration. A large number of civil society representatives and engaged intellectuals consider that the Law has been adopted too late and that it should be withdrawn or even annulled (CEM 2010a, b; Najčevska 2011b).

At the same time, different NGOs declared their public support for the applications of the law. Sometimes, in the case of lustration, the role of civil society could even be qualified as contradictory, as in the example of the HCHRRM. Joining other NGOs that affirmed their support for the Law on Lustration, the HCHRRM—previously very critical of the democratic deficiencies of the law

(2007)—adopted a contradictory decision that each of its members and candidate members should file a Statement of Non-collaboration with the Secret Services (2010a, b)—even after Article 34, concerning the lustration of NGOs and religious groups, was abolished by the Constitutional Court. As formulated by Najčevska, it seems sometimes that regarding lustration, Macedonian civil society has “lost its compass” (2010). Furthermore, regardless of the constitutional revision of the law, lustration has won some more battles within the civil society sphere: in 2011, for example, members of different religious organizations such as the Macedonian Orthodox Church and the Islamic Religious Community supported the lustration of its members (Islamic Center 2011). The support for this measure was also recently expressed by the Macedonian Association of Journalists (МПЦ Нема Против, ИВЗ Молчи 2011), which earlier, in 2007, had denounced it as means of political pressure on journalists critical of the government (Vojnovska 2007).

Finally, civil society has also been criticized for initiating the debate on lustration too late—thus allowing for manipulation of the secret services’ archives—and for having missed the opportunity to prepare the Law well, and thus for contributing to its professionalism and success. Regarding this issue, Koteska points out the failure of Macedonian civil society to address the need of transitional justice in due time.

As for transitional justice, I am also critical of FOSM and their contribution to the process. They have not opened the issue of transitional justice in time. (...) There were funds for transitional justice at disposal at that time and they did not use them. Also, by not tackling this issue, they left it in the hands of other people that have approached it more roughly. (...) And now, maybe also as a consequence of this failure to act timely, lustration is being used against them, as a boomerang effect (personal communication, September 23, 2011).

## The Role of Individuals and Human Right Activists

Engaged intellectuals and human rights activists played a crucial role in the debate on lustration. In this regard, the former director of the HCHRRM, Najčevska, taking part in public discussions, writing in the press, but also regularly publishing on her blog, has been one of the most active ones in denouncing the law, although her father himself was a victim of the Communist regime. On her blog, Najčevska (2007) argued that, instead of lustration, Macedonian society should use established judicial procedures—that respect the presumption of innocence and the clear distinction between informants and perpetrators of crimes or human rights’ violations—accompanied by a precise file expertise. Additionally, in the petition contesting the law that she, together with Filipov, submitted to the Constitutional Court, she has pointed out its unconstitutional and antidemocratic aspects and asked for its annulment (Najčevska 2011b). According to Najčevska (2011c), lustration has also been used as an instrument for intimidating citizens, allowing a prolonged period of control over them and depriving them of concrete civil rights.

### *Lustration and the Oblivion of the Victims*

Reflecting and writing on lustration, another human rights activist, columnist, and member of CEM, Žarko Trajanovski, argues that post-Communist transitional justice is a far more complex process than its Macedonian translation into a simple Law on Lustration. Furthermore, this engaged intellectual claims that the Macedonian law, which does not conform to the recommendations of PACE (1996a, b; 2006), has, in fact, not much to do with transitional justice, as it makes the victims fall into oblivion (personal communication, September 30, 2011).

In his public argumentation, Trajanovski points out what he considers to be one of the principal failures of Macedonian lustration: by focusing on secret informants and collaborators, who are not the key figures in the process of violation of human rights, the Law on Lustration—that is, relying on the files of members of the secret services that have not yet been lustrated themselves—pursues only the “small fish” who, in some cases, were victims of the same secret services and were forced to collaborate. Consequently, according to him, the Law reproduces the same scheme: “Basically, today we are facing a lustration conducted by the non-lustrated services of state security, who are one of the principal violators of human rights, while the guilt is transferred to those whom they have sacrificed. In this respect, we could ask if this Law was in fact a law on amnesty of the true perpetrators of human rights violations” (personal communication, September 30, 2011).

However, the greatest failure of Macedonian lustration, in Trajanovski’s analysis, is that it has completely put aside the victims. Instead of the misused lustration, which has muted the prosecuted, he considers that Macedonia needs a law on rehabilitation and financial compensation of the victims of the Communist regime. For him, lustration, without those two other crucial laws, represents a profound lack of understanding of the process of transitional justice. In this respect, Trajanovski formulates a general critique of the actions of civil society organizations in regard to transitional justice, as none of them really tried to hear the needs of the victims, to approach, to encourage, or to empower them (personal communication, September 30, 2011).

Furthermore, Trajanovski points to an important issue concerning the contradictions of Macedonian lustration, and that is the fabricated nature of the secret files. As also argued by some secret services employees within the debates on lustration, one of the principal tasks of these services is to produce collaborators and informants, even if sometimes the latter or the files are entirely invented (CEM 2011a). Consequently, Trajanovski stresses that this fictional dimension of the files, on which the lustration procedure relies, questions its objectivity (personal communication, September 30, 2011). Prolonging his reflection on the moral and legal controversies underlining transitional justice, Trajanovski analyzes the latter as intervening in transitional societies where confidence in the institutions of the system and in justice has been lost. According to him, that is exactly the current situation that Macedonian society faces today: it has lost that confidence, particularly because lustration has been transformed into an instrument of injustice (personal communication, September 30, 2011).

## ***Communist Intimacy and Transitional Justice: Constructing more Complex Memories of the Past***

Joining the reflection of Trajanovski on those who have been forgotten in the process of lustration, theorist and writer Koteska, daughter of a poet persecuted by the Communist secret services and imprisoned for 5 years, was one of the first to address publicly the issue of the unrecognized victims of the Communist regime. She was one of the first to affront the taboo of the totalitarian past and to speak publicly on her personal trauma caused by what she considers as the deeply provincial version of Macedonian Communism. In this respect, *Communist intimacy* (2008), by dismantling the sacrificial mechanisms of communism, represents an important contribution to transitional justice. With her book, Koteska primarily addresses the victims and tries to encourage them to cope with the past in search for recovery: "My basic premise was that if the post-communist states want healthy nations, they have to psychoanalyze themselves extensively, in order to know what happened to them and where they are now. So I invited the children of the former political prisoners to open the communist files they kept at home" (Koteska and Prueber 2011). Koteska also argues that the numerous public reactions to her book prove the need of people to speak about Communism, as this subject remained suppressed. This has created "traumatic pockets" within people, and, to this end, she wrote her book to resist the "cultural and political amnesia" where decades of history have been erased from the collective memory of people (Koteska and Galevski 2008).

*Communist intimacy* was published the same year the Law on Lustration was adopted. In that respect, the book was also criticized for putting accent on the informants as the principal villains, while denouncing some important personalities from the political and cultural Macedonian establishment for having cooperated with the Communist secret services. Yet, clearly distancing herself from the political and personal revenge that, according to her, was enacted by the Law on Lustration, Koteska argues that her intention was not to propose a "list of persons to kill," but instead to offer a critical analysis of the engineering that allowed the installation of Macedonian Communism: "It was not the informants that were my primary subject, it was the system in whose name they operated" (Koteska and Galevski 2008). Additionally putting Radomir Konstantinovic's reflection on provincialism and nationalism (1981) at the center of her work, Koteska focuses on the specific mechanisms of Macedonian Communism that she describes as a mixture of the tyranny of provincial minds and secret services. Furthermore, she identifies the latter as still moving contemporary Macedonian society and its lustration.

Positioning herself on the antipode of the Law on Lustration, perpetrating the spirit of authoritarian provincialism and provoking paranoia within people, Koteska calls for a lustration that she sees as "non-revolutionary and legal, allowing the opening of the Communist archives in order to understand the past" (Koteska and Stanković 2008). In this respect, criticizing the restricted access to the secret services archives that is still in force in Macedonia, Koteska outlines transparency as the essential condition of a successful lustration: "As a scientist, still for me, the

unresolved question of the archives is crucial, and again with this Law on Lustration the principal problem remains—somebody still mediates the past, in this case, the Commission” (Koteska 2008, p.76). Reaffirming, more recently within a public debate, her criticism against the Law on Lustration, Koteska repeated her conviction that the non-selective publication of the files, in the spirit of Wikileaks, is crucial in order to fight against the secret services logic. On the same occasion, she stated that it was definitely too late for lustration in Macedonia (CEM 2010). Still, Koteska considers that it is not too late for a confrontation with the past, confrontation that should have historical and scientific value, not a political one (Koteska and Pureber 2011).

*Communist intimacy* was thus written searching for the answer to the question of what kind of reconciliation is still possible for those who were the children of the Communist system and the parents of this one (Koteska and Pureber 2011). In Macedonia, there are around 15000 persons who possess personal files as victims of the secret services (Koteska 2008, p.12). Yet, Koteska does not pretend to speak on the behalf of all the victims, since, as she says, every story is different, and mass crimes do not have a simple or unique solution (personal communication, September 23, 2011). It is in this spirit that *Communist Intimacy*, as argued by Koteska, was written as a part of the reconciliation process, “not in order to force people to forget their happy memories about the Communist past, but to help them render those more complex, and to place them next to the memories of those people amongst them, that were less happy” (Koteska and Galevski 2008).

In this respect, outlining the complexity of coping with mass crimes and trauma, Koteska’s book represents a precious contribution to the field of transitional justice, and by also opening our memories of the Communist past to its unrecognized victims and thus acknowledging their right to grieve publicly, it indicates a possible path to recovery and collective reconciliation.

## Conclusion

In this chapter, I have considered the difficulties and deficiencies of Macedonian lustration. Drawing on examples, I have explored the way in which it has failed to respond to the normative goals of transitional justice and rapidly become an object of political manipulation. As argued by Teitel on lustration “in fledgling democracies, where the administration of punishment can pose acute rule-of-law dilemmas, the contradictions to the uses of the law may become too great” (2003, p.77).

In this regard, Macedonian lustration has been qualified, entirely or partially, by different experts, members of the civil society, and by the Constitutional Court as violating the rule of law and human rights. The implementations of the Law provoked moral and legal controversies and debates on whether this process sustains or undermines democratic transition. Najčevska has outlined the dangers of the Law on Lustration as a measure of “exceptional justice” that allows for a verdict and a loss of concrete citizen rights without a trial. In this respect, Macedonian lustration,

with its disturbing consequences for local justice and democracy, seems to reinforce the already existing dilemmas related to transitional justice initiatives. Lustration, in a broader sense, has been often criticized for creating divisiveness and excluding some people from the first category of citizenship (Sadurski 2003, p.6; Teitel 2000, p.98). This deficiency has shown as even more acute in a deeply politically divided society such as Macedonia.

Furthermore, in this study I have highlighted the particular difficulties of late lustration, which has shown serious failures in others post-Communist countries as well. As it has been argued, those difficulties are greatly linked to the crucial issue of access to archives of the secret services. The later file access has been granted, the greater the possibility of the archives being tampered with and manipulated, and thus the lustration process being discredited.

Additionally, in my analysis I pointed out that the crucial problem in the Macedonian case is the non-lustrated secret services on whose “corrupted” archives lustration relies, and which, consequently, continue to control the process. Lustration has lost its credibility since it has become clear that some of the secret files might have been entirely invented. This implies that, when rethinking lustration, we have to take into consideration the unreliability of the secret files and their constitutional fictional dimension, which seems to enlighten the inherent contradiction of this process more generally.

On the other hand, as noted by Hinton (2010, p.17) “transitional justice is a tool that, despite its limitations, can still potentially bring about positive social change, particularly if it more fully takes account of justice and locality”. In this regard, even if Macedonia’s late lustration seems to have failed in respect of universal transitional justice goals, it has still outlined the complexities of the local application of this tool. I argue that those revealed difficulties and contradictions, at the same time, could contribute to the enrichment of transitional justice field by bringing it closer to realities on the ground.

Furthermore, Macedonian lustration has shown the crucial role that civil society has in monitoring of these processes and in rethinking transitional justice permissible goals. As stated by Bell (2009, p.17), transitional justice ends require that “they be constantly argued and won throughout design and implementation”. In this sense, local actors have played an essential part in correcting Macedonian lustration. Trajanovski denounced thus the Macedonian lustration as being wrongly targeted towards the informants, masking the ones principally responsible. Joining Trajanovski’s argumentation, this chapter has also outlined the need of a law on rehabilitation and financial compensation of the victims of communism, who have been completely forgotten by lustration.

Finally, this study has noted the precious contribution to Macedonian transitional justice also coming from personal testimonies, as in the case of Koteska, the author of *Communist intimacy*. Resisting political, historical, and cultural amnesia, Koteska, with her book, copes with the repressed totalitarian past in search for recovery. In this respect, I consider her engaged efforts toward collective reconciliation as also enabling us, her readers and listeners, to enrich the memory of our common Communist past by the memories of its unrecognized victims, rendering it more complex, more inclusive, and thus more just.



Reflecting on the important challenges that transitional justice faces today, Bell writes (2009):

The deep justice project is one in which all must participate jointly, with: awareness of the contingency of their own positions; a willingness to negotiate justice while adhering to a belief that justice has a normative core content capable of delivering meaningful change in people's lives; and a conscious sense of how much is at stake in the negotiation (p.27).

In that sense, finally, it is precisely with their shared contribution, resisting, and correcting the authoritarian abuses of lustration, but also rethinking and reshaping transitional justice scope, that truly committed civil society actors have helped Macedonian citizens not to forget what meaningful justice should and could be.

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## Chapter 5

# How Activists See Civil Society and the Political Elite in Bosnia: Relevance to Prospects of Transitional Justice

Eunice Castro Seixas

### Introduction

Between 1992 and 1995, Bosnia–Herzegovina (BiH) was devastated by a war in which serious crimes under international law were committed, resulting in mass killings and a large number of refugees. Following this ‘bloody war’, it was widely recognized that some kind of process for dealing with the past is vital to help communities recover from the wounds of the war and move towards a culture of peace and justice. This process has recently been labelled as ‘Transitional Justice’. In this chapter, I argue for a bottom-up and contextualized conceptualization of transitional justice, which takes into consideration a multiplicity of local voices at the grassroots level. Non-Governmental Organizations (NGOs) in BiH are important actors in democratization and peacebuilding processes. They represent multiple voices whose discourses and practices can have great relevance for the building of a contextualized and bottom-up approach to transitional justice. The purposes of this chapter are: to critically explore the representations that NGO members hold regarding some of the main actors in BiH, civil society and the political elite; and to discuss the impacts for the prospects of justice and peace in the country. How are these actors perceived in the NGO world? Are they considered legitimate political or moral authorities to promote peace and justice? What are the consequences of these representations for Transitional Justice in BiH? These are the main questions considered in this chapter.

The structure of this chapter is as follows: I begin by presenting a review of literature regarding the conceptualization of transitional justice and its relevant actors; then I provide a description of BiH actual context; and subsequently I argue for the relevance of a view from the grassroots, which includes an analysis of how the main

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actors involved in transitional justice in BiH are discursively represented by NGO members. Afterwards I present my methodological approach and my data, followed by a discussion of these and final concluding remarks.

## **The Conceptualization of Transitional Justice and the Expansion of Relevant Actors**

Transitional Justice has been defined as ‘measures that are implemented in order to redress the legacies of massive serious crimes under international law’ (De Grieff 2010:2) or as ‘the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation’ (UN 2010: 2). These conceptualizations of transitional justice have several inherent problems. One is the tendency to identify transitional justice with a pre-defined list of measures, organized hierarchically into core and secondary elements, and supposedly linked to abstract and consensual notions of justice and peace. It is therefore necessary to critically examine the values and premises that support each and every approach to transitional justice, and to clarify the concepts of justice, peace and reconciliation in use, as well as assumptions about the nature of the social reality in which one is intervening, including how that reality may change. An important aspect of social reality that the preceding definitions do not take into account concerns the actors involved in transitional justice. Who designs and implements these measures? How are these actors perceived in the community? Are they granted legitimacy as political or moral authorities capable of promoting peace and justice? I suggest that these are fundamental questions for building a bottom-up, contextually grounded and emancipatory approach to transitional justice.

As the concept of transitional justice has evolved, it has become less focused on the role of states compared to its early phases. It has become more complex, integrating various levels of analysis (international, national and local) and different actors, including states, IGOs, NGOs, epistemic communities and global policy networks (Crossley-Frolick 2009). These important changes in the conceptualization of transitional justice are described and analysed by Teitel (2003) as part of a proposal for a genealogy of transitional justice. This proposal is structured along critical political cycles, divided into three phases. Phase I, in the post-war period after 1945, reflects the importance of international law in framing transitional justice, and has the Nuremberg trials as its most recognized symbol. This first phase of transitional justice was associated with interstate cooperation, war crime trials and sanctions, and ended soon after the war. With the post-Cold War transition began Phase II of transitional justice, which was associated with a period of growing democratization and political fragmentation. Because the form of transitional justice emerging in this period was linked with the rise of nation-building, it tended to rely on more local understandings of the rule-of-law, which stood in tension with a more transnational conception of justice.

According to Teitel (*ibid.*: 78), this post-Cold War model of transitional justice constituted a critical response to Phase I, but was not suitable for the globalization period and the interdependence of national and international politics. The contemporary and third phase of transitional justice, that emerged by the end of the twentieth century, has been associated with globalization, heightened instability and violence. Importantly, the relevant actors also changed ‘from those with legal and political authority to those with moral authority in civil society,’ including churches, NGOs and human rights groups (*ibid.*: 83). The contemporary phase has encompassed a whole new range of actors, at local, national and global levels, and likely increased tensions amongst those.

The current evolution of the transitional justice discourse, as it is associated with globalizing politics, implies a complex interaction of the international, national and local. In the present dynamic political context, multiple alternative forms of transitional justice emerge, involving a range of international, transnational, national and private settlements (Teitel 2002: 899).

The multi-level and multi-actor nature of transitional justice requires an examination of the power relations established in discourse and social practices, between these different actors and in the integration of these different levels. In this chapter I argue the importance of analysing the representations of relevant social actors of transitional justice, specifically civil society and political actors.

### ***Contemporary BiH Context***

Since the *General Framework Agreement for Peace* (known as the Dayton Peace Agreement) ended war in 1995, BiH has been under international regulation and the supervision of the ‘Office of the High Representative’ (OHR). Since 2002, OHR has combined this role with the Special Representative of the European Union. The present High Representative is Valentin Inzko, the seventh High Representative of the International Community to BiH. The complex political structure established by the Dayton Peace Agreement to accommodate the various warring factions of BiH (Serbs, Croats and Bosnian Muslims (Bosniaks)) has divided the society into two so-called ‘entities’: the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS). The Federation is predominantly Bosniak and Bosnian Croat, while the RS is predominantly Bosnian Serb. The Constitution (Annex 4 of the Dayton Agreement) established a central government with a bicameral legislature, a three-member presidency (consisting of a Bosnian Croat, a Bosniak and a Bosnian Serb), a council of ministers, a constitutional court and a central bank. The Dayton Peace Agreement is often criticized for having transformed BiH into a shared sovereignty, where supra-national organizations implement liberal peace and market economy, leading to an increased dependency on foreign aid and a lack of ownership and accountability, either in civil society, politics or economy (see for example Bieber 2002; Chandler 2000; Jansen 2006).

Important donors, like the European Commission or the USAID, have focused their efforts and investment on democratization through a strategy of building civil society. But the building of civil society in BiH has been associated with a top-down imposition of a liberal/pluralist idea of civil society, and has led to an exponential increase of associations, presumed independent from the State and from the market (Belloni 2001).

In terms of the present political context, the 2010 elections signalled the rise of the multiethnic party, the SDP, in the FBiH. However, Nationalist parties remain highly represented, primarily the SDA party in the FBiH and the SNSD in the RS. Milorad Dodik, from the Bosnian Serb nationalist party SNSD, was re-elected president of the RS with 50.52% of the votes. It takes 14 months for the new central government of BiH to be formed, and only at that moment will a national budget be able to be approved and loans from the IMF de-blocked.

## **For a Contextually Grounded Transitional Justice Approach in BiH: A View from Civil Society**

The building of a civil society in post-war BiH has led to an exponential increase in NGOs that are presumed to be independent. The NGOs represent a multiplicity of voices including think tanks, media organizations, human rights and peacebuilding organizations and cultural associations. Although some of these NGOs have dubious links to the political elite and oligarchies, it is also true that a considerable (but unknown) number are working for democracy, human rights, peace and justice in the country. Considering the large number of NGOs in BiH, as well as their relevance to democratization and peacebuilding, it would seem natural that a transitional justice approach in BiH would focus on the multiplicity of voices at the grassroots. However, in BiH, the International Criminal Tribunal for the former Yugoslavia (ICTY) has been the key instrument for transitional justice (Armakolas and Vossou 2008; Zupan 2006). The credibility and perceived impact of the ICTY in the former Yugoslavia countries has been low. The ICTY is widely considered to have failed in promoting reconciliation in the region, and is not generally associated with justice within the former Yugoslavia (UNDP 2009: 17).

The lack of an integrative, holistic approach to transitional justice has contributed to transforming the ICTY into ‘a world unto itself,’ removed psychologically, culturally, and politically from those who would live most intimately with its success or failure (Flechter and Weinstein 2004: 33; see also UNDP 2009).

These critiques point to the limitations of a focus on international law and retributive justice, and also, to the need for a more contextually grounded approach to peace and justice in BiH. One needs to take into account the diversity of local voices in BiH and move towards a more contextualized engagement with civil society, as is argued by Kappler and Richmond (2011), in relation to peacebuilding. Analysing the diversity of local voices from the grassroots is also important to guard against

prevailing weaknesses of international community actions in BiH: romanticizing civil society; selectively reinforcing existing power structures; or failing to embed a social contract in cultural agency (ibid.).

## **Methodology**

### *Design*

To study perceptions and analyse discourses, the following qualitative methods were used: in-depth qualitative face-to-face interviews with members of human rights NGOs, ‘ethnographic’ observation<sup>1</sup> and document analysis (NGO reports and other documents, news related to human rights activities, etc.).

### *Setting and Sampling Strategy*

The setting of the research is BiH, and specifically the cities of Sarajevo and Banja Luka. These were chosen because they are the capital cities of each of the entities of BiH, the FBiH and the RS respectively.

The sampling strategy was based on making use of several sources—enquiry within my host institution, research within academic documents (Masters thesis on the subject) and use of World Wide Web search engines—to develop a list of the most active/important human rights/peacebuilding NGOs. Due to the difficulties in reaching subjects through email and institutional contacts, I used the snowball sampling technique or ‘respondent-driven sampling’ (Salganik and Heckathorn 2004), asking interviewees for further referrals. I also engaged the help of a Sarajevo journalist to establish some of the contacts.

### *Data Collection Techniques*

Data collection was primarily based on in-depth interviews with representatives of human rights NGOs. Open-ended questions covered the following topics: the history of each organization; its major goals and frameworks; major achievements and obstacles/difficulties; relationships with donors and the influence of international

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<sup>1</sup>I spent 5 months in BiH and collected my thoughts and feelings resulting from that experience in a field diary, especially in relation to conversations and interactions with locals. Although this was inspired by the methodology of ethnographic observation, it was limited by my poor knowledge of the language.



community; civil society and human rights organizations in BiH; human rights discourses in BiH and perception of the future of human rights system in BiH; prospects of reconciliation and peace in the region and ways towards reconciliation. Following informed consent,<sup>2</sup> interviews were recorded where possible, and later transcribed and subjected to critical discourse analysis. Altogether 23 interviews were made, 14 of them with representatives of NGOs, the remainder with other relevant social actors such as politicians, academics and students.<sup>3</sup>

Additional sources of data consisted of a field diary, where I stated my impressions, feelings and analyses during my fieldwork, as well as other relevant documents (NGOs reports and other material, news, surveys, economic data from each country, etc.).

In this chapter, I focus on interviews with members of NGOs. However, I then refer to the data from the other interviews as well as from the ethnographic observation as a way to triangulate these findings during the discussion.

### *Relationship Between Researcher and Participants*

The majority of interviewees did not have any objections to their interviews being recorded. The fact that neither I nor the interviewee was native speaker of English was taken into consideration in the analysis, by focusing more on the ideational meanings than on the formal linguistic aspects of the text. Also, as a way of dealing with possible language bias, during the interview I consistently reformulated the key ideas (including feelings) I had gleaned from my interviewee's responses in order to verify my understanding.

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<sup>2</sup> Before each interview, I briefly explained the purpose of my research as part of my PhD studies at the University of Coimbra (Portugal), and assured interviewees that data would be used solely for the purposes of my research and in an anonymous way. Then, I would ask their permission to record the interview. Interviewees were encouraged to express their personal opinions and hence they may not represent the position of the NGO they are working for.

<sup>3</sup> Within the FBiH, I interviewed members of the following NGOs: the International Crisis Group (ICG), Transparency international BiH, Wings of Hope, Nansen Dialogue Center (NDC), Youth Information Agency (OIA), a member of both Scouts of BiH and Youth Press of BiH, a member of the banks' Syndicate; a Judge working for USAID Justice Sector Development Project II, Sarajevo; a local journalist working for the UNDP; a local journalist working for the Center for Media Development and Analysis; a member of the Association Pravnik and a former member of the Helsinki Committee for Human Rights in BiH. Within the Republika Srpska I only had time to conduct four interviews, all in Banja Luka: with representatives from the Helsinki Citizens' Assembly (hCa) Banja Luka, the Centre for Informative Decontamination of Youth, with one local journalist working for Radio Free Europe, and with one of the political advisors for the Office of the High Representative. Given the aims and framework of this study, variables such as age, sex and ethnicity were not considered as a priori categories. The urban focus of the research as well as the imbalance between the number of the interviews in the two entities is acknowledged as constraining the generalization of the results.



## *Analysis*

The analysis followed a critical discourse analysis approach, using the framework and categories proposed by Fairclough (2003). In this chapter I focused on 'styles' or identities, specifically, the representations of civil society and the political elite and also gave particular attention to the way difference is represented as related to these identities.

## **Results**

### *Representations Concerning People and Civil Society*

Amongst the interviewees, 'people' and civil society in BiH were often represented as apathetic, lacking initiative to participate in the social and political life, and unable to take responsibility for their actions. A widely expressed explanation for this apathy was that people do not believe in the possibility of change in the country, and hence, their actions and activism cannot bring any change. In some discourses, this passivity was linked to the previous socialist mentality. In other discourses it was linked to a fear of consequences. Often these discourses were presented with a strong, angry, frustrated or resentful emotional tone. Within this representation of people and civil society, there were however important differences, contrasting urban and rural environments and also younger generations with older generations in BiH.

For instance, according to the representative of Transparency International BiH (TI BiH):

And citizens are completely apathetic because after 16 years it is obvious that nothing significantly has changed in this country.

That was the biggest challenge for civil society, how to convince the people that they are part of civil society too.

In this discourse, 'citizens' and 'people' are used interchangeably, and 'civil society' is presumed to be linked to a more active role in society, encompassing both NGOs and 'people'. The problem of convincing people that they also are part of civil society is seen as the biggest challenge for civil society (including for TI BiH). This is also increasingly difficult because, according to this interviewee, Bosnia has no tradition of civil society. The apathy of people is thus linked to both the lack of real change in the country in the last 16 years, which causes disbelief that changes are possible, and a lack of civil society tradition in BiH.

Another complaint of the apathy of people comes from a member of the 'Center for Decontamination of Youth Banja Luka' (CID Banja Luka):

Now our target group is people between 25-40 years old (...) People are keeping in silence, not voting, not participating in civil society, there is a kind of apathy.

This evaluation of peoples' attitudes as apathetic is linked to the mission of the NGO. But the association between the lack of change in society and the mentality/attitude of the people appears also less explained by the passivity of people than by their nationalist attitudes, as expressed elsewhere by the same interviewee:

Our society doesn't want any kind of changes, they want to be separated, that is the biggest problem (...) Everything is the same, we don't have reasons to celebration, maybe if you come to BiH again in 5-6 years and you can't find us, maybe something can change.

The interviewee expressed frustration and anger (noticeable also in their tone of voice), and again portrays BiH as a place of no change because 'society' *does not want any kind of changes* and prefers to be *separated*. 'Society' as used here is linked to the pronoun 'they', which suggests the interviewee's efforts to distance himself and the organization. In the last statement 'we' relates to the organization and thus affirms the value of its work against the prevalent nationalist mentality.

Another example of this discourse linking 'people' to a passive and even lazy mentality is one that argues that 'people are the problem' of the country. In the words of a local analyst working for the International Crisis Group (ICG):

People are the problem because they don't understand it's really their problem and it's up to them, not just politicians.

This relates to the previous idea that people are not convinced that they are civil society too and that they also should take an active role in society alongside politicians and NGOs. This interviewee refers to this mentality as linked to the previous 'socialist mentality' that was held responsible for the perception that *many people don't feel to be in control in their own lives*. Instead of a feeling of agency, there is a recurring victimization of everyone. At the same time, the interviewee attempts to establish a distinction between himself and the majority of people (especially the younger generation of BiH), by stating that, for him, it was never an option to do nothing, while the majority of people in BiH live their life according to the Bosnian saying *You can never pay me as little as little as I can work*.<sup>4</sup> He also expressed resentment regarding the way that he feels that young people in BiH regard him.

The only thing that for me was never an option was to sit down and do nothing; that was never an option.

They (young people) see my salary, my car, but they don't see how much I work.

This idea that people in BiH complain but fail to take initiative, do not want to work to improve things, and resort to victimization, is common, and emerged also in my interviews with representatives of foreign NGOs. For example, an interviewee from the United States working at the NGO Center for Women and Youth Development c/o Wings of Hope BiH stated:

They complain but don't want to do nothing.

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<sup>4</sup> In the original Bosnian language this saying is: 'Ne možeš me platiti tako malo, koliko malo ja mogu raditi'. The translation to the English language was made by my interviewee.

In this statement ‘They’ refers broadly to ‘Bosnians’ in a general, homogenizing, and essentializing manner. This sits in contrast with the portrayal these activists give of their project participants, a group of teenagers described as an educated and a ‘special’ group who do not represent the majority of the Bosnian.

Similarly, an American judge working for USAID mentioned the reluctance of Bosnians to take responsibility for their actions. Although this statement is presented with some modulation (*seemed to be*), it is contradicted by the expression *a lot*.

There seemed to be a lot of reluctance to take responsibility.

At the same time, my interviewee recognizes the structural obstacles for those who want and try to take responsibility for their actions, referring to the post-Dayton governmental multi-level structure:

A structure that frustrates those who try.

At the end of the same interview, the respondent acknowledged the efforts of the Bosnians, but at the same time, took a moral standpoint, evaluating Bosnians as deserving of American help.

They (Bosnians) are courageous and they are trying to make things better and they deserve our help.

In this evaluation, the opposition between ‘they’ and ‘us’ is noticeable, placing ‘us’ (which in this case is an ambiguous term that may represent the USAID, the United States or even the international community) with the power to morally judge the Bosnian ‘other’ and to decide if they do in fact deserve help.

Fear is another explanation given for the passivity of civil society in Bosnia, as one can see from the statement of a member of the NGO ‘Center for Media Development and Analysis’:

If you are scared for your life you won’t be interested in activism.

Insecurity and fear as explanations take the blame away from the citizens, focusing attention instead on those who contribute to promote fear and insecurity in society.

Although negative representations of people and civil society as ‘lacking’ (strength, initiative, responsibility, etc.) seemed to prevail, some interviewees also expressed more positive representations. There was, for instance, a more encouraging representation of ‘the people’ of BiH, one linked to a temporal relation of difference, contrasting the time immediately after the war to the present time, and focusing on the change of mentality for the better. For example, my interviewee from Helsinki Citizens’ Assembly (hCa) Banja Luka, when asked about the major achievements of the NGO, stated:

Maybe the change in the attitude of people. After the war it was really hard.

Her statements show a relationship of difference contrasting two moments: after the war and now. The change in the people’s attitude is mostly noticeable in their perception of human rights NGOs. There is also a narrative which legitimizes this

claim, when my interviewee proudly told me about a fundamental social event: the first inter-ethnic meeting of women after the war in 1997, which was organized by the Helsinki Citizens' Assembly (hCa) Banja Luka:

We organized one of the first meetings between Serbian, Croats and Muslim women, inter-ethnic, in the early beginnings. That time it was quite dangerous, really.

NGOs were seen as traitors, spies for IC, money laundry—after the war that was the perception. (...) It is now different.

This idea is reinforced by other activists' accounts of the perception of the human rights NGOs in the past. For instance, a former member of the Helsinki Committee for Human Rights in BiH gives the following description:

We had all kinds of problems, all kinds of labels, during these 15 years, we were accused of working for Milosevic, for XXX for the international community (...) all kinds of labels that were possible.

The same interviewee states that:

What is clear is that civil society is not at this point as strong as to be able to make the difference. But it is becoming stronger and stronger.

There is thus an accent on the positive developments of civil society, while acknowledging that civil society is still not capable of making a difference in BiH. The same interviewee also describes how civil society in BiH started as an anti-war movement, active both during and after the war, and has played a crucial role in social support and protection of women and victims' rights. But most important, civil society is seen as fundamental in promoting the idea of a multicultural 'fourth Bosnia'.

Interviewee: Civil societies as well as multiethnic parties were kind of trouble makers. Because we were coming up with a new concept. They prefer the concept that there are 3 parts in Bosnia; there are Serbs, Croats and Bosniaks. But no, there are also citizens! We come with a more complicated idea, yes of course the respect for the 3 ethnic groups, but it's not the only basis for a country, has to be also a country of citizens, of a real democracy and ethnical rights cannot block all the reforms.

Interviewer: Actually maybe you're saying that international community in Dayton kind of neglected ideas from civil society?

Interviewee: Exactly, exactly! They considered that Bosnia is only what they heard from nationalists. What we call the fourth Bosnia ...

Interviewer: The 'fourth Bosnia'?

Interviewee: The fourth Bosnia, a Bosnia that is European that is not infected by nationalists, that is cherishing human right values, democratic values so on. We are the results of elections, these are the winners, and these are the losers. ... And that was a suicidal idea.

This strong critique to the international community in BiH ('They') who, according to my interviewee, considered civil society a 'trouble maker' and neglected the multiethnic idea of a 'fourth Bosnia', clearly states the importance and trust in civil society as a force to promote democracy, multi-ethnicity and multi-culturalism. The international community in Dayton is accused of taking the simplest option, by negotiating with nationalists and ignoring the 'more complicated idea' coming from civil society. Also, there is a strong critique of the idea that democracy is only about elections, while human rights and democratic rights are not being cherished.

## *Relations of Difference*

Civil society is not always represented in a homogenized or essentialized manner and some fractures are visible in the discourses of my interviewees. There are two main relations of difference regarding civil society: one contrasts urban vs. rural civil society; another establishes a difference between the younger generation and the older generations in BiH.

### *Urban Versus Rural Civil Society*

Civil society in the urban area is often contrasted to civil society in the rural area, in which the latter is described as weak and showing a lack of initiative and support. There is the assumption that cosmopolitanism is necessarily urban. Here is one example from an interview with a former member from the Helsinki Committee for Human Rights BiH:

Interviewer: What about CSO (Civil Society Organizations) or movements in the rural area?

Interviewee: Civil society is very weak in the rural area. There is a lack of initiative, there is a lack of support, but there is also a very strong pressure on the part of the government.

Interviewer: So, they don't have a chance. It's like CSO only have a chance in a multi-cultural environment.

Interviewee: Exactly, Exactly. It doesn't mean we are better here no, but it means the atmosphere is much better.

### *Younger Generation Versus Older Generations*

The accentuation of difference between the younger generation in BiH compared to the older generations is usually framed as 'the problem of the younger generation', who grew up in BiH after 1992 and hence in a divided society. A local journalist working for a media organization in Sarajevo ('Center for Media Development and Analysis') explains this in the following manner:

From 1992 till today, everyone younger than 20 years is brainwashed. It's completely different system of values, of education. Those kids never lived together with other ethnical group. Those kids, they don't have firsthand experience in living together. Day by day in the family, in the school, they are just listening how the other are cheating them, how the other are the enemy, how the others are prepared to kill them. I am really scared what is in the minds of those kids.

If you tomorrow have a very high tension, those people will start a fight. (Interviewer: The young people?) The young people. Who is going to war? Only young people go and fight to die. Who has ever sent pensioners to work? (laughs) You need the young people, Young people are easier to manipulate. They want to prove themselves. And if you create an atmosphere that they are heroes and so on they will be very happy to go to work.

This interviewee is clearly expressing his concerns and even fear regarding the future in BiH, when the older generation disappears and the country is left to this generation that grew up during or after the war, with a totally different value system.

Another journalist working for Radio Free Europe in Banja Luka makes similar claims although he adds, perhaps as an excuse or explanation, that the youth are depressed:

Youth is depressed and divided by ethnical lines.

We have already seen how the younger generation is sometimes accused of being lazy and unwilling to work for the fulfilment of their objectives (cf. *supra*). Nevertheless, in one case, the younger generation was mentioned in a positive sense, by an interviewee from the NGO Pravnik:

We them (young people), we still have hope.

The idea expressed here is that with the young there is still hope possibly because there is still time and enough opening/flexibility to change.

### ***Representations of the Political Elite***

The political elite were represented exclusively in a homogenized and negative way, as the main group responsible for the lack of progress in the country and for creating a divided society, unable to reach any consensus and interested only in remaining in power and keeping their own benefits. In these representations, difference is accentuated between the interests of the political elite vs. people's interests; the 'political life' vs. the 'real life'; the politicians vs. the NGOs.

For instance, a member of the Pravnik organization mentioned the existence of strong political differences and nationalist ideas that divide society and create an obsession with three-sided approaches.

If you are watching like media or reading newspapers we still have strong, strong political differences and really strong nationalistic ideas that are running the country. And division doesn't really help that much and also to me to have everything divided in the country (...) You know those are all the signs that we are pretty much obsessed with, you know, with three-sided.

The idea that information in BiH is always influenced by a nationalist framework was also suggested by an interviewee from USAID:

I don't think they (people in BiH) have a lot of information and the information they have is colored by their ethnical group (regarding public acceptance of the justice system).

The same interviewee also refers to the election year (2010) as the most difficult period to bring about change because politicians were afraid to take controversial decisions which might have harmed their campaigns.

And then, this year has been really, really frustrating because it's an election year. They are afraid to do something that may be controversy. So, it's really a difficult time to make changes.

The representation of the political elite often elicits anger, as noticeable in the statement of the interviewee from the ‘Youth Press of BiH’, regarding the problem of visa restrictions in 2009.

I am very angry about this, with our politicians.

The politicians’ image seems to be linked to the blocking of any reforms or important changes in the country. Lack of political will is another common way to refer to this problem and this is linked to the manipulative strategy of accusing others to distract attention from the serious questions, as an interviewee from Transparency International suggested:

It’s obvious the lack of political will. And they are using these accusations and threats against TI in order to distract attention from other serious questions.

### *Relations of Difference*

Relations of difference concerning politicians accentuate differences between these social actors and civil society actors. For instance, a member of the Helsinki Citizens’ Assembly (hCa) Banja Luka suggests that the nationalist political discourses do not represent the ‘real life’ and social relations. The ‘political life’ is thus contrasted to the ‘real life’.

There is difference between real life and political life, in reality there is pretty good cooperation, not in every sphere—people that return to their houses they still have trouble finding a job; now you can travel everywhere (...)

Although it is acknowledged that cooperation is not generalized to all spheres, the activist gives examples from her work in the hCa Banja Luka, reporting, for instance that:

From all this period and work with women I never noticed any kind of animosity (...) There are issues that are common to women.

On the other hand, she sees political discourses as almost unchanged since the end of the war and still influencing people:

But the political national discourses are almost the same, haven’t changed and people are influenced by these discourses, hate speeches.

As ‘political life’ is contrasted to the ‘real life’, so the political leaders are contrasted to the people of BiH. The political elite are represented as working for their own interests and against the people, as was stated by the interviewee from the International Crisis Group:

Political leaders first and foremost represent their political parties’ interest; political leaders are working against the BiH population.

There was one exception: the interviewee from the Radio Free Europe, at Banja Luka. Instead of accentuating the difference between politicians and the people of BiH, he diminished this difference, by putting these actors on the same level:

I hope people will have a better government that they deserve.

This is a strong statement, one that can be associated with the previously analysed discourse portraying people as ‘the problem’.

Additionally, one can also find an accentuation of difference between politicians and NGOs in BiH, with the two groups perceived as working for opposite objectives. An example is when a member of the NGO Youth Information Agency (OIA) contrasted the objectives of OIA to those of BiH politicians. One could schematize this relation as the following:

Politicians	OIA
Nationality discourses	Unite people
Make differences	

That’s what politicians say, you know. We want to change that and connect people again. We just want to change the political atmosphere; because what they are doing (...) doesn’t work, you know? We still need visa to go from one place to another (...)

The idea of change as a goal appears here in a pronounced way: to change the nationalist discourse, change the political atmosphere and unite people. The activist identifies himself with the NGOs, and there is a clear opposition between ‘we’ (the NGOs) and ‘they’ (the politicians).<sup>5</sup>

Real threats to the security of NGO members are the most serious sign of this ‘struggle’ between politicians and NGOs fighting for human rights, as the interviewee from Transparency International BiH shows, in his reference to Milorad Dodik’s accusations against the NGO and the resulting temporary suspension of their activities in Banja Luka.

That was a very problematic thing when we were forced to suspend our activities in Banja Luka. He officially admitted that his advisors and he personally collected evidence against us.

Yes, the question is resolved after IC reacted (...) And this stopped in such drastic way But for example last year Dodik adopted official document about conspiracy against RS, international conspiracy. (laughs) That was not very pleasant. We ask ourselves after that what is the next step? I mean to arrest us or? What? (laughs)

From these statements it is clear that the problem has not been resolved and the NGO still expects to be the target of further threats in the future.

## Discussion

The findings of this research reveal that civil society actors hold negative views of the Bosnian political elite: politicians are distrusted, seen as working for their own interests and blocking the possibility of positive changes in the country. Furthermore,

<sup>5</sup> In 2009, the problem of visa restrictions impeding BiH citizens from travelling to the EU was a prevailing concern.



they continue to be linked with the promotion of nationalist discourses and even pose security threats to civil society actors. As transitional justice presupposes an agreement between the three ethnic political elites and a certain degree of trust in the politicians, this representation may be considered a serious obstacle to transitional justice in BiH. These findings were corroborated by data from ethnographic observation and interviews with other social actors. Popular jokes concerning local politicians also indicate the amount of distrust, and sometimes anger, attached to these actors.

Civil society has more complex and nuanced representation, although most of the associations are also negative. 'People' and 'civil society' in BiH are often characterized as passive, apathetic, weak, depressed or lazy. Nonetheless, there are relations of difference in terms of the generations and rural vs. urban area. There are also some positive representations: descriptions of progress in people's mentality compared to the period immediately after the war; showing that even during the war, civil society was linked to the defense of peace and multiculturalism, although these ideas were neglected by the international community at Dayton; and expressions that civil society is getting stronger and that the political discourses do not represent 'real life'. These discourses point to the idea that some positive changes have occurred in civil society since the end of the war, but these are limited improvements are not enough to build a culture of peace and justice in BiH. Interestingly, from ethnographic observation and interviews with other actors, I also heard the opposite idea: that civil society was more active during the war. This could mean that members of NGOs, in their efforts to promote their work and show their good results, give a more positive picture of the social reality. During my fieldwork I noticed a recurrent feeling of pessimism and depression associated with the lack of change in the country and little confidence in potential changes. This feeling also emerged from the interviews and is possibly, one of the major obstacles to transitional justice in BiH.

## Concluding Remarks

The findings of this study reveal prevailing negative representations of the political elite and more nuanced representations of civil society in BiH. It seems that any hope of positive change and moving towards a culture of peace and justice in the country will happen only in spite of the political elite's lack of will and people's apathy. There is also a common belief that only in the urban area can there be any drive to change. The participation of the younger generation in any transitional justice project remains a controversial question, given the different discourses regarding the young. One interesting aspect of the results is how data from both local and international actors included in the sample were consistent. In fact, most of these representations resonate with international organizations' discourses on civil society and the political elite in BiH. For instance, in USAID Country Assistance Strategy for Bosnia and Herzegovina 2009–2013, it is stated that (author's italicization of key words):

Civil society organizations, which should be best suited to put pressure on government to reform, are weak and inexperienced, and strong, articulated public opinion is lacking to support their pressure (....) Most organizations are small and inexperienced and lack a stable domestic financial base, making them dependent on donor funding.

And also,

Only *when citizens are confident in their country's institutions* and feel that they effectively promote and protect their interests will the country reach long-term stability.

And regarding the political elite in BiH:

The presence of an international overseer, the Office of the High Representative (OHR), has ensured stability, *but has not instilled in local politicians the ability and will to implement reforms on their own.*

Thus, images of 'lacking' characterize both civil society and citizens (lack experience, size, strength, confidence in their institutions) and the political elite (lack the ability and will to implement reforms on their own). This correspondence between international and local representations surely merits further research to clarify its significance.

However, one has to remember that these representations constitute discourses and discourses are only part of the reality. If it is true that the way these social actors are represented by the members of NGOs may influence relations and cooperation, as well as subsequent transitional justice initiatives, it is also true that NGOs necessarily have to work with these actors in the pursuit of their projects. And from this encounter better things may come. Further research should focus on the social practices of the work of NGOs, specifically, in transitional justice. How are power relations between these actors negotiated in practice? How do practices influence representations and vice versa? The comparison of these practices and relations of power in urban and rural spaces would also be an interesting option of research.

Regarding representations, for reasons of space, I did not include here my data regarding the representations of the media or of the international community's powers and presence in BiH. These are clearly other fundamental actors in transitional justice. It would also be important to study local and international discourses about peace and justice and relate these to identities of the relevant actors.

As a concluding remark, I hope this chapter contributes to broaden and stimulate research promoting a contextually grounded and bottom-up approach to transitional justice, by taking into consideration the multiple voices and experiences from the grassroots.

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## Chapter 6

# The “Transitional Citizen”: Civil Society, Political Agency and Hopes for Transitional Justice in Bosnia–Herzegovina

Briony Jones, Alex Jeffrey, and Michaelina Jakala

### Introduction

Current approaches to transitional justice, while still retaining a central focus on questions of judicial responses to human rights abuses, repressive regimes and war, often include additional elements within their conceptualisation and policies. “Thicker” understandings of transitional justice (McEvoy 2008) which may include memorialisation, public apology and forgiveness connect the work of courts to a broader context of far reaching social, economic and political transformations. Increasingly, transitional justice is seen as part of liberal peacebuilding and thus connected to rule of law, good governance and democratisation processes (Sriram 2009, p.112). It is here that we come to the citizen, present in transitional justice assumptions, practices and outcomes. This chapter is concerned with the nature of the “transitional citizen”, a subject which is implied in many transitional justice interventions and in much of the scholarly literature on their framing, practice and impact. However, “the citizen” is under-theorised in the literature and remains in many ways implicit, assumed and in the background behind more instrumental discussions of the workings and relevance of particular mechanisms. It is the argument

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made here that we need to know more about the type of citizen which is implied either implicitly or explicitly within transitional justice and what this means for civil society and political agency in societies undergoing transition.

The wealth of scholarship on citizenship, which cannot be fully discussed within the confines of this chapter, addresses not only the question of which rights and obligations are bestowed on individuals but goes further into analysing the ways in which citizenship is lived, practiced and made more substantive in context by citizens themselves. Indeed, citizenship is more than a status, but is also an identity and practice, and thus something which can be claimed through struggle and contestation (Hoffman 2004, p.1; Kabeer 2005, p.1; Lister 2003, p.3; Faulks 2000, p.7). What becomes clear when reading the literature is that citizenship is in many ways a malleable concept, capable of taking on new shapes according to which voices are trying to be heard (Jones 2009, p.60). If we see citizenship as a contested space then the question of “who should be included?” (Gibney 2006) i.e. “who is the citizen?” is one of fundamental importance. The citizen can be shaped by socio-economic contexts, cultural identification, gender and sexual orientation, political structures and experiences of violence, such that it exists not only in practice (who has the status of citizen and who is able to practice their citizenship and claim the rights this entails) but also in aspiration and in imagination. In this sense the citizen can have more or less agency in shaping the substance of citizenship in context, but it can also be instrumentalised within political discourses and national myth.

In the case of conflict and transitional justice the citizen is often central but usually under-theorised. Whilst there is a developed body of literature analysing the importance of contestations over citizenship for dynamics of conflict (see for example Mamdani 2001 and Adejumobi 2001) the role of the citizen in transitional justice is not as well understood. During transition the contexts in which the citizen is defined, both in terms of the legal and political definitions of who is included and in terms of the possibilities for practicing and living such a citizenship, undergo transformations at the same time as a consensus is sought over who can and should participate in the “new” society and what form such participation should take. Looking at transitional justice interventions it is clear that there is often an underpinning assumption of social transformation through which violent individuals or groups should (and could) become willing to coexist peacefully, to observe the rule of the law, and to practice a civic virtue which connects them to each other and the state. This is a normative project of which a particular understanding of the citizen is a part.

For some, citizenship can be used during transitions as a uniting and equalising force. Porter writes of reconciliation in Northern Ireland that, “Despite our differences there is no good reason why commitment to a common citizen dignity should not translate into a common civic identity. And if we care about the society in which we live, there are compelling reasons why it should” (2003, p.172). Here the citizen is mobilised as an agent of unity and holds the promise of an identification which can transcend divisions on which violence has been based. Porter acknowledges that this is complicated in contested spaces of transitional societies but suggests that fostering civic virtues such as forgiveness, magnanimity and reasonableness can go towards it (Ibid, p.67 and p.99). A danger may come when

citizenship is hollowed out by policies which restrict active practice, as some have claimed to be the case in Rwanda. According to Buckley-Zistal (2006) a particular citizenship discourse has been mobilised by the current government of Paul Kagame, in order to force a de-ethnicisation of the public space in the name of unity whilst at the same time it supports a particular narrative of the past and future. This creates a public space in which what it is to be a Rwandan citizen is to some extent strictly controlled from the top down.

Recognising that citizenship is not only a core part of transition from violence to peace, but that it can also be instrumentalised in particular ways to achieve certain normative goals, we are prompted to ask how “the citizen” is shaped by, and shapes, transitional justice processes. There may be official policies and discourses of citizenship, such as in the Rwandan case, which link questions of citizenship to transition. But there are also the practices of citizens who themselves shape their own social and political membership in a way which is meaningful for them, and which interacts with transitional justice processes.

Van de Merwe et al. point out that actors will hold different perspectives on transitional justice which may also include “deep dissatisfaction with, and alienation from, the process” (2009, p.3). As Newman has written, “dealing with past abuses of human rights is as much about politics and trade-offs as it is about justice and accountability, especially in post-conflict and transitional situations” (2002, p.32). There has been an increasing emphasis placed by transitional justice scholars on trying to understand the nature of these contestations and the agency of citizens themselves, for example the recent edited collections on localising transitional justice (Shaw et al. 2010) and transitional justice from below (McEvoy and McGregor 2008a, b). Such work highlights the importance of context, agency and the everyday. This is important on two counts. Firstly, there is an instrumental argument: in order for particular transitional justice interventions to achieve their goals we need to understand how they will be received and reacted to by those who are the subjects of those interventions. Secondly, there is a more normative argument: it is important that those people who have been affected and marginalised by violence have not only a stake in the transition, but that their influence and agency is understood and recognised. Scholars of transitional justice have written about how discourses of law and rights tend to create regimes of truth which produce silences and legitimise certain types of speech (Wilson and Mitchell 2003, cited in Akanji 2011), and how in this way law can be complicit in a renewed disenfranchisement (Campbell and Turner 2008, p.381). With this danger in mind it is important to ask who determines the form and content of transitional justice? For whom does transitional justice take place? And how do the acts of citizens shape, and in turn are shaped by, transitional justice processes?

Questions regarding the placement of the citizen within understandings of transitional justice are cast in sharp relief in contemporary Bosnia and Herzegovina (hereafter BiH). After the signing of the Dayton General Framework Agreement for Peace (GFAP) in 1995 there has developed a tension between a liberal democratic understanding of the citizen with a civic identity which can override ethnic division, and the ethnicisation of the political space. Mujkić (2008) has described BiH as an

ethnopolis in which the citizen is first and foremost a member of an ethnic group. Voting rights, standing for political office and many other aspects of citizenship are directly connected to ethnic group membership and residency in one of the two entities which now form the country: the Federation of Muslims and Croats, and Republika Srpska. However, actors such as the Office of the High Representative (OHR—leading international authority in BiH) have at the same time supported a nation and state building process which is designed to develop consensus over an understanding of a Bosnian citizen (Sejfića 2006). Secondly, opinion surveys suggest that Bosnians themselves do not necessarily support a civic integrationist formula, and in addition Bosnian-Croats and Bosnian-Serbs are less likely to identify with the current BiH state (Ó Tuathail and O’ Loughlin 2009). The political space in post-war BiH is thus to some extent defined by dichotomised debates over the nature of the polity and the demos. This has implications for the agency of the people of BiH. Some observers have suggested that there is a need for a development of a civil society which can engage and identify with the state (Fischer 2006), others have identified knowledge about participation opportunities as a key challenge for democratic participation (Bajrović 2005), and others have asserted the need for more grassroots civil society activity to challenge the dominance of internationally funded non-governmental organisations (Fagan 2005; Jeffrey 2007).

This chapter began with the assertion that much more needs to be known about the nature of the citizen during times of transition. Given the contemporary background sketched above it is important to ask how transitional justice discourses and practices in BiH intersect with the contested nature of political identity and citizenship practice in BiH. The formal legal response to the human rights abuses and war crimes that were committed during the fragmentation of Yugoslavia in the 1990s has been led by the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague. However, since 2005 the establishment of the State Court of Bosnia and Herzegovina (CBIH) has provided a new avenue for legal redress for victims of crimes during the conflict in BiH (1992–1995). The instrumentalisation of mechanisms of transitional justice as a state building practice is encapsulated by the establishment of this new judicial institution. The CBIH is much more than simply “localised” international law, since its creation marked a rare centralised form of authority in a state where power has been principally devolved to the two sub-state “entities” (the Muslim Croat Federation and the Republika Srpska). The creation of the CBIH was dependent upon the imposition of a *Law on the State Court of Bosnia and Herzegovina* by the then High Representative Wolfgang Petrisch in 2000.

In this chapter we will assess how this new legal institution casts light on the transitional citizen, exploring in particular the contested role of civil society within the implementation of programmes of transitional justice. As argued elsewhere, the establishment of the CBIH required a process of “public outreach”: deliberate policies aimed at fostering participation within, and understanding of, the aims and activities of the CBIH (see Jeffrey 2011). Focusing on practices of public outreach identifies the significant role played by civil society organisations in fulfilling some vital aspects of citizenship entitlement. For example, it is envisaged that such



schemes provide the opportunities for individuals and groups to participate in legal proceedings, give voice to concerns over the nature of the judicial process and articulate alternative concepts of justice after violent conflict. But the analysis extends beyond this normative placement of civil society as agents of popular engagement. The chapter moves on to explore how certain practices of civil society may constrain or limit the possibilities for redress, through the establishment of bureaucratic or administrative barriers that limit individual rights. In a sense, we see in these later examples of attempts to support survivors of wartime sexual violence the tension that exists in practice between civil society and citizenship. We would argue that recourse to the potential of civil society carries with it a contradiction: that while the organisations of civil society offer opportunities for a wide range of individuals to observe and participate in legal processes of transitional justice, these informal mechanisms are not necessarily emancipatory or inclusive. We would argue that this illuminates a tension between civil society and the citizen, where the opportunities inherent in associative life may only be fully realised in a context in which citizenship is able to be practiced in a way which is meaningful for the citizens themselves, and where citizenship status is matched by a substantive realisation of rights.

The arguments made during this chapter are informed both directly and indirectly by the empirical work of each author in BiH: Briony Jones in 2007, 2008 and 2011; Alex Jeffrey in 2007 and 2009, and Michaelina Jakala in 2006, 2007 and 2008. The two specific projects which are analysed directly were conducted by between 2009 and 2012. The first, carried out by Alex Jeffrey and Michaelina Jakala, is funded by Economic and Social Research Council (grant number RES-061-25-0479) and explores establishment of war crimes trials at the CBiH. To date, this research has involved 22 semi-structured interviews with officials within the CBiH, members of local and international NGOs, and employees of donor and intergovernmental agencies such as the Organisation for Security and Cooperation in Europe (OSCE) and the United Nation Development Programme. This research has been predominantly conducted in Sarajevo, though interviews have also been undertaken in Mostar and Bijeljina. The interviews have been conducted in Bosnian and English and, where necessary, translated by the authors. In addition to the interviews, the research has involved monitoring key trials at the CBiH, participating in NGO-organised events and attending workshops and seminars directed at sharing information concerning the war crimes trial processes in BiH. The second project the chapter draws upon was a series of life history interviews conducted in 2006–2008 as part of doctoral research by Michaelina Jakala with survivors of wartime sexual violence in BiH. The qualitative approaches of semi-structured interviews and participant observation have been selected by the research team in order to convey the plural accounts of public outreach from the CBiH that circulate in contemporary BiH. Attentive to forms of practice, these approaches allow an account of the lived experience of policies of transitional justice and forms of choices and deliberation that shape their implementation.

The chapter is divided into three further sections. In the following section we explore the history of the establishment of the CBiH and in particular identify its normative placement as an agent of new concepts of legal citizenship in BiH. In the



second section we examine how the CBiH has attempted to engage with the public in BiH and beyond through practices of public outreach: initiatives that have invested particular faith in the role civil society as a “bridge” between legal institutions and a wider public. This section draws on the empirical research to view these initiatives from the perspectives of the civil society groups involved, testimonies that reflect on both the diversity of civil society as a concept and the range of perhaps unforeseen outcomes that have emerged from public outreach initiatives. The third section explores another articulation of civil society in contemporary BiH: the associative support available to survivors of sexual war violence. This work illuminates the ways in which just as civil society organisations invent new opportunities for individual citizenship practice, their scale and capacity can sometimes limit the reach of their support. This allows us to explore a conclusion that advances new sightlines for research exploring “the citizen” within transitional justice.

## The Court of Bosnia and Herzegovina

There are a number of different avenues available for the prosecution of war crimes which took place during the 1992–1995 conflict in BiH. High-level perpetrators are tried at the ICTY in the Hague, Netherlands while the majority of the mid- to lower-level cases are tried at the state-level institution of the War Crimes Chamber (WCC) of the CBiH which is located just outside the centre of Sarajevo. There is also the possibility for the lower-level cases to be tried at the entity and municipal levels within the ten Cantons of the Federation of BiH, five district courts of Republika Srpska and the Basic Court of the Brčko District (Ivanišević 2008, p.5).

The CBiH is the first institution at state-level to deal with criminal offences within the jurisdiction of BiH. In 2003, the CBiH established the capacity to deal with organised crime, economic crimes and corruption cases. That same year the Criminal Procedure Code of BiH was established under which crimes such as crimes against humanity, genocide and war crimes were defined<sup>1</sup> and the ICTY and Office of the High Representative (OHR) agreed that there was a need to establish a local (i.e. state-level) WCC. The establishment of the WCC played a role in the ICTY completion deadline goal of completing all high-level cases. Furthermore, there was a need to localise the war crimes trials by bringing mid- to low-level perpetrators back to BiH. The concept behind the creation of the WCC is “that accountability for the gross violations of human rights that took place during the conflict is of concern to all humanity but ultimately remains the responsibility of the people of Bosnia and Herzegovina themselves” (OHR 2004, p.4).

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<sup>1</sup> It is interesting to note that in cases of war crimes the state and entity level sentencing vary greatly. For example, the CBiH uses the 2003 Criminal Code Procedure which allows for a maximum sentence in war crimes of 45 years, while in the entities the Criminal Code of the Socialist Republic of Yugoslavia is most often applied which brings with it a maximum sentence of 20 years (OSCE 2011).

The WCC began operating in March 2005 just after the completion of vetting of domestic judges and prosecutors. Initial funding for the WCC came from international donors, a source which has been gradually phased out with the state taking over funding from the beginning of 2013 (Transition Council 2011). The first cases to be heard in the WCC were transfer cases from the ICTY. But while the bulk of the WCC’s current cases have been locally initiated, the WCC is considered a “hybrid” court as it is a “national judiciary with capacity to run war crimes trials according to international standards.” (Ivanišević 2008, p.6). Another contributing factor to the hybrid nature of the CBiH is the presence of internationals in the mixed trial panels of judges. But what makes the WCC truly unique compared to any other hybrid court is that fact that “key participants in the proceedings—prosecutors, defence lawyers, witness and presiding judges—all share the same language”<sup>2</sup> (Ibid, p.11).

The creation of the WCC can be seen as an institutional response to transitional justice which addressed the growing need to localise and address issues of mechanisms of transitional justice which are “spatially removed from the context within which the crimes took place” (Jeffrey 2011, p.347). With this in mind, the WCC, to date has completed proceedings in 73 cases which have “overall [...] delivered efficient, fair, and human rights compliant proceedings” (OSCE 2011, p.7). Whilst there have been numerous successes of the WCC, criticism exists. According to the Organisation for Security and Cooperation in Europe (OSCE), the WCC has not successfully succeeded in the implementation of the National Strategy which provides recommendations as to how the CBiH and the entities can efficiently and effectively address and process war crimes cases. The OSCE identified a continued need to distribute the lower-level cases to the entity, cantonal and municipal courts so more pertinent cases could be addressed at a state-level. Another problem which the OSCE has identified is the “lack of political support for war crimes processing from certain quarters, evidenced by [...] interference in proceedings, attempts to undermine existing judicial and legal reforms, and denial of war crimes established [...] through binding legal decisions” (Ibid, p. 8). Finally, there is a lack of understanding amongst the public in regards to the activities of the CBiH and with the prosecution and sentencing of those found guilty. This creates an environment of misunderstanding and mistrust which is used by political elites to further their agendas.

## The Significance of Public Outreach

The concept of “public outreach” poses questions concerning the relationship between law and society. One of the criticisms of an overly “legalistic” interpretation of transitional justice is that it conveys the normative impulse that law and society should be considered separate (McEvoy 2008). Within this optic, the

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<sup>2</sup>The language is Bosnian/Croatia/Serbian.

purity of legal judgement is preserved through the cordon of spatial separation from the messy particularities within which crimes are committed. Of course, socio-legal studies scholars amongst others have contested this myth of conceptual separation. While the concept of public outreach may convey the transmission of legal knowledge from a centre (the CBiH) to a periphery (BiH society) its practice challenges this simple geometry. Our research exploring the public outreach programmes of the CBiH have illuminated the ways in which a number of civil society initiatives are firstly creating the possibility for individuals to shape the activities of new judicial institutions while secondly also creating new informal spaces where allied and alternative concepts of transitional justice are mobilised. These activities stretch the signifier of “outreach” since they instead illuminate a circulation of ideas of justice as they are formulated, contested and extended within BiH civil society (see also Lambourne 2012). Returning to the key argument of this chapter, this could be seen as a symbiosis between civil society and the citizen, as associations create arenas within which new articulations of citizenship in BiH may be voiced.

From the outset in 2005 the CBiH included a Public Information and Outreach Service (PIOS) which was directed at communicating the activities of the CBiH to a wider BiH public. This commitment to public outreach differed from the establishment of the ICTY in 1993, which had to wait 6 years before a programme of public outreach was included in its work. According to one of the initial employees in PIOS the CBiH was attempting, in those early years, to learn from the perceived mistakes made by the ICTY which were seen to contribute to a sense of alienation amongst the BiH public to its activities and agendas. Nettlefield’s (2010) account of public perceptions of the ICTY speaks of the improved attitudes within BiH towards the tribunal through increased attempts to engage the BiH public. In the CBiH the initial prioritisation of public outreach was typified by the project in 2006 to establish a Court Support Network (CSN), a group of human rights NGOs that would serve as link points between the CBiH and wider society. The CSN was established by PIOS in 2005 with an aim “to integrate the mission of the CBiH into the wider Bosnian community.”<sup>3</sup> Reflecting their normative placement as “democratising” agencies within the international intervention in BiH since Dayton (see Jeffrey 2007), PIOS looked to non-governmental organisations (NGOs) as the main instruments through which to achieve this objective.

Over the course of 2006, PIOS enrolled five human rights NGOs from across the territory of BiH into the CSN: *Žene ženama* (Sarajevo), *Centri civilnih inicijativa* (or CCI, Mostar), *Izvor* (Prijedor), *Helsinkiški komitet* (Bijeljina) and *Forum građana* (Tuzla). But the network envisaged by PIOS extended beyond these five organisations: the purpose of the initial 6 month programme (funded by the CBiH) was for each organisation to develop a network of other civil society organisations which could circulate information both from and to the CBiH. This approach focused on

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<sup>3</sup>ICTY Liaison Officer and co-instigator of the CSN, Sarajevo, 9 October 2009.

the role of civil society groups as socially embedded organisations that may have developed long-term links with a range of institutions, such as victim associations,<sup>4</sup> youth groups, sports clubs and *Mjesne zajednice* (local associations or MZs). This model of public outreach envisages a particular normative role for civil society as a locus of trust acting outside particularistic agendas of a specific social group. In addition there is the more straightforward issue of approachability, with one PIOS official remarking in 2009 that people feel “more comfortable approaching an NGO than the CBiH,” a situation that she felt was a reflection of a legacy from the “Yugoslav system” (PIOS interview, 2009) but perhaps reflects a wider internalisation of conceptual separation of law and society (see McEvoy 2008).

On some criteria the CSN initiative failed, since the organisations did not coalesce into an integrated network, but rather continued to pursue individual agendas through activities often focused on supporting the work of the CBiH. However, this limited assessment fails to grasp the wider set of practices and opportunities facilitated by participation in the CSN. Taking the example of *Helsinkiški komitet* in Bijeljina, this organisation participated actively in the work of the CSN but used it as a starting point for a much wider set of activities relating to transitional justice in BiH. As an organisation they had been involved in public outreach activities with the ICTY since 1999, expertise that made them well-placed to assist the CBiH in similar tasks. Certainly, their participation in the CSN saw them undertake work that seemed to accord with the expectations of civil society support for the legal process, for example they undertook publicity campaigns regarding the work of the CBiH and organised seminars and workshops that explained specific trial processes and outcomes. As one of the members of *Helsinkiški komitet* explained in 2009, these events were usually targeted at specific groups:

For instance in Zvornik we did it with former camp detainees, because they raised the question several times in public that they were having difficulty approaching the CBiH, the Prosecutor’s Office, no one is coming and listening to them, and so on, so we organised some events for them, bringing people from the CBiH and Prosecutors Office to Zvornik. [...] Now it is a question of whether [camp detainees] want to use it or not use it.<sup>5</sup>

Through such events *Helsinkiški komitet* was providing the opportunities for individuals and groups (specifically victims’ associations and associations of camp detainees) to attempt to access justice through formal legal mechanisms. In a sense this reflects the failure of the citizenship model enacted since GFAP in 1995, since it is the feeling of anomie and powerlessness that prompts the intervention by the *Helsinkiški komitet*. Crucially for the argument in this chapter, the workshops organised by *Helsinkiški komitet* are not designed to produce an outcome in itself, since they are structured around the possibility of future prosecutions through the CBiH. Rather, the workshops create the conditions where expressions of citizenship rights may be secured.

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<sup>4</sup> Many of these associations are often run by the survivors themselves who lack formal training in programme development and management and often speak little English. See for example Delpla (2007), Rangelov and Theros (2009), and Zupan (2007).

<sup>5</sup> Interview with representative from *Helsinkiški komitet*, Bijeljina, 18 October 2009.

While this example reflects the CSN as an extension of CBIH practice, enrolment in this network has also provided the opportunity for *Helsinkiški komitet* to challenge and extend ideas of transitional justice emanating from the CBIH. This challenge was evidenced in a number of aspects of their activities and agendas, but it was encapsulated by the idea of embedding discussions of transitional justice into education programmes. The organisation was using its access to the CBIH to organise regular student visits, but it was its more ambitious attempt to establish a new university course that illustrated a desire to explore ideas of transitional justice beyond the retributive model practiced through the legal process:

We are now starting a relatively big project which is advocating establishing at universities a subject of transitional justice. We are now starting at the Bjeljina Faculty of Pedagogy [...] We presented it as a subject that was going to be financed for three years by us. And we are going to give all the documents and literature they need, it is about intercultural understanding, non-violent communication. And one part of it is dealing with the ICTY, the CBIH, the transitional justice initiatives, formal non-formal, judicial, non judicial and so on.<sup>6</sup>

These comments open up the possibility that the participation of civil society organisations in the formal processes of transitional justice in BiH is simultaneously cultivating more informal ideas of the possibilities and practices of transitional justice. We again see a symbiosis between the practices of civil society and the ideal of an engaged citizen, as associations attempt to use their privileged knowledge and access to cultivate individual engagement with ideas of transitional justice. This reflects the possibility of retributive mechanisms of justice acting as a vehicle through which alternative ideas of justice may be debated and enacted. Of course, we must not overlook the fact that the existence of the CSN speaks of a wider public suspicion of the CBIH, where political attacks on the CBIH (particularly by Republika Srpska) challenge its function and public acceptance. But this brief example of civil society activity between 2005 and 2009 illustrates how civil society agencies may facilitate civic participation where formal practices of citizenship emanating from the state have failed.

## Civil Society and Agency

The second example drawn upon in this chapter challenges this virtuous narrative. As stated above, the model of citizenship adopted following the GFAP has failed to provide an inclusive formulation of political or social membership. As scholars have long argued, this situation reflects the failure of the wider peacebuilding process in BiH to address discrimination on grounds of gender, minority status or social vulnerability (see for example Domi 2002, and Greback and Zillen 2003). In the period since the GFAP these failings have been addressed through internationally funded civil society initiatives including victims associations who deal strictly with issues associated with torture and missing persons. These initiatives reflect a

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<sup>6</sup> Interview with representative from *Helsinkiški komitet*, Bijeljina, 18 October 2009.

parallel process to those discussed above, whereby civil society organisations are cultivated in the absence of the legal processes of transitional justice enacted at the ICTY and later at the C BiH. In this second section we will draw on interviews conducted in Sarajevo with survivors of wartime rape<sup>7</sup> (hereafter survivors) from the periods of 2006–2007 and 2008–2009 and focus on how one “unofficial” mechanism of transitional justice—social assistance<sup>8</sup>—impacts a group of survivors in Sarajevo.

In BiH, there is no form of official state-level reparation or recognition for survivors of wartime rape, rather a system of Entity-sponsored social assistance exists for eligible survivors. This fragmentation exists despite the fact that wartime rape has been ruled a crime against humanity by the ICTY in 2001 with the Kunarac, Kovač and Vuković case (i.e. the Foča verdict). The status of the survivors only became a “real” issue when BiH was formally required to fulfil the criteria of international agreements to which it was a signatory, such as the United Nations Security Council Resolution 1325 (2000) on Women and Peace and Security. Despite this obligation, to date BiH offers no reparations or other forms of compensation for survivors at the state-level.

To address this issue, in 2005, the European Union funded a research project entitled “Improvement of the position of women victims of war” which was conducted by two local civil society organisations. The project held a series of roundtable discussions with the purpose to develop recommendations for the amendment of the *Law on the Basic Social Protection, Protection of Civilian Victims of War and Families with Children in the Federation of BiH*<sup>9</sup> (*Law on CVW*) to include survivors of sexual violence and rape. The campaign “For the dignity of the survivors” was launched in March 2006 as a form of active citizenship and publicised the issues of survivors through the collection of 50,000 signatures from the Federation through a series of advertisements in an attempt to address this group’s feelings of marginalisation and powerlessness. The campaign also enlisted the Bosnian film director Jasmila Žbanić whose film *Grbavica* released 1 March 2006, follows the story of Sarajevans Esma and her daughter Sara and their coming to terms with Esma’s rape and forced pregnancy in a concentration camp. The film was purposefully released to coincide with the launch of the campaign (Initiative Group of ‘For Dignity of the Survivors’ 2006) and brought wartime rape in BiH back into domestic and international spheres with the film winning a Golden Bear at the Berlin International Film Festival. This lobbying and international attention

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<sup>7</sup> Official statistics suggest 20,000 women (mainly Muslim) were raped in BiH (European Community 1993). Yet we must remember that these statistics fail to take into account those who choose not to come forward, who have not been able to come to terms with their experiences, those who were killed, and non-Muslims victims. The statistics also do not include men who suffered sexual violence and/or rape (see Zawati 2007, p.1).

<sup>8</sup> This focuses on monetary assistance even though the law includes entitlement to professional training, employment priority, etc. which was never experienced by the survivors I spoke with.

<sup>9</sup> There is a similar law present in Republika Srpska which is the *Law on the Protection of Civilian Victims of War in the Republika Srpska* (Official Gazette of the RS No. 25/93, 1/94—special edition, 32/94, 37/07 and 60/07) but no existing State law and/or harmonisation of laws between the entities.

pressurised the Federation to amend the *Law on CVW* in 2006 to include wartime rape survivors. This significant step was a victory for the lobbying throughout the Federation by victim groups and associations and a rare example of active citizenship. This amended law currently entitles those officially registered as civilian victims of war and survivors of wartime rape to<sup>10</sup>:

a personal disability allowance or a personal monthly allowance; a supplement for aid and assistance by another person; an allowance for orthopaedic supports; a family disability allowance; financial support for the cost of medical treatment and purchase of orthopaedic supports; the right to professional training (skills and competencies training and professional development); the right to worker employment priority; the right to housing priority; and, the right to psychological assistance and legal aid (International Commission for Missing Persons, 2007a, p.9).

In theory this unofficial transitional justice mechanism “addresses” the socio-economic needs of those officially registered to receive social assistance under the law but it does nothing in terms of reparation,<sup>11</sup> rather for the survivors spoken to it exacerbates their situation.<sup>12</sup> During the research<sup>13</sup> the survivors spoke of numerous barriers, misunderstandings and resentment in the process of qualifying and receiving the social assistance. First, there was an initial confusion of *where* to access information on their rights and entitlements and *how* to register and claim the social assistance. In one case, a survivor spoke with a Federation minister who asked *her* who was in charge of implementing the law (Jakala 2010, p.259).

But the logistical barriers to receiving assistance extend beyond limits to individual capacity. There is only one organisation, the Survivors of Wartime Sexual Violence Association<sup>14</sup> in the whole of the Federation<sup>15</sup> which issues the certificates which

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<sup>10</sup>In theory access should be granted to *all* entitlements under the law. The survivors I spoke with only focused on and indicated that they could access the personal monthly allowance (Jakala 2010).

<sup>11</sup>De Grieff (2008) defines reparations as “... measures that provide benefits to victims directly. This use contrasts with measure which may have reparative effects, and which may be very important (such as punishment of perpetrators, or institutional reforms), but do not distribute a direct benefit to victims themselves” (2008, p.436).

<sup>12</sup>This can be experienced in the retelling of experiences, in feeling they need to justify their experience and making public their experiences which can lead to retraumatisation. See Track Impunity Always (TRIAL 2010), and Jakala (2010).

<sup>13</sup>Life history interviews were conducted with ten female research participants from a survivor’s organisation in Sarajevo, BiH along with 22 months of intensive participant observation at the organisation.

<sup>14</sup>This is a pseudonym for the organisation.

<sup>15</sup>Whilst this research focussed on wartime rape survivors in the Federation it is known that wartime rape survivors in Republika Srpska also have means, albeit much more limited than the Federation, of claiming social assistance (see note 7). The law in Republika Srpska, “... limits the recognition of the civilian victim of war entitlements with a 5 year deadline, from the day the application of the Law started, that is from the day the person suffered damage to the body, or was killed, or went missing” (ICMP 2007a, b, introduction). This law has been amended a few times with the deadline for application set at 31 December 2007 and then later extended with a 6 month deadline (Human Rights Ombudsman BiH 2010).



allow survivors eligibility for the social assistance.<sup>16</sup> The women’s organisation is located in the Sarajevo suburb of Ilidža and has a procedure of proving one was raped either by providing a witness or through documentary evidence. The survivors must also tell their stories to the committee (with little or no access to psychologists), risk retraumatisation, and face the possibility of their experiences not meeting the requirements needed to attain the certificate. Survivors have told of instances of being made to sign a release form for their statement in order to receive the assistance and some even spoke of being coerced into publically discussing their experiences.<sup>17</sup> The processing times to receive the social assistance vary from between 6 to 8 months with some cases taking up to 4 years. It was also suggested by some of the survivors that the monetary payments were inconsistent which created problems for those survivors who depended on the payments as their sole source of income.<sup>18</sup>

The social assistance granted from the 2006 amended law is a deficient and unofficial attempt at a transitional justice mechanism. Besides creating barriers, misunderstandings, confusion and for some retraumatisation<sup>19</sup>—the right to the social assistance is limited to those who can physically access the organisation and among other things willing to tell their experiences. As transitional citizens, this group of survivors have been rendered, for the most part, passive actors in BiH’s transitional justice process which has marginalised this group (and other groups of civilian victims of war) by failing to draw upon their experiences and needs in this collective process. This passivity indicates the need for a strong state-level transitional justice mechanism which officially acknowledges the survivors experiences be it through symbolic and/or monetary reparations or other form of state-sponsored recognition (see for example Ilif et al. 2011) so to establish the foundations for an inclusive form of citizenship in BiH.

## Conclusion

This chapter began with an assertion that the citizen plays a central role in transitional justice, both in terms of the way it is framed through policies and institutions, and the way in which it is enacted in practice. The agency of citizens interacts with

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<sup>16</sup> This is an issue as the organisation is known to be biased towards Muslims and not physically accessible to all survivors especially those who are unable to travel from rural areas. It also is an issue because they do not have proper psychological support available to the survivors when they retell their experiences and do not account for the fact that many already belong to victim associations and have already told these associations of their experiences (see for example Amnesty 2009; Jakala 2010).

<sup>17</sup> This is problematic as it appears to be used as leverage—sign the form and get social assistance and if you do not sign it, then you do not get social assistance. The survivors also do not know what their statements will be used for. See for example Amnesty (2009), Jakala (2010) and TRIAL (2010).

<sup>18</sup> The social assistance is funded by the Federation and the cantons with 70% contributed through the Federation budget and the remaining 30% contributed by the local cantons. See Jakala (2010) and Popić and Panjeta (2010).

<sup>19</sup> See for example Amnesty International (2009), Jakala (2010), TRIAL (2010).



transitional justice policies and mechanisms to construct what are sometimes unexpected outcomes, but which may challenge or reinforce the implicit and explicit assumptions of the nature and role of the citizen in transition. The purpose of this chapter has been to illuminate these outcomes through two empirical examples from post-Dayton BiH. The aim of this approach is not integrative; we do not maintain that we can trace a unifying dynamic over these disparate cases. Rather, it is to illustrate the diversity of interpretations and practices of justice and citizenship as they are unfolding in contemporary BiH. Perhaps the enduring conclusion of this article is the limits to theoretical reflection in encapsulating the lived experience of transitional justice in BiH, and allied to the significance of long-term empirical examinations to understanding how policies of transitional justice are implemented.

The empirical examples discussed here (the WCC and social assistance for survivors of wartime rape) highlight a key tension between how civil society has been targeted as part of transitional justice, and the citizen which, in its more substantive form, requires more stable and secure citizenship rights than are afforded by the political arrangements of post-GFAP BiH. As far as WCC outreach is concerned we see a circulation of ideas of justice and the formation of new spaces in which alternative ideas of citizenship and justice can be articulated. In the case of social assistance for survivors of wartime rape we see the limits of a transitional justice mechanism which is designed to engage civil society but in fact marginalises survivors of wartime rape in a context of social inequality and social vulnerability. From this we learn that it is not enough to target civil society as a necessarily emancipatory space in which, and through which, transitional justice can be enacted. Instead, we must understand this concept as a realm of variegated political and social practices, and one which is connected to and shaped by the broader context of the possibility of a more substantive citizenship.

In this relatively new field and taking a new approach to understanding the nature of the citizen in transition, further fruitful areas for research can be identified. By seeking to understand the way in which the citizen is present in transitional justice processes we can identify the assumptions implicit in certain policies which, for example, may target civil society as agents for outreach. This can help us to understand whether transitional justice processes are meaningful for citizens living in those societies, and how they are shaped by broader contexts of social and political membership. Building on this, we create space for alternatives to dominant discourses and practices which may be articulated in the contestations over transitional justice. Finally, and following McEvoy and McGregor (2008a, b), it allows us to avoid losing sight of the social and political struggles which put transitional justice on the agenda in the first place.

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# Chapter 7

## Transitional Justice in Albania: Historical Burden, Weak Civil Society, and Conflicting Interests

Arolda Elbasani and Artur Lipinski

### Introduction

Albania has suffered one of the harshest communist dictatorships in the communist world. Despite the many victims brutalized by the former regime and the anticommunist policies advocated by the political forces that won the first free elections, however, the country has done very little in terms of dealing with the crimes committed during that dictatorship. This chapter asks why Albania has failed to ensure justice after the collapse of communism. What has been the role of civil society in this process and how has this role changed throughout the different stages of transition from communism?

Our proposed framework builds on alternative explanations of transitional justice processes: historical legacies, the configuration of political interests, and idea-based factors. We attempt to link and supplement these existing explanations by incorporating the role of civil society as a mediator that can screen and shape elite-driven initiatives on the issue. We ask how and when civil society has influenced processes of transitional justice in Albania by examining two different stages, which coincide with similar politically sponsored campaigns but feature different levels of civil society participation. The first of these campaigns, led by the anticommunist forces that took over in the early 1990s, featured little input from other social actors and resulted in the adoption of initial legislation on

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communist crimes in 1995. The second initiative, led by the same political actors but contested by a number of civil society actors, resulted in a second legal package on transitional justice in 2008. None of these initiatives actually materialized into coherent policies. During the first campaign, the political sponsors of the bill sought to use the legal package against their opponents and failed to ensure a fair process. The second time around, however, social and political actors spoke against the shortcomings and the timing of the proposed legislation. The contrast between these two examples suggests that a more active civil society, which triggered public debates and also served to channel different actors' objections, played an important role in 2008. Our empirical analysis draws from an extensive literature review, personal observations and conversations, official press releases, and representative samples drawn from the daily press.

The chapter is organized in four parts. The first part maps out existing explanations of the processes of transitional justice across the postcommunist world and develops our own analytical approach to the case study of Albania. The second part provides a historical overview of Albanian democratization and establishes the background for analyzing postcommunist transitional justice in light of the historical legacy of communism. The third part explores how different factors, including a weak civil society and vested political interests, have interacted to produce a profoundly politicized process of transitional justice in the period 1995–1997. The fourth part examines the role of growing civil activism against politicized policy initiatives undertaken in the years 2008–2009. While arguing that strengthened civil society actors—in conjunction with other institutionalized actors—played an important role to discredit the transitional justice bill in 2008, we also recognize that Albanian civil society has yet to introduce an alternative model for dealing with the communist past.

## **Transitional Justice After Communism**

### ***Quest for Justice, Different Models, and Varying Results***

Transitional justice has been an issue of concern in most societies emerging from communist regimes (Teitel 2000: 15–18). The principal ideas and policy options that animated public debates and pushed forward the process came mainly from those groups who directly suffered under communism: repressed individuals, intellectuals, and anticommunist political groups with dissident credentials. Media outlets and the broader public have also shown intense interest in the debates regarding the communist past. Across Eastern Europe, television programs and news feature focusing on communist-era repression abound.

And yet, different countries have opted for different alternatives to transitional justice, depending on the strength of players advocating for or against it. The array of models ranges between different measures of lustration and/or excommunication, a mixture that determines the degree of moderation or extremeness of the system

(Sadurski 2003). Although opinions may vary on what constitutes the first and the second, we opt for a clear differentiation of the two (Nalepa and Kaminski 2006). Accordingly, lustration consists of the process of screening of all persons seeking to occupy certain public positions for evidence of involvement in communist-era abuses of human rights. As such, lustration is typical of moderate models, which aim only at the public disclosure of the perpetrators of human rights abuses. Excommunication, instead, is explicitly aimed at the banning of certain categories of former officials from holding certain public positions for a defined period of time. Hence, excommunication is the hallmark of a “wild” model that aims to “cleanse” the new system from those found guilty instead of merely ensuring transparency in dealing with the past (Nalepa and Kaminski 2006: 384).

### *Explaining Transitional Justice*

The wide range of policy options, goals, and achievements has generated a wealth of research on the factors that might help explain such cross-country differences. This spectrum of explanations can be summarized in three main strands: one focusing on the role of *history*; one on the role of *politics*; and one on the role of *ideas*.

The most typical explanation emphasizes the significance of *historical* factors, especially the type of the communist regime and the mode of extrication from the old system. According to this line of argument, the higher the degree of liberalization of the old regime, the higher is the tendency to tolerate former abuses and embrace a moderate model of transitional justice (Linz and Stepan 1996: 38). This historical strand of explanation also maintains that where the exit from communism took the form of revolutionary action, the new regimes would tend to opt for a harsher line of transitional justice. In turn, where exit from the old system involved negotiations, it frequently led to rather lenient policies toward perpetrators (Moran 1994: 96). The politics-centered approach tends to emphasize major actors’ *political strategies*, conceived in a competitive environment where anti-communist and postcommunist groupings strive to gain and maintain power (Williams et al. 2005). The general precept of this approach is that, with the passage of time, transitional justice becomes increasingly politicized and instrumental to the strategic interests of those with sufficient power to negotiate new rules (Welsh 1996: 421; Calhoun 2004: 16). The third current of explanations underlines the significance of *ideas* in the choices involving transitional justice. Accordingly, even though sometimes helpful in explaining the timing of certain measures related to crimes of the past, power politics alone can often fail to explain why certain actors, who one would expect to promote or reject reckoning with the past, abstain from it (Calhoun 2004: 17). In the political field, this argument goes, the advancement of political interests necessitates the ability to provide explanations and/or justifications for any given policy.



Most of the above approaches tend to dismiss civil society as a factor in explaining the pace and scope of dealing with the past in postcommunist countries. Historical approaches are predominantly focused on the balance of power and strategic games between reformers and hardliners within the old regime on the one hand and anticommunist opposition on the other. These approaches imply that transition is an elite-centered game where both sides strive to control or demobilize their supporters (Letki 2002: 537). The same pertains to the political approach, which emphasizes the role of political interests and competition. Transitional justice, therefore, remains entirely an “elite affair” (Nalepa 2010: 101). The third approach, which emphasizes the role of ideas and their public exchange, similarly employs a top-down elite-driven model of explanation. From this angle, too, political actors are the major players directing and shaping civil society attitudes (Ask 2006: 2).

### ***Civil Society, Public Debates and Control over Politics***

Our proposed conceptual framework attempts to link and supplement these existing explanations by bringing into focus the role of civil society actors. Various groups organized at the civil society level can be instrumental in exposing the shortcomings of top-down elite proposals. We certainly do not suggest that *history*, *political interests*, and *ideas* are not important. Rather, we argue that a numerically sizeable and politically active *civil society* can mediate and complement the role of other factors. Following the work of Backer, we suggest that civil society can play two distinct roles in influencing, controlling, and directing the process (2003: 302–305). First, it can perform a number of activities and services such as data collection and monitoring, service delivery, and compensation. Secondly, it can act as an advocate of certain choices, work against others, and even advance its own models and initiatives. Such activity contributes to keep an eye on the role of political interests and check out the political input on transitional justice programs. Although both dimensions of civil society’s activities combine to reinforce social pressure on political choices, our analysis focuses mainly on the role played by civil actors via participation in open public debates.

We posit public debates as the crucial mechanism for civil society actors to articulate their ideas and, when necessary, exert pressure on other actors over specific alternatives to transitional justice. The exchange of arguments during public debates forces respective actors to take into account new ideas and information, in addition to elucidating the interests of opponents (Ask 2006: 14; Los 1995: 120). Debates in general require the existence of a multitude of actors driven by different interests who argue for the solutions they put forward. Public debates, moreover, belong to a different category of debates to the extent that they involve public contestation of a specific subject among elites and civil society actors (Ask 2006: 27). Those actors involved, including political elites, journalists, judges, religious authorities, public intellectuals, and trade unionists, among others, have the power



to set the agenda and prime debates, thus influencing a wide audience and affecting the distribution of opinions within society (Entman 1989). Needless to say, not all public discussions have the same effect. Based on Ask's analysis of public debates, we distinguish between ordinary exchanges of ideas and concentrated public contestation. The latter includes both a wide range of actors (not only politicians, but also civil society participants), considerable duration (longer than 1 year), and intensity (frequent contributions to the national discussion) (2006: 30). It is concentrated debates that can work to disclose, reconfigure, and balance the inclination of some political actors to manipulate transitional justice at the service of their personal political agendas. The following section provides a general overview of political and social developments in postcommunist Albania and broadly introduces the actors involved in transitional justice initiatives.

## **Challenging Democratization: The Burden of the Past**

Postcommunist Albania has gone through different waves of democratization and de-democratization, featuring institutional progress but also periods of stagnation coupled with recurrent crises of order and legitimacy. The difficult, chaotic, and at times uncertain path of regime change is often related to an inherited democratic deficit, as illustrated in the 'capturing' of transition politics by groups connected to the former communist regime (Elbasani 2008). Albania's was among the harshest dictatorships in the communist world; "opening up" to reforms, therefore, proved immensely challenging (Prifti 1978). Under the leadership of party leader Enver Hoxha, the communist state created a particularly repressive security apparatus, which, according to some estimates, affected the lives of as much as one-quarter of the country's total population (Biberaj 2000). A special law adopted in 1956 banned all independent organizations and restricted the activities of all existing associations (Chiodi 2007). To be sure, other communist countries in Eastern Europe widely used repressive methods, but the Albanian regime distinguished itself as a particularly tenacious follower of Stalinist methods even after the so-called de-Stalinization was launched in 1956.

By the late 1980s, the ruling communists were still determined to preserve the one-party system and their highly rigid economic policies (Goldman 2000). As a result of repression, moreover, there were hardly any dissidents who could advance alternatives to the one-party rule or work toward regime change (Biberaj 2000: 98–106). Instead, it was disaffected students who took to the streets in 1990 to seek limited reforms. These protests, which escalated into massive demonstrations joined by ordinary inhabitants, did not start out as political protests per se, but they quickly emerged as a threat to the regime's stability. Hoxha's successor, Ramiz Alia, who had reluctantly allowed for some minor reforms starting in 1989, opted to give up very limited controls and only when it became clear that the protests would escalate further (Vickers and Pettifer 2000: 33–34). In other words, given the mummified social and political climate created under

decades of political repression, the impulses of change came from unorganized but growing groups of people dissatisfied with the regime. By the end of 1990, Alia reluctantly agreed to political pluralism.

The first opposition party, the Democratic Party (DP), was created soon thereafter and encompassed various anticommunist groups and individuals who capitalized on the student protests. The establishment's control over state institutions, however, ensured a communist victory in the first elections held in March 1991. Nevertheless, the victory proved insufficient in containing the escalating anticommunist protests. In light of ongoing clashes and turmoil, the country was forced into another round of elections. Promising large-scale reforms, the DP won the first free elections held in March 1992 (Vickers and Pettifer 2000: 31–34). The sweeping victory led many people to believe that Albania was about to embark on a quick program of transitional justice (Austin and Elisson 2008: 382). Intense power struggles and narrow political interests, however, trumped over demands for accountability for past repressions. Despite DP's ambitious political program, Albania failed to make a clear break with the communist past (Duffy 2000: 83–84).

At the helm of the DP emerged Sali Berisha, a former communist party member and a leading cardiologist. He was brought in by Alia to mediate between the regime and the student protesters, but he quickly seized the opportunity to emerge as a spokesman for the anticommunist forces. In the following years he established himself as an all-powerful president (Vickers and Pettifer 2000). After a round of contested elections in 1996 and the collapse of widespread ponzi schemes later that year, massive crowds of protesters once again took to the streets but this time denouncing the self-proclaimed anticommunist government for mismanaging the political and economic transition of the country (Biberaj 2000: 483–485). By 1997, those protests and clashes escalated further and threatened to bring Albania into total collapse.

Worried about the prospect of a failed state bordering the European Union, international actors intervened (Duffy 2000). They assisted the bitterly divided domestic political groups to negotiate a way out of the crisis and ensure some degree of stability until another round of elections in 1997. Substantial international support, including aid and direct supervision of reforms, proved essential to Albania's recovery and also enabled the emergence of a rudimentary civil society sector. Thus, both the discourse and practice of Albanian civil society was deeply connected from the beginning with Western donors' aid policies and their 'world of projects' (Chiodi 2007). But while foreign assistance has contributed to opening and enriching some kind of public sphere, donor-driven civil society remains weakly embedded in the Albanian social environment. It also remains incapable of standing up to the major political actors.

The 1997 elections brought in power the regenerated Socialist Party (SP), a self-described reformed strand of the former communists, which proclaimed a new path of democratization and fresh institutional reforms. In reality, the new government also excluded the opposition and relied on key figures who personalized political power (Biberaj 2000). Fatos Nano, the SP leader and a former member of the Institute of Marxist-Leninist Studies, served as prime minister

for significant periods during the years 1997–2005. He also dominated the country's politics and often aggravated conflicts with the opposition but also within his own party, while 'using' the state as 'his own clientelistic enterprise' (Elbasani 2008).

Emphasizing deep reforms and introducing a host of new political faces, the DP returned to power with the relatively unproblematic 2005 elections. The new Berisha cabinet promised to tackle some of the long-standing problems in the country, including the 'capturing' of the state by corrupt politicians and their allies and the marked weakness of independent institutions. It also promised a more collaborative tone with the opposition. Nevertheless, the DP government has largely conformed to old patterns: centralizing powers in the office of the premier; subordinating independent state institutions; and coercing critics of the government, including through penalization of important media outlets (BTI 2012). In light of this historical overview, the following sections analyze projects of transitional justice as they have been introduced at different times in postcommunist Albania.

## **The First Wave of Transitional Justice 1992–2000: Anticommunist Politics and Weak Civil Society**

### *Nonexistent Civil Society and Limited Public Debates*

Given the level of repression under communism, Albania lacked organized opposition groups, or independent intellectuals, who could steer the process of transitional justice, as it happened elsewhere in the former Eastern bloc, at least in the first stage of transition (Chiodi 2007). Alia's timid concessions in the cultural sphere in the late 1980s, though encouraging the first signs of alternative thinking, hardly amounted to any organized effort from below, let alone the organization of autonomous or semiautonomous spaces of social engagement. Given extensive elite purges, even the most adventurous of intellectuals were intensely afraid that vocal opposition to the party-state could be deadly for them.

The DP was a motley of individuals from different backgrounds and driven by different interests. While this inclusion of diverse groups seemed to broaden its popular appeal in the short term, it also threatened party's cohesion on important political issues in the long term. From the very start, the party proved strongly divided on the issue of transitional justice. Young students and those persecuted under the communist regime, both well represented within party ranks, preferred a decisive break with communism. The reformist intellectuals who joined the DP in the latter stages, on the other hand, opted for a more gradual transition. The latter informed the main line of debate about the model of justice to be pursued in the country. Thus, while those persecuted under the communist regime asked for radical measures against perpetrators of communist crimes, a number of intellectuals

advocated for a milder approach (Biberaj 2000). In general, very few within the decision-making core of the DP proved willing to dig deep into the past. Even fewer had any reasons to call for the declassification of the controversial files of the security apparatus. On the issue of transitional justice, in fact, Berisha has arguably played an important role in moderating demands for a tough policy line (Austin and Elisson 2008: 382).

At the other end of the political spectrum was the Socialist Party. Its members were widely perceived as collaborators with the former regime and, as such, enjoyed little credibility when it came to the issue of transitional justice. Moreover, the immediate postcommunist years were marked by a host of other intense challenges—deep social polarization, a nascent but extremely weak civil society, fierce conflicts between political groups, lack of experience with free press and professional media, a weak parliament, lack of rule of law, and massive waves of immigrants. In this context, debates about the communist past or policy proposals regarding transitional justice became a casualty of the political interests of those who sought to capitalize on the issue (Vickers and Pettifer 2000). Indeed, most initiatives related to transitional justice evolved separately from any meaningful public discussion, let alone the involvement of nonpolitical actors in serious and multiparty deliberations (Hatschikjan 2010).

### *Late-coming and Politicized De-communication Acts*

The course of events during the first transitional phase in Albania confirms some authors' claims about a strong relationship between specific political interests and the timing of lustration packages (Williams et al. 2005). Despite the adoption of a strong anticommunist rhetoric, the ruling democrats were slow and ambiguous in formulating the promised decommunisation policies. The initial campaign was limited to public assaults against communist-era symbols, including the removal of communist names and landmarks, the confiscation of SP accounts, the banning of the communist party, which had shrunk to a handful of militants, and the prohibition of all parties of a Stalinist or Hoxhaist nature (Duffy 2000: 75). The government also undertook a large-scale indiscriminate "cleansing" of the administration from communist-era personalities (Elbasani 2009). The first decommunisation law, which targeted judiciary officials under the previous regime, was adopted in 1993 but was annulled shortly thereafter by the Constitutional Court. The DP also targeted key leaders of the previous regime, who were brought to trial and condemned for petty financial abuses (East and Pontin 1997: 217–218). Those public but disorganized and selective initiatives in dealing with the communist past failed to bring attention to the real abuses of the communist regime and created confusion about the goals of transitional justice.

Just ahead of the 1996 elections, the DP majority decided to enact a series of concrete and more radical measures in dealing with former communist officials. This came in the aftermath of the loss of the constitutional referendum in 1994,

which the party interpreted as a concerning sign of diminishing popular support (Biberaj 2000). The decommunisation package, which was approved unilaterally by the DP in 1995, included an “anti-genocide” and a “verification” law. The “anti-genocide” law provided for the prosecution of “crimes against humanity” committed during the communist era and prohibited the election of those convicted for such crimes to a listed categories of offices until 2002 (article 3). The law did not have any legal impact given the fact that genocide and crimes against humanity were already indictable offenses under the penal code. Nevertheless, it served as a political move to show that the DP intended to enact its anticommunist promises. The law on the “verification of officials”, on the other hand, provided the legal instruments to screen and ban from office a wide range of former communist officials. The Verification Committee (the so-called Mezini Commission), which was allowed full access to security files, was tasked with screening a wide range of enlisted categories of officials. If the persons found guilty refused to step down voluntarily, government institutions could remove them until the expiration of the law in 2001.

At first glance, the verification law opted for “wild” measures to the extent that it regulated the screening of an exceptionally wide list of positions and employed radical measures of banning from public office of all the listed categories. Yet, a closer look reveals that the law included a number of provisions that enabled the ruling majority to maintain political control over the process. First, the law contained a provision that enabled the government to appoint six out of seven members of the Verification Committee (article 4), casting doubts on the political impartiality of its institutional decisions. Similarly, provisions of exception for persons who “worked against the official line or distanced themselves publically” (article 3) were vague enough to allow the committee to protect certain individuals. Other provisions asserting that already employed individuals could be investigated only if required by the respective institution, and those appointed would have the option of requesting a review, seemed all tailored to protect current employees (Austin and Elisson 2008: 388). Additionally, all party leaders were automatically excluded from the verification process, unless it was “requested by other members of the party leadership” (article 12). Finally, the article concerning personal files (Article 16) called for their closure to the public until 2025, while also ensuring that the whole verification process would take place without any public scrutiny. Indeed, according to the law, both Verification Committee meetings and its screening decisions were to be taken behind closed doors, and none of its decisions would become public, unless the person concerned asked for a public hearing (article 11).

### *Sham Transitional Justice*

If there were any doubts about the intention of the political motivations behind the 1995 decommunisation package, the selective implementation of the procedures actually dispelled them. To begin with, the list of the individuals screened between 1996 and 1997 was never disclosed, but estimates suggest that around 140 people

were banned from participating in the forthcoming elections. The ban included only three DP members, while the rest were members of opposition parties. Moreover, the ban included 7 out of 12 members of the SP board and a quarter of all Socialist MPs (Biberaj 2000: 290). Needless to say, both laws had a detrimental influence on SP's performance in the subsequent national elections. Meanwhile, none of the ruling party leaders had their credentials questioned, even when their affiliations with the communist regime had become public knowledge.

Despite the obvious problems with the legal package adopted in 1995, no political or civil society groups contested the initiative. Even the Socialists, who were essentially the primary target of the initiative, did not contest the law, at least not openly, because they feared being perceived as defenders of communist crimes. Nevertheless, the Socialists went into the offensive once the DP-ruled government came under attack for mismanaging the transition process by late 1996. Rising popular protests forced the government to concede to the opposition's demands for relaxing decommunisation provisions and allow SP members to participate in the new elections of 1997 (Biberaj 2000). A package of amendments, agreed between the two major forces in March 1997, trimmed the banned categories and permitted all members of the opposition to run for office. After the elections, the SP majority pushed for new amendments, which ultimately transformed the decommunisation package into a merely formal act. In January 1998, the Socialists also voted to restrict the categories of those banned from public office to include only "senior officers," "leading functionaries" of security services, and "collaborators" in political trials, while preserving the provision of total secrecy around the Committee's decisions and nondisclosure of files. In May 1998, a new Verification Committee appointed by the Socialists claimed that it had reviewed the credentials of 3,000 individuals employed in various state positions, and had disqualified 84 of them. Nevertheless, the Committee never disclosed who these individuals were and what measures were taken against them (Austin and Elisson 2008). Only four members of parliament were declared guilty of collaboration with the communist regime, but they did not have to give up their positions since the revised law excluded elected officials from the ban. Shortly thereafter, the Committee declared that the new administration was 'clean' of any communist collaborators while the law itself was not exercised again.

## **The Second Wave of Transitional Justice 2005–2009: Political Agendas and Civil Society**

### *The Challenge of Transitional Justice*

Two decades after the fall of communism, Albania still faces the same questions regarding investigation, disclosure, and condemnation of perpetrators of communist-era abuses. According to commentators like Fatos Lubonja, a well-known public intellectual and former political prisoner under communism, Albanian citizens

feel disappointed by the politicization of the “verification” process in the 1990s and have grown increasingly suspicious of politically motivated campaigns (Lubonja 2008). Though civil society organizations have sharply increased in number, they have not proposed a concrete alternative model of transitional justice (Hatschikjan 2010). Moreover, the lack of rule of law and the precarious nature of independent institutions continue to be fundamental challenges to any serious engagement with the communist past.

There are also plausible concerns that archival files may have been destroyed during moments of social unrest, especially during extreme social disorder in 1997. An important aspect of dealing with communist repression, access to communist-era archives remains problematic in Albania. After assuming power in 1997, the Socialists failed to liberalize access to archival material. Even as state archives have been largely opened to researchers and the public, security police files remain off limits. A law on archives passed in 2003 permits researchers to access files created more than 25 years ago. But the most significant challenge to anyone researching the communist past is a 1999 law restricting access to state secrets. Neither of these laws makes a distinction between secrets classified under communist rule or after 1991, thus creating a paradoxical situation in which certain documents are accessible according to one provision (the 25-year rule) but off-limits according to the other (due to their still-classified status). Even archive personnel are often confused about the declassification status of certain materials and, afraid that they might be fired, they tend to deny access to researchers or individuals lacking security clearances (Mëhilli 2009). Even if these laws were fixed, dealing with the archival legacy of the communist regime would continue to be a massive ordeal. Declassification has stalled, whereas funding, personnel training, and resources are extremely scarce. For example, the archive of the Ministry of Interior, which houses the infamous files of the security police, is located in a rundown building resembling a state prison. Materials are piled inside damp rooms and documents are not cataloged. Despite the heated public debate on these files, virtually no resources have been allocated to this particular institution and its staff—yet another indication of the lack of seriousness with which Albanian actors in either side of the political spectrum have approached the issue of historical reckoning. Under these conditions, some authors have expressed doubt whether the country can manage at all to deal with intricate questions of the past (Austin and Elisson 2008: 397).

### *New Political Initiatives and Growing Social Activism*

Albanian politicians have continued to capitalize on anticommunist campaigns. This issue became especially salient after the 2005 elections and the return of the DP in power. The latest initiative, much like the previous one in the mid-1990s, concurred with the run-up to elections in 2009. Crucially, it also coincided with the prosecution of one of the most serious corruption charges related to the so-called Gërdec affair, which exposed several government ministers.



The adoption of the Council of Europe resolution on the need to condemn communist crimes in 2006 had already pushed this issue forward in the Albanian political agenda. Different parties, including the Socialists, had proposed as many as four draft laws in the Albanian parliament. Nevertheless, the DP decided to advance its own draft without consulting with other political forces. It subsequently passed the bill by a simple majority in December 2008 (Perndoj 2008). As adopted, the controversial law required the lustration of members of government and the legislative and judicial branches. It also provided for the creation of an Authority responsible for screening personal and professional backgrounds (Perndoj 2009).

This time around, however, a new coalition of social and political forces openly criticized what they perceived as highly problematic legislation. In addition to opposition members, independent observers, domestic civil society activists, and public intellectuals, foreign diplomats also voiced serious concerns. (Embassy of the US in Tirana 2008; OSCE 2008; Voice of America 2008; Council of Europe; 2009). The opponents brought forth a number of arguments against the bill. First and foremost, they pointed out that the bill threatened to create serious conflicts with constitutional rules guiding the election of high-level legislative and other officials, since the lustration act was passed as a separate law rather than as a constitutional amendment. Opponents also took the law to task for presuming guilt, insofar as the bill contained very broad and ambiguous references to all persons formerly “employed” by the security police but failed to specify who was to be included and excluded. There were also vague references to incriminating participation in “political trials” and “political processes” which worried some observers that overseeing officials could fault candidates at will. Finally, the provisions guiding the creation and activity of the Authority tasked with screening political candidates came under serious attack. Opponents pointed out, for example, that given the pervasive culture of political appointments in Albania, these individuals could be handpicked according to political interests. The law contained only vague references to the solicitation of recommendations for members of civil society organizations (Balaš 2010). A number of Albanian opponents suggested that the lustration campaign was aimed at independent institutions, especially the office of the public prosecutor involved in the investigation of government corruption cases (Lubonja 2008). Indeed, the prosecutor in charge of the Gërdec case was publicly mentioned during the Democrats’ promotional campaign. Fearing repercussions, he resigned as soon as the law entered into force in January 2009. The judicial process related to Gërdec, as a result, lost momentum.

The opponents of the bill also mobilized domestic institutions in their campaign. Once the law went into force in January 2009, a number of groups and individuals filed complaints with the Constitutional Court on grounds that the law was unconstitutional. These included a group of over 30 Socialist MPs (including 2 members of the DP majority), the association of prosecutors, and the Albanian Helsinki Committee. (The latter filed the complaint as a representative of the civil society.) When the Constitutional Court suspended the law, while forwarding it for review to the Venice Commission, the ruling majority mounted an aggressive



campaign against the institutions involved. The Speaker of the Parliament, a high-ranking DP official, issued memos to the Court “asking” it not to suspend the law. The head of the DP parliamentary group declared that they would not recognize the court’s decision because some of the Court members had a “conflict of interest,” implying that the judges themselves had been involved with the previous communist regime (hence their opinion on the matter would be compromised). Through its legal department, the Council of Ministers requested the court to bar four out of its seven members from the deliberations, with the motivation that they had served under the communist regime. Premier Berisha, finally, charged that the judges who voted to defer the law did so with the intention of detracting from their own wrongdoings under communism, although no evidence was ever produced to back up these claims.

### *The Role of Plural Public Contestation*

Both the number of actors involved and the duration and quality of public discussion on lustration were significantly higher in 2008–2009 than in the 1990s. A number of new civil society actors encouraged an intense public debate around the issue. Numerous analysts and intellectuals wrote editorials and debated the law’s shortcomings in the press and on television. The media was very active in scrutinizing the law and providing space for arguing its merits and faults. This unfolding debate also showed how repeatedly botched attempts to institute a lustration law in the past had actually served to discredit any efforts to conceive a credible transitional justice model. For Lubonja, for example, lustration in Albania was not only impeded by the political maneuvers and tactical calculations of the DP. The Socialists, too, he wrote at the time of the law’s passing, retain a powerful electoral base among aging former communists so they are very reluctant to engage meaningfully with the question of historical reckoning and communist crimes. If Albanian governments had failed so miserably in punishing corruption among their ranks, or raising the level of accountability, the author asked, what guarantees were there that these same people were now genuinely interested in a lustration project? (Lubonja 2008)

To be sure, one cannot idealize the role of civil society actors in the Albanian context. Civil society actors were not able to establish the hierarchy of the issues debated in the public sphere or outlined in the political agenda of the parties (Backer 2003). Particularly noteworthy during the debate of the lustration law in 2008, moreover, was the relative silence of precisely those individuals whose suffering politicians incessantly talked about: former political prisoners and persecuted individuals. The Pan-National Organization for the Integration of Prisoners and Persecuted Persons of Albania, the formal organization fighting for the rights of this group, held its first national convention in May 2006. Despite the strong bond allegedly linking many of its members and the DP, their pleas for support and accountability were only weakly represented in the political and public debate.

Sadly, though perhaps unsurprisingly, precisely because these people were so brutalized under communism, their voices are still weak and their interests mostly articulated by other actors carrying political weight. In a country where alternative forms of organization and resistance were nonexistent under communism, in short, those formerly persecuted have found it virtually impossible to find the means to mobilize on accounts of historical reckoning.

Besides the increasing involvement of nonpolitical agents in the 2008–2009 debate, external actors were also crucial to the outcome. In fact, it was the foreign observers, including US and EU diplomats, who energetically brought up a number of concerns about the proposed bill. Even the Czechs, whom the ruling Democrats referred to as an example in advocating for lustration, and who, coincidentally, held the presidency of the European Union at the time, panned the initiative. The opinion of the Venice Commission, which deemed the law to have infringed on a range of constitutional rights and guarantees, was the decisive factor in enabling the Constitutional Court to annul the bill. The involvement of the US embassy as well as interventions by the European Union also served to create a field in which civil society mobilization could gain in strength and importance. The multidirectional pressure exerted by this coalition of social and political forces put the law's sponsors continuously on the defensive. Under mounting international and domestic pressure, the ruling eventually agreed to submit to the Constitutional Court's ruling. This marked an unexpected setback for the government. Civil society activists and foreign diplomats hailed the decision as an important step forward.

## Conclusions

A mixture of political maneuverings, electoral calculations, but also incrementally strengthening civil society and international involvement enabled a concentrated public discussion on the subject of dealing with communist abuses and what model of transitional justice is appropriate for Albania. Still, it remains to be seen how these actors—especially in light of the involvement of the European Union through its funding initiatives—will impact the ongoing effort in devising a lustration project or, more broadly, programs concerning historical reckoning (Gledhill 2011).

More recently, a number of civil society representatives, including the Albanian human rights group, have indicated that they intend to propose an alternative lustration law (Ballauri 2011; ABC News 2012). Foreign money and resources, especially from the embassies of the United States and major West European countries, have been critical in sustaining the few public commemoration initiatives that have taken place and in encouraging public debate on the communist past. German foundations have often been at the forefront of these civil society initiatives. In fact, German experience has been increasingly deemed important, and various local actors have sought to claim that experience in building their own platforms for an Albanian lustration project. The Konrad-Adenauer-Stiftung, for example, has organized roundtables on the subject matter, including recent discussions with

Rainer Eppelmann, the well-known East German opposition activist (Baze 2011). Nevertheless, it remains far from clear how such experience can inform the complicated Albanian processes in the 2010s. And though civil society and public engagement has made a difference in terms of scaling back politically motivated initiatives, a clear alternative has yet to emerge.

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## Chapter 8

# Truth in the Shadow of Justice

Jamie Rowen

In Bosnia and Herzegovina (BiH), divisive nationalist narratives about the causes and consequences of the war dominate the social and political landscape. In order to maintain power, leaders within the country's two entities—the Federation, which is now primarily Muslim and Croat, and the Republika Srpska (RS), which is now primarily Serb—continue to point out how their constituencies were victimized during and after the war (see Chandler 2000; Toal and Dahlman 2011). In the meantime, survivors find themselves with few economic opportunities and remain concerned that the country may divide further (see Bougarel et al. 2007). In light of these challenges, survivors looking for information about the violence are losing hope that either domestic or international policy makers can provide some semblance of truth in the shadow of justice.<sup>1</sup>

To address ongoing social and political tensions, several civil society organizations, defined as those that enjoy autonomy in relation to the state and are formed voluntarily by like-minded individuals to protect or extend their interests or values, are trying to establish a fact-based account of the violence (White 1994, p. 379). Since the end of the war, organizations working in BiH have pursued a variety of innovative truth-seeking initiatives, defined here as strategies to investigate, document, and publicize facts about the violence. Given their relative autonomy, these civil society actors have had some success in pursuing their goals. However, these organizations also struggle to dispel ongoing disputes over the number of dead and missing, and which national group is to blame for the violence.

Transitional justice scholars have much to learn from civil society organizations that are pursuing truth-seeking initiatives. The goals of transitional justice include

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<sup>1</sup> Although truth is a contested concept, I use it to refer to a fact-based account of the violence, and in reference to scholarly debates about truth and justice that defined the early literature on transitional justice (see Roht-Arriaza and Mariezcurrena 2006; Zalaquett 1994).

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ensuring accountability, improving survivor well-being, and preventing future violence (see Elster 2004; Teitel 2002; Vinjamuri and Snyder 2004; Olsen et al. 2010; Roht-Arriaza 2006). Given the recent war, many civil society organizations in the Balkans also set their agendas around these goals. While many focus on helping individuals of only one national group, particularly victims or veterans from the war, others have been working since the war to help bridge social and political divides in the region. As the focus of this chapter is to examine civil society organizations (CSOs) that are pursuing truth-seeking initiatives in order to meet these goals, I will focus on three prominent BiH organizations: the Coalition for RECOM (ZaREKOM, which translates to “for RECOM”), the Information and Documentation Center (IDC), and the Youth Initiative for Human Rights (YIHR). In addition, this discussion includes information on the International Commission of Missing Persons (ICMP). This organization, though more an international organization than a civil society organization, is relevant to the analysis of transitional justice in BiH due to its ongoing efforts to improve the quality and impact of truth-seeking initiatives in the region.

The analysis reveals that these organizations face numerous challenges and points to ongoing dilemmas for those seeking new approaches to redress mass violence through truth-seeking in the Balkans and beyond. In addition, the study also highlights the various approaches these organizations use to involve survivors in their truth-seeking initiatives. With this strategy, the organizations work to counter the prevalent belief that foreign actors, domestic and international courts have not adequately addressed the needs of those who suffered (see Delpla 2007; Stover 2007).

## **Transitional Justice and Civil Society in BiH**

Given the ongoing social and political divides in BiH, transitional justice scholars have much to learn from a study on how civil society organizations are trying to ensure accountability, improve survivor well-being, and prevent future violence. In the beginning of the 1990s, the republics in the former Yugoslavia began to declare independence, and the Muslim population in Bosnia, as the territory was then called, voted to create an independent state. The political leaders in Belgrade did not recognize their declaration and newly independent Croatia to the west and Serbia to the east attempted to take control of different parts of the territory. The violence intensified as military leaders tried to “cleanse” entire towns and cities of individuals with a different nationality. With 80% of the casualties occurring in BiH, this country experienced most of the violence in the wars that culminated in the dissolution of the former Yugoslavia. Following the Dayton Peace Accords, BiH was divided into two entities, the Federation, which is now primarily Croat and Bosniak, and the Republika Srpska, which is now primarily Serb.

During the war, the United Nations created the ad-hoc International Criminal Tribunal for the Former Yugoslavia (ICTY), hoping to deter ongoing war crimes and crimes against humanity (see Hagan 2003). National groups continue to express



divided opinions about courts, particularly the ICTY (Nettelfield 2010). Bosnian Serbs feel victimized by the court, which they see as biased against them, and Bosniaks feel victimized by what they view as lenient sentences for convicted war criminals. This divide is also salient for the Bosnian War Crimes Chamber, which has struggled to overcome challenges related to funding and local politics (Barria and Roper 2008).

In addition, youth throughout the country are educated in “Two Schools Under One Roof,” the name used to describe the segregated education system developed by the Organization for Security and Cooperation in Europe in 2001. While this educational system was designed to encourage survivors from different national groups to return to their communities, it has resulted in a generation of youth learning disparate, nationalist accounts of the war (Bartulović 2006; Kreso 2008). The courts and education system are two of many examples that highlight how well-intentioned policies created additional challenges for the already polarized country.

Though scholars increasingly discuss the need to examine nongovernmental efforts to ensure accountability, improve survivor well-being, and prevent future violence, there is not yet a robust literature on civil society truth-seeking initiatives (Backer 2003; McEvoy and McGregor 2008). Empirical studies reveal that survivors want to share their stories and learn from others about what actually happened during the violence (Crosby and Lykes 2011; Riaño-Alcalá and Baines 2011). However, as Daly (2008) notes, policy makers often respond to this desire and create truth commissions in countries where leaders may ignore “alternative suitors that might bestow similar outcomes” (23). Scholars suggest that outreach to local communities might increase the impact of transitional justice initiatives, yet it is not clear how civil society organizations can effectively communicate and involve survivors who want to provide information or learn more about the violence (Backer 2004; Hodžić 2010; Van der Merwe and Chapman 2008; Vinck and Pham 2010).

Scholars who are interested in how transitional justice is being “localized” must pay particular attention to civil society organizations (Shaw et al. 2010). The challenges they face, and the opportunities they create, illustrate broader theoretical and policy questions related to the value of investigating, documenting, and publicizing information about violence. By looking at advances in nongovernmental efforts for justice, one learns effective and efficient ways to bypass policy makers. Given that CSOs in post-conflict settings usually get funding from transnational actors in order to serve local communities, an examination of CSO goals and strategies can serve as window into the beliefs and practices of both local and transnational actors interested in promoting accountability, improving survivor well-being, and preventing future violence.

In order to examine new developments along these lines, the rest of this chapter will focus on four organizations that are working to meet the goals of transitional justice. While there are a variety of organizations that are trying to investigate, document, and publicize information about the violence, these organizations are particularly well-known and influential in the country, in the region, and internationally. Moreover, this sample of organizations was selected on account of their innovative



truth-seeking initiatives, and due to the fact that several of them have adopted and adapted the concept of transitional justice to explain their goals and strategies. As a result, they are a useful sample to explore truth-seeking, civil society, and transitional justice in the Balkans. The data for this study were collected from 2009 to 2011 during four field visits to the Balkans, and include open-ended, in-depth interviews with 56 interviewees involved in various civil society initiatives to assist survivors and the new generations. All but two of the interviews were conducted in English, one relied on a professional interpreter and the other was conducted in the local language and translated by the author. Interviewees who chose to remain anonymous are identified by the number under which their interview transcript was filed. The interview questions focused on the goals and strategies of their work, as well as their understandings of transitional justice.<sup>2</sup>

The findings and analysis of this study suggest that civil society initiatives focused on investigating, documenting, and publicizing information can provide important insights into how transitional justice initiatives may develop and take shape in the future. In particular, they reveal how these organizations are taking advantage of science and technology to improve communication and outreach to those transitional justice is supposed to serve—those who must live together after the violence.

### **Coalition for RECOM (Regional Commission Tasked With Establishing Facts About The War 1991–2001)**

The Coalition for RECOM (ZaREKOM or “for” RECOM) originated from a partnership between three leading human rights organizations in the Balkans: the Information and Documentation Center (IDC) in BiH, the Humanitarian Law Center (HLC) in Serbia, and Dokumenta in Croatia. During internal discussions, the founders became interested in a new initiative to address ongoing concerns that the international and domestic courts were not contributing to an authoritative account of the war. These organizations began holding regional forums around the region, seeking input from survivors, scholars, youth, and others interested in new strategies to investigate, document, and publicize facts about the violence.

The founders knew that they would have to address the skepticism with which survivors view both governmental and civil society initiatives designed to help them, particularly when foreigners are involved (Coles 2002). As a former HLC staff member who participated in early discussions explained, the organization was particularly wary about calling their proposal a truth commission:

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<sup>2</sup> The data also include detailed notes on 14 public events in Sarajevo where civil society leaders presented their work, and a content analysis of dozens of documents provided by the individuals and organizations analyzed here. For more information on these methods, please see Jamie Rowen, (forthcoming 2012), “Mobilizing truth: Agenda setting in a transnational social movement,” *Law and Social Inquiry*.

The founders of the RECOM Initiative would say it's not about a truth commission. They would say it's about a fact-finding body. They want to get away from this idea from using the term *truth*. In essence, it remains the same. It's essentially a truth commission, but they were talking about a body that would establish the facts about human rights violations rather than a body that would establish the truth, which seems more sort of esoteric and just—a bit out there, really (67, personal communication, 16 May 2011).

Part of this skepticism towards truth commissions came from the leaders' awareness that most people in BiH are unfamiliar with truth commissions. For example, A 2010 United Nations survey study of 1,600 individuals throughout BiH found that two-thirds of the population do not know what a truth commission is and, among those who do, 90% want one in the country. 70% of the respondents said that "facts about the war have not yet been fully established."<sup>3</sup> Moreover, ZaREKOM was not the first attempt to create a truth commission in BiH, though it was the first effort initiated by regional civil society leaders. At the turn of the millennium, the United States Institute of Peace lobbied the governments for a truth commission, but some local civil society organizations as well as the ICTY prosecutor were concerned that a commission might usurp the authority of the tribunal and survivors were not properly consulted about its functions (Kritz and Finci 2001). Serb delegates in the BiH parliament proposed a commission that would uncover the "scientific truth" about the violence in Sarajevo, but this initiative failed when the parliament would not vote on the proposal (Buljugic 2007). There was commission of inquiry into the events at Srebrenica, which had no public hearings but helped establish the number of victims killed in the massacre, and another commission on violence in Bijeljina that began but never concluded its work (Somun 2010).

Rather than promote a commission that would investigate the violence in one town or in one country, the founders decided to promote a regional commission. It would be a treaty body signed by the governments of BiH, Croatia, Serbia, Montenegro, Macedonia, Slovenia, and Kosovo, though neither BiH nor Serbia recognizes Kosovo as an independent country. This issue caused immediate friction within the growing coalition, and other challenges quickly arose.

First, the IDC, which was to lead the effort in BiH, stepped out before the Coalition was formalized. The director explained to me his concern that the initiative was doomed to fail from lack of popular and governmental support:

Yes, I was involved, and then I withdrew. Why? Simply because three years of our very intensive work, there is no reaction from State.... Then I don't want to travel, like a circus around the region, and to have every two, or one, or three months consultation with somebody, and stop my practical work. And then what will happen finally? Nothing. Why? Because there is no political atmosphere. The States are not ready, Serbia doesn't recognize Kosovo, Bosnia doesn't recognize Kosovo.... So this is not time for commissions basically.... And I have to reiterate. It is my moral act. I don't want to spend money, my dollars, and then to say, "Look, we failed" (Mirsad Tokaca, personal communication, 6 November 2009).

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<sup>3</sup> Pajic, Zoran, and Dragan Popović, "Dealing with the Past and Access to Justice from a Public Perspective," Presentation from UNDP Conference on Transitional Justice, 31 March 2010.

Despite the withdrawal of the BiH leader, the HLC and Dokumenta decided to forge ahead with an ambitious set of goals: (1) to create an accurate, official, and unbiased account of war crimes and other serious violations of human rights, (2) to increase recognition of victims' suffering, and encourage recognition of each nationalist groups' suffering, and (3) to prevent a recurrence of violence (Alma Masic, university lecture, 20 May 2011). To ensure public support, individuals and organizations could become members of the Coalition by signing its charter. During 2008–2010, coordinators in each country would lead consultations with victims associations, religious leaders, public intellectuals, youth groups, and others interested in learning about the new truth-seeking initiative. At the consultations, leaders would provide information about transitional justice and the benefits and limitations of truth commissions in other countries. In this way, they hoped to educate survivors as well as learn about their hopes and desires for this proposed commission.

To replace the IDC, the Serbian and Croatian leaders chose civil society organizations throughout BiH to coordinate consultations with those interested in a new fact-finding strategy. These organizations included Izvor, a victims association from Prijedor, the Citizens Forum from Tuzla, the Youth Initiative for Human Rights from Sarajevo, and the Center for Civic Cooperation in Livno. The Helsinki Committee for Human Rights-Republika Srpska was chosen as the primary leader for the BiH activities. In addition, a working group of individuals knowledgeable about war crimes, law, and transitional justice would draft a mandate for the proposed commission. At the end of the consultations, the Coalition would begin a media and signature campaign to rally public support throughout the region. The leaders envisioned that there would be enough public pressure to compel the governments to create the proposed commission.

Even with the new BiH leaders, challenges arose throughout the consultation process. In particular, though the International Court of Justice (ICJ) determined that Serbia is not liable for its collaboration with Bosnian Serb generals, the ICTY and the ICJ declared the massacre at Srebrenica part of genocide against the Bosniaks.<sup>4</sup> Some Bosnian Serbs hoped that a commission might be able to undermine this judicial finding, while most Bosniaks would not support an initiative that calls the genocide into question. Early on, ZaREKOM's founders decided that the commission would not revisit the question of genocide and would simply build from the tribunals' conclusion. Two important RS organizations, the Association for Prisoners in Republika Srpska and the Republika Srpska Team for War Crimes Research, eventually called on its supporters to boycott the Coalition. Moreover, many Bosniaks worried that the HLC is from Belgrade and that the proposed commission would be used to justify Serb aggression. A Croat civil society leader noted his concerns that Bosnian Croats groups were not included in early discussions and, thus, he declined to join the Coalition (79, personal communication, 7 May 2010).

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<sup>4</sup> Krstic Decision. (ICJ Bosnia and Herzegovina v. Serbia and Montenegro), case 91, International Court of Justice (ICJ) Judgment returned on 26 February 2007.

Thus, despite the founders' intent to reach out to survivors, important representatives from all of the national groups were reluctant to join the Coalition.<sup>5</sup>

From the perspective of some Coalition leaders, these problems had more to do with BiH civil society and nationalism rather than this particular initiative:

And as time elapsed, we see that there are no strong organizations who are capable to, for example, convince people from other entity to come on consultations. So there is no authority among these organizations.... I see a weakness of civil society really in this fact that civil society is not independent from present political elite or context (52, personal communication, 1 April 2010).

This statement, from a Coalition leader in Serbia, was echoed by BiH civil society leaders. These actors noted that the tenuous political situation leaves little opportunity for initiatives that require independence from the government and collaboration across nationalist groups. Moreover, victims associations continue to hold tremendous political power in the country, and efforts to investigate, document, and publicize facts about the violence require their support.<sup>6</sup>

Among those who did participate in the consultations, some felt that they benefitted from having the opportunity to speak publicly about their experiences and hear the perspectives of other national groups.<sup>7</sup> However, several leaders from the victims' associations expressed that they were silenced in the consultations and leadership meetings, and nationalist newspapers reported on how tensions grew between the HLC, particularly its director, and the other BiH Coalition members.<sup>8</sup> At the end of 2009, the HLC brought in a media organization, the BiH Association of Journalists, to help their initiative gain public support in the country. Disputes continued through the first half of 2010, and the five BiH organizations that had been leading the consultations stepped out of the Coalition.

The BiH Association of Journalists, along with the Center for Informative-Legal Support in Zvornik, remained in charge of the consultations and was able to publicize ZaREKOM through its connections with local media outlets. In the previous year, leaders created an online website for individuals to sign the petition and aired TV commercials to prepare for the signature campaign in the spring. Paid volunteers stood at major thoroughfares in towns and cities throughout the region and people throughout BiH quickly learned about the initiative. However, even with a deadline extension from June 6 to June 26, the Coalition was unable to meet its target of gathering one million signatures on a petition asking the governments to

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<sup>5</sup>For a detailed overview of these challenges, including the responses of the various victims' associations, see Igor Mekina, Analysis of Public Criticism and Support for the Initiative for RECOM. [www.zarekom.org/uploads/documents/2011/09/i\\_1647/f\\_1/f\\_2826\\_en](http://www.zarekom.org/uploads/documents/2011/09/i_1647/f_1/f_2826_en). Accessed August 2011.

<sup>6</sup>One well publicized example of their power can be seen in the dispute over Angelina Jolie's movie on a Bosnian war camp. The plot involved a romance between a rape victim and her perpetrator. A BiH rape victims group was able to lobby the government to temporarily withdraw the filmmaker's production permit.

<sup>7</sup>See Regional Debate on the Mandate of RECOM: Review of opinions, suggestions, and RECOMmendations Report May–December 2009, Novi Sad, Vojvodina, Serbia, 20–21 March 2010.

<sup>8</sup>See, e.g., Kandić Asks that Donations to her Critics be Revoked!/? *Dnevni Avaz*, 25 March 2010.

create RECOM. At the end of the campaign, 122,473 signatures were collected in BiH and 542,660 in the whole region.<sup>9</sup> Several prominent BiH politicians expressed support for RECOM in theory, but it remains to be seen whether their statements will lead to any action.<sup>10</sup>

While nationalism in BiH might undermine any collaborative truth-seeking initiative, ZaREKOM's challenges extend beyond existing social and political divides. By setting its goal to create a government sponsored commission, the Coalition may have created expectations that are impossible to fulfill. Following the campaign, the director of the Helsinki Committee for Human Rights-Republika Srpska publicly stated "the entire RECOM project is envisioned completely wrong, too ambitious and is completely unrealistic."<sup>11</sup> Although the Coalition faced criticism from a number of civil society organizations in BiH, it engaged thousands of people and sparked public debate about truth-seeking initiatives and the organization leaders state that they will continue their efforts through 2013.<sup>12</sup> Its successes and ongoing challenges highlight both the challenges and the opportunities for civil society organizations hoping to engage survivors in a participatory truth-seeking initiative.

## Investigation and Documentation Center

Like ZaREKOM, the IDC has set its agenda around investigating, documenting, and publicizing facts about the violence. The Center originated in 1992 from the State Commission on War Crimes and Genocide, and was tasked with collecting data on victims of the ongoing war. From that original data, the IDC created the Human Losses Project in order to develop an accurate count of deaths caused by the violence. At the time, leaders from different nationalist groups presented various figures, from 30,000 to 300,000 dead and missing, depending on whether they wanted to minimize or exaggerate the consequences of the war.<sup>13</sup> Based on years of

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<sup>9</sup> These figures are cited in Youth Initiative for Human Rights, "Newsletter, July/August 2011," YIHR Index: YIHR-08-13727 24 August 2011. In order to understand these overall numbers, it is also important to highlight how the shadow of justice extended to neighboring countries. The Coalition leaders in Croatia seemed to have more success bringing together various parties, but the indictment of popular war-time general Gotovina in May 2011 undermined their efforts to collect signatures. Many Croatians believe that Gotovina is a hero who defended the country from Serb aggression and resent the international community for condemning him as a war criminal. The Coalition was only able to collect 19,668 signatures. ZaREKOM seemed to have most success in Serbia and Kosovo, where many youth appear interested in understanding the recent wars.

<sup>10</sup> Notably, the chairman of the BiH Presidency, Zeljko Komšić, pledged support for the establishment of RECOM.

<sup>11</sup> L. Kovacević, Is RECOM Collapsing? *SETimes*, <http://www.eurasiareview.com/03072011-is-recom-collapsing/>. Accessed 3 July 2011.

<sup>12</sup> To Establish RECOM in 2013, *Nezavisne Novine*, 9 July 2011.

<sup>13</sup> A prominent Croatian human rights advocate and scholar relayed to me that the only time he has been verbally attacked for speaking about the war was when he arrived in 1996 and said that 100,000 people were killed (79, personal communication, 8 May 2010).

data collection and statistical analysis, the organization published its estimate that 97,207 individuals were killed during the war in BiH. Three independent international experts, including one from the ICTY, validated the findings and the IDC became known internationally for its compilation of statistics in the study of the dead and missing.<sup>14</sup>

Despite the international attention, the Center has struggled to gain support from the survivors in BiH. As a former staff member explained:

I can't say that we were physically attacked in any of those municipalities or threatened in any concrete way. The biggest obstacle—the biggest resistance [had to do with] our impartiality, trying to make a connection between offices that we have in Sarajevo, Gorazde, and Srebrenica—places—mostly communities or places, towns, mostly inhabited by Bosnian Muslims. And [the] head of the IDC was the former chief of the state commission for gathering facts on war crimes and genocide established in 1992 by the President of Bosnia and Herzegovina. In several ways, those nationalistic representatives tried to blame the IDC in that direction of bias (73, personal communication, 18 May 2010).

The former staff member's statement highlights the ongoing problems that civil society organizations face when trying to change entrenched narratives about the war. Given that the director of the Center is a Bosniak, many survivors assume that he will enhance the number of Muslim victims. Ironically, given that the IDC's estimates of the dead are far less than what Bosniak leaders had claimed, the leader has struggled to convince members of his own national group that his findings are unbiased.

Following their work on the Human Losses Project, the Center decided to develop new strategies to investigate, document, and publicize facts about the violence. One project is called the "Positive Stories" and includes volumes of information about those who risked their lives to save others during the war.<sup>15</sup> In addition, the organization wanted to reach more survivors and interested parties than is possible with published reports and town visits. Using Google Earth technology, the organization developed the War Crimes Atlas, launching the project in November 2009.<sup>16</sup> At the launch event, the director projected the website, found the geo-coordinate of the building where the audience was sitting, and clicked on an icon. The audience sat still as a video showed the building ablaze during the war.

As the brochure for the Atlas states, the goal was to make "research more accessible to a wider public in a simple and efficient way both in the country and abroad." Individuals can search the site for information on loved ones who were killed, post pictures of memorials, and find documents from domestic and international tribunals. Like the ZaREKOM initiative, this project is designed to provide survivors with the opportunity to inform others about their personal experiences. As the

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<sup>14</sup> See, e.g., Bosnia War Dead Figure Announced, *BBC News*, Accessed 21 June 2007. <http://news.bbc.co.uk/2/hi/europe/6228152.stm>; Balkan Investigative Reporting Network, Justice Report: Bosnia's Book of the Dead. <http://birn.eu.com/en/88/10/3377/>. Accessed 21 June 2007.

<sup>15</sup> Another Sarajevo-based organization, Gardens of the Righteous Worldwide (GARIWO), has been engaged in similar work to gather and disseminate stories of survivors who saved others.

<sup>16</sup> See Information and Documentation Center, War Crimes Atlas. <http://www.idc.org.ba/>.

director of the IDC explained in our interview, he presents truth-seeking as an individualized process involving self-expression:

I need individual history. I need to offer you my story. I need to offer you my personal or family history ... to have confidence in the people, the grass roots organizations, victims' groups, to offer them something, to respect the individual rights of people to know (Mirsad Tokaca, personal communication, 6 November 2009).

In this statement, he implicitly contrasts his project with that of the tribunals. The idea that people have a “right to know” shifts the notion of rights away from judicial accountability and provides a legal foundation for truth-seeking initiatives.<sup>17</sup> In a similar vein, the director also explained that War Crimes Atlas is designed to enable individuals to make their own judgments about the facts. In a conference on the legacy of the ICTY, the IDC’s director explained his reasoning behind this decentralized approach to truth-seeking:

[E]ach of us has our own personal truths. Munira’s truth (a female audience member who commented)—is her truth about the suffering of her kids, her children, and no one has the right to take that away from her. As well it is true for Mr. Dukic (a male audience member who commented) that someone took him out, beat him up, and shattered his ribs or whatever else they did. So we keep ignoring things because of our narrative. And our narrative, our past narrative, has been that only my truth and only my tragedy is what is valuable (Mirsad Tokaca, personal communication, 6 November 2009).

In his comments, he reiterates the belief that the narrative needs to change but truth-seeking initiatives should not be seeking to establish a unitary “truth,” which he views as a goal of courts. Following this reasoning, a web-based approach to investigating, documenting, and publicizing facts can be particularly useful. It has the potential to efficiently inform many survivors and others who are interested in learning about the violence, but are skeptical of the courts. However, while creating a platform on the web may disseminate facts more effectively, it requires the IDC to assess the accuracy of the information and to protect the rights of those accused of violence. Moreover, only those with access to the web and an interest in this information will actually seek it out. Despite these limitations, this organization is but one example of several civil society initiatives that use the web to make sure that information of the violence reaches as many people as possible.

## Youth Initiative for Human Rights: Sarajevo

The Youth Initiative for Human Rights (YIHR) is well-known in the region for bringing together youth from different national groups to learn about each other and the war. In the past few years, the organization has also engaged in new strategies to

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<sup>17</sup>The Human Rights Council has developed a doctrine on the “right to the truth” as critical to “end impunity and to promote and protect human rights.” United Nations Human Rights Council, *Resolution on the Right to Truth*, A/HRC/9/11, 18 September 2008.



investigate, document, and publicize information about the violence. For one project, “Mapping Genocide,” the organization created a website with information about legal definitions of genocide and the history of violence at Srebrenica. The site states that the organization engaged in “comprehensive research” to develop this strategy for outreach:

In order to get a modern and user friendly tool, particularly intended for younger population[s], after comprehensive research, we decided to adopt documentary animation as a new model of presenting facts, whilst applying modern technology for its user-friendly application and dissemination.<sup>18</sup>

This description reveals how the organization’s goal was to reach a broad audience, particularly the youth of the region. As younger generations are accustomed to seeing images on film or on the web, utilizing documentary animation and the web seemed an effective and efficient strategy to meet its goals. Despite its stated goal of educating others on the history of Srebrenica and genocide, referring to Srebrenica as genocide is very problematic for those Bosnian Serbs who believe the violence should not be classified in this way. Thus, while the information may be more accessible, it may reinforce contentious narratives about the causes and consequences of the war.

The organization is also involved in a project called “Survivor House,” which includes an online repository of documents with information on how residents of Sarajevo survived the 1992–1995 siege of the city. This latter project is being designed to memorialize the resilience alongside the suffering of survivors. As the YIHR director Alma Masić noted, truth-seeking initiatives that investigate, document, and publicize information about how people survived is necessary to create a sense of solidarity:

The idea is that it is dangerous when everybody behaves as a victim. This is to make something dignified. Even the people reading texts on the mapping genocide project, the voices are plain. We don’t want to tell you to make conclusions. Here are facts, judge it, it’s not about victimization.... We will see a sense of solidarity came out, sharing an apple or an onion. No one had it but after the war, the world collapsed, you forget and become greedy, looking for status, grabbing, all basic values behind. Your sign of success is when you show it off. Big house, big car, skiing in exotic places, but no underwear on you.... Where is solidarity? Does something like this have to happen again (Alma Masic, personal communication, 17 May 2011)?

Here, Masić expresses a common concern among civil society leaders that courts entrench existing feelings of victimization. Moreover, her comments highlight the challenges of being a civil society leader who has been working for decades in order to bring together the different national groups. In discussing both projects, Masić provided insights into a major source of this frustration:

One main issue here is the cost.... I was always a grassroots worker and believe you can do fabulous things with little money. It doesn’t spoil you. It doesn’t become the purpose of your existence (Alma Masic, personal communication, 17 May 2011).

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<sup>18</sup> Mapping Srebrenica, About Us. Retrieved from <http://www.srebrenica-mappinggenocide.com/en-m/>.



Her comment is representative of statements by other civil society leaders who are worried about funding, both how to get it as well as how it shapes organizational goals and strategies. As civil society organizations continue to develop new approaches to investigate, document, and publicize facts about the war, they necessarily think about their own survival as well as the long-term stability of BiH. With this in mind, they will look for cost-effective ways to conduct outreach. The web may be a particularly useful strategy to address this challenge. Although it requires technical expertise, it can be a more cost-efficient medium than print and enables civil society actors to present the information in more creative way.

## International Commission on Missing Persons

Although it is not technically a civil society organization, the International Commission on Missing Persons (ICMP) deserves the attention of scholars investigating civil society and transitional justice because of its unique organizational structure and ongoing work with courts, policy makers and survivors to investigate, document, and publicize the violence. The ICMP originated in a political agreement between the countries involved in the Dayton Peace Accords; though autonomous from BiH, and the Commissioners and steering committee include government representatives from around the world (Wagner 2008). Working with the BiH Council of Ministers, the organization helped found the Missing Person Institute (MPI), a BiH government agency that was developed to take over the ICMPs work on investigating missing people, storing the data, and working with the tribunals.

Like the IDC, ICMP has developed several innovative, science-based strategies around truth-seeking. The Commission's primary goal is "to ensure the cooperation of governments in locating and identifying those who have disappeared during armed conflict or as a result of human rights violations."<sup>19</sup> It relied on DNA-based techniques to identify the remains of victims exhumed throughout the region. Since its inception, the ICMP has developed a database of nearly 90,000 relatives of over 29,000 missing people, gathered more than 36,000 bone samples. By matching DNA from survivors' blood, the Commission has been able to identify over 16,000 victims.<sup>20</sup>

Referring to the organization's goals, the chief operating officer explained to me:

For some people it's a forensic science program. For some people it's a humanitarian action to be taken with people who've lost family members. But really what it comes down to is ICMP supports the rule of law and ... it really tries to build the capacity of governments to address the human rights needs of their citizens (Adam Boys, personal communication, 9 November 2009).

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<sup>19</sup> International Commission on Missing Persons, About ICMP. <http://www.ic-mp.org/about-icmp/>.

<sup>20</sup> These numbers are regularly updated on the organizations website. See International Commission on Missing Persons, About ICMP. <http://www.ic-mp.org/about-icmp/>.

In this statement, he relates truth-seeking to justice by suggesting that accurate information is essential to ensure fair trials, and trials are a fundamental part of a democratic state. He further explained that there is no unitary truth that a judicial or quasi-judicial body can uncover but, rather, there are “some truths” to establish:

We can at least limit the narrative that sort of changes the truth about what happened and, therefore, if we can establish some truths, for example the number of killed and missing, the names of those people, feed those into court processes, then we’re no longer dealing in an abstract (Adam Boys, personal communication, 9 November 2009).

His comment reveals a common belief that truth-seeking initiatives might bridge the social and political divides. The goal of establishing “some truths” suggests that the organization believes its work might “limit the narrative” that nationalist leaders manipulate. To this end, the Commission has tried to avoid claims that it is biased in favor of one national group or the other. However, various media outlets and political leaders continue to criticize the organization in the same way they criticize the ICTY, claiming that the Commission is funded by governments who are biased against Serbs and staff contaminate their data to prove that Serbs defendants are genocidaires.<sup>21</sup> Such claims have made their way to the ICTY, where defense lawyers for Karadžić have asked for verification of the ICMP’s work.<sup>22</sup>

In an effort to address these concerns and increase its impact in the local community, the Commission developed a new program entitled “mutual understanding and transitional justice.”<sup>23</sup> The name of the program suggests that the Commission views transitional justice as a long-term process to prevent future violence. As part of this program, the Commission is engaged in discussions with local civil society leaders on how to memorialize victims and how to lobby the government for benefits. Moreover, the Commission has created an online inquiry center for family members to access information from the organization’s database.<sup>24</sup> From the site, individuals looking for missing persons can track the status of a case and provide information about family members who might be able to provide DNA.

As one staff member explained, these new strategies are necessary in light of what the ICMP has already accomplished, and what remains to be done:

There were 29,000, 30,000 people who went missing in Bosnia. ICMP has helped assist local institutions to find and identify about 20,000 of them—two thirds, which is just unprecedented anywhere in the world. And it’s probably going to become ever harder to find the remaining third. And so for us, we’re not turning our back on the exhumations and

<sup>21</sup> The ICMP has been targeted largely because of its close relationship with the ICTY. Questions about the number of dead have come up in several cases at the ICTY. See, e.g., *Prosecutor v. Vujadin Popovic (Judgment)*, IT-05-88-T, International Criminal Tribunal for the former Yugoslavia (ICTY). <http://www.unhcr.org/refworld/docid/4c1f69fe2.html>. Accessed 10 June 2010.

<sup>22</sup> International Criminal Tribunal for Former Yugoslavia, *Prosecutor v. Karadžić, Order on Selection of Cases for DNA Analysis*, IT-95-5/18-T (19 March 2010).

<sup>23</sup> International Commission on Missing Persons, Mutual Understanding and Transitional Justice. <http://www.ic-mp.org/activities/public-involvement-civil-society-initiatives/mutual-understanding-and-transitional-justice/>.

<sup>24</sup> International Commission on Missing Persons, Online Inquiry Center. <http://www.ic-mp.org/fdmsweb/index.php?w=intro&l=en&2956>.

the technical assistance we provide in terms of DNA identifications, but it's time to start thinking about how we commemorate the 20,000 that have been identified, and also how do we commemorate those that haven't? Ultimately, these efforts are designed to improve social relationships between the nationalist groups and prevent a recurrence of violence, the long term goal of many who advocate for transitional justice (76, personal communication, 20 May 2011).

His statement reveals a common desire to improve outreach around these truth-seeking initiatives in order to prevent a recurrence of violence. While the connection between truth and prevention is unclear, this organization wants to dispel skepticism about its work. Rather than focus on the courts or BiH policy makers, the ICMP is now working more closely with civil society organizations and survivors who might be able to use the Commission's information to bridge the ongoing divides between national groups.

## **Civil Society, Truth-seeking, and the Future of Transitional Justice**

Through investigating, documenting, and publicizing facts about the war, these four organizations are trying to realize the goals of transitional justice. The findings suggest that, although they value investigation, documentation, and publicizing information, civil society organizations are focusing their efforts on new strategies to publicize information. Moreover, they are going directly to the people rather than relying on the courts or policy makers to conduct outreach. ZaREKOM's strategy of regional consultations, in particular, highlights this new emphasis on outreach. The IDC, which has been holding discussions in local communities for years, decided to invest in a web-based strategy to expand its impact. Similarly, the YIHR used the web with the hope that this medium would publicize effectively and efficiently. Like the IDC, this organization chose to examine how people survived, not only how they were victimized. Even the ICMP, which worked mostly with the government and the courts over the past decade, has decided to engage directly with survivors.

Moreover, the study also points to the ways in which these organizations are utilizing science and technology to increase their impact. For years, scholars and scientists have been working together in order to improve advocacy efforts, and these organizations reveal the fruits of their labor (Doretta and Fondebrider 2001; Hagan et al. 2006; Stover 1985). The IDC is known for its statistical analysis of the number of dead and missing and the ICMP has been involved in investigations of the dead and missing outside of the Balkans. For scholars, policy makers, and advocates interested in improving the impact of transitional justice, the work of these organizations reveals a need for further inquiry into the opportunities and challenges of using scientific and technological advances to investigate, document, and publicize facts about violence.

These findings also raise important questions. First, what is the value of civil society truth-seeking initiatives when survivors distrust both governmental as well

as nongovernmental actors? Next, will scientific methods, statistical or forensic, have more legitimacy than other approaches to investigate, document, and publicize facts about violence? Finally, should civil society initiatives focus on allowing individuals to share their stories, or should they try to develop as close to a factually accurate representation of history as possible?

The first question has been addressed by many scholars who have surveyed and interviewed survivors of the recent war in BiH, as well as those studying truth-seeking more generally (Daly 2008; Bougarel et al. 2007; Ivković and Hagan 2006; Stover 2007). The highly publicized failure of the ZaREKOM signature campaign reveals the difficulties faced by civil society organizations trying to reach across national divides in BiH. It is unclear whether any truth-seeking initiative may ever affect the pervasive belief that one's own national group was most victimized. Moreover, given that scholars, policy makers, and advocates around the world are increasingly interested in civil society and transitional justice, these truth-seeking initiatives may receive unwarranted approval. For example, despite its struggles in BiH, international media promoted the ZaREKOM campaign throughout the world, with one outlet calling it "one of the most serious efforts to promote reconciliation in the region."<sup>25</sup> Those evaluating civil society truth-seeking initiatives from abroad must pay close attention to what is going on *inside* the societies these initiatives are supposed to help.

The second question speaks to the need for more scholarly attention on how to utilize new technologies in truth-seeking initiatives. The organizations reviewed in this chapter have been taking advantage of new media to investigate, document, and publicize facts about the violence. They are using the web to inform others about their work, solicit feedback, and expand the scope of their investigations. However, focusing on web-based outreach excludes those without access to the web, which may leave out some of the most vulnerable survivors. Moreover, those designing and monitoring websites will need to carefully monitor the information they publish and how they present it. For example, should information on Srebreniça be presented as a massacre or as genocide? Moreover, as scholars such as Davenport and Ball (2002) note, more information does not necessarily lead to a valid account of the violence. Rather, the available information may reflect the objectives of the observer, leading to more biased accounts of the violence.

This latter dilemma about biased information is also relevant to the last question on whether truth-seeking initiatives should focus on story-telling or a factual account of violence. In addition to the challenge of evaluating the validity of available information, psychologists have found that individuals are more willing to accept the outcomes of a judicial process if they are given the opportunity to speak, feel heard, and validated by a legitimate authority (Lind and Tyler 1988; MacCoun 2005;

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<sup>25</sup> How to Think about the Balkans, *The Economist*, 17 November 2010. Vesna Terselić, executive director of Dokumenta, was recently awarded the Right Livelihood award for her efforts to promote peace in the region. Speaking with reporters, explained the value of ZaREKOM See, Right Livelihood Laureates from Thailand, Burma and Croatia, *Democracy Now*. [http://www.democracynow.org/2010/9/16/right\\_livelihood\\_laureates\\_from\\_croatia\\_thailand](http://www.democracynow.org/2010/9/16/right_livelihood_laureates_from_croatia_thailand). Accessed 16 September 2010.

Tyler 1975). Thus, survivors may want a venue for public speaking or participation, and civil society organizations will want to facilitate this desire. At the same time, initiatives that prioritize participation may avoid dealing with root-causes of conflict and survivors may sacrifice fair outcomes if they are distracted by the fairness of the process (Folger 1977; Nader and Grande 2002; Törnblom and Vermunt 2007). It is thus important to examine whether or to what extent scholars, policy makers, and advocates working under the banner of transitional justice are promoting an understanding of justice that prioritizes process over outcome, and how this might undermine their goals of ensuring accountability, improving survivor well-being, and preventing future violence (see Nader 1999).

In conclusion, this chapter points to ongoing challenges for scholars, policy makers, and advocates who hope that investigating, documenting, and publicizing facts might bridge the social and political divides in BiH, as well as other countries struggling in the wake of violence. Though these civil society organizations have developed innovative approaches to outreach, their efforts are limited both on account of their methods as well as the pervasive distrust between different national groups. The dilemmas they face reveal that civil society, like international and domestic policy makers, must continue to reflect on how to effectively and efficiently reach those they seek to serve. While researchers outside of the country may learn from the new websites and applaud local leaders for their innovation, all must continue to question whether they can meet their goals within the country, especially as local leaders as well as domestic and international courts continue to reinforce narratives of victimization. In this way, transitional justice scholars can continue to discover the opportunities and limitations of seeking some truths in the shadow of limited justice.

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**Part II**  
**Transnational Civil Society Practices**



# Chapter 9

## Structured Encounters in Post-conflict/Post-Yugoslav Days: Visiting Belgrade and Prishtina

Orli Fridman

### Introduction

In the past decade, an extensive number of publications have analyzed the Kosovo conflict, the declaration of independence, as well as the international presence in Kosovo. Often, when analyzing the conflict in Kosovo, more attention is given to the territory itself than to the people living in Kosovo and Serbia. While political processes and politicians are in the media and policy analysis spotlight, everyday realities and peoples' lives in Kosovo are often overlooked or forgotten. In the same line, on going local civic initiatives as part of transitional justice processes aiming to transform the conflict relations between citizens of Kosovo and Serbia were not systematically studied and analyzed.

This chapter therefore looks at meetings and projects initiated and facilitated by local civil society groups with the purpose of generating exchange between young people from Serbia proper and from Kosovo. I here refer to such meetings as to *structured encounters* and focus my analysis on meetings taking place between Kosovar Albanians and Serbs from Serbia proper in the form of the *Visiting Program*, a project initiated and facilitated by the Youth Initiative for Human Rights (YIHR), a Belgrade and Prishtina-based NGO. My aim here is not to offer a description of the project, but rather to offer a glimpse into what it generates: exchange of perceptions and firsthand experiences between young people from Kosovo and Serbia in relation to the recent war in Kosovo, the past relations and the present state of affairs.

The chapter analyzes the possible contribution of such a program as the *Visiting Program*, to the transformation of relations between Serbs and Albanian, in the context of transitional justice processes enhancing civic engagement and civic identities of young people in Kosovo and Serbia. It acknowledges and highlights the

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shift in power relations that has occurred between Serbia and Kosovo as consequence of the 1999 international intervention. I understand this shift as crucial in reshaping intergroup relations inside Kosovo and between Kosovo and Serbia.

It is often argued that war tends to polarize and reduce the space where people can debate freely. Yet paradoxically war also tends to promote civil society and groups formed in reaction to it (Kaldor, Kostovicova and Said 2006, p.94). A number of liberal civil society groups were indeed established in Serbia early on during the wars of the 1990s.<sup>1</sup> Other groups were only formed later, in the aftermath of the wars, as it became clear that the regime change in Belgrade in October 2000 did not lead to the abolishment of the legacy of the Milošević regime (Fridman 2011, p.518). The YIHR was formed in that context in 2003 in Belgrade.<sup>2</sup>

Since its foundation, YIHR has become a regional NGO with programs in Serbia, Kosovo, Montenegro, Bosnia-Herzegovina, and Croatia. It was formed by young people from these countries in order to enhance youth participation in the democratization of society and empowerment of the rule of law by driving the processes of facing the past and establishing new progressive connections in the post-conflict region of the former Yugoslavia. The *Visiting Program* started in 2004, as an exchange program for journalists between Serbia and Kosovo and later developed into a broader exchange program for young people of various profiles from Serbia and Kosovo (Visiting Program 2006, p.47).

The *Visiting Program* is here analyzed in the context of bottom up approaches not only to transitional justice but also to peacebuilding and social change as generated by civil society groups. The concept of transitional justice is commonly understood as a framework for confronting past abuse as a component of a major political transformation that involves complementary judicial and nonjudicial strategies (Bickford 2004, p.1045). In this chapter, my interest is primarily in transitional justice in the context of conflict transformation and peacebuilding after armed conflict and less on its initial use in the context of societies transitioning from undemocratic regimes (Lambourne 2009, p.29).<sup>3</sup> The literature on peacebuilding points at the importance of and the need to transform relationship between people in addition to ending the state of war and violence between them (Lederach 2007). For such transformation to take place and remain sustainable, it must be based on recognition of the particular culture and conflict context and the effective participation of civil society (ibid, p.20). Based on this understanding, the model of *transformative justice* was developed proposing a focus on civil society participation in the design and implementation of transitional justice mechanisms

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<sup>1</sup> For a discussion distinguishing between anti-war and anti-Milošević activism in Serbia in the 1990s see (Fridman 2011). The distinction between civil and uncivil society groups is also important in this context (Kopecky and Mudde 2003; Kostovicova 2010, pp.289–290).

<sup>2</sup> The fall of Milošević paradoxically also led to the proliferation of uncivil society and ultra nationalist groups in Serbia promoting illiberal ideologies, including anti-Semitism, xenophobia and racism (Kostovicova 2010, p.290).

<sup>3</sup> For additional discussion regarding developments and scholarly trends in the field of transitional justice see for example (Teitel 2003; McEvoy 2007).

(Lambourne 2009, p.35). Others have used the term *transitional justice from below* to denote a “resistant” or “mobilizing” character to the actions of community, civil society, and other non-state actors in their opposition to powerful hegemonic political, social, or economic forces (McEvoy and McGregor 2008, p.3).<sup>4</sup>

In discussing structured encounters as the *Visiting Program* in the context of the current Kosovo–Serbia frozen relations (or frozen conflict), I here highlight the need for scholarly analysis of such projects “from below” and explore their potential to become transformative. From that point of view, this chapter contributes to literature already analyzing the Dealing with the Past processes in the successor states of the former Yugoslavia in an encompassing manner (Franović 2008; Subotić 2009; Dragović-Soso and Gordy 2011).

## Structured and Unstructured Daily Encounters: The Broader Frame

This chapter is part of a larger and broader research project comparing structured encounters such as the *Visiting Program*, with daily *unstructured encounters* referring to encounters between Albanians and Serbs from Kosovo. Given the limited length of this chapter, I here present the analysis of the structured encounters portion of the research only. In the larger frame of this research project, in addition to analyzing the *Visiting Program*, I also analyze unstructured encounters between Serbs and Albanians from Kosovo, from the point of view of Serbs who remained in Kosovo after 1999 and attempt to interact and part take in public and social life, in what is now an Albanian space. Such interactions are almost nonexistent as Serb communities in Kosovo are segregated and disconnected from the newborn state. Yet they do take place on a small scale. The analysis of the unstructured daily encounters focuses on three chosen sites of daily encounters: (a) the American University in Kosovo (AUK) campus in Prishtina; (b) work spaces, mostly of international organizations in Prishtina; and (c) the Albanian side of the Merdare border crossing between Serbia and Kosovo, controlled by local Kosovar Albanian forces (Fridman 2009). By analyzing and contrasting these two types of encounters, structured and unstructured, I attempt to shed light on hidden practices and exchanges between ordinary citizens, at times away from the spotlight of the international actors and policy analyzers.

In focusing on Serb–Albanian intergroup relations and highlighting the issue of power relations, I do not claim that this is a region torn between Serbs and Albanians only, nor do I wish to oversimplify other existing divisions and issues in Kosovo’s population and societies today or ignore the rich history of other communities in

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<sup>4</sup>For additional literature analyzing such processes see (Shaw and Waldorf 2010; Hinton 2010). I thank Olivera Simić for introducing me to these texts. For a discussion about transitional justice mechanism and truth telling to ensure a real political engagement and agency to a population that has been subject to violent conflict see (Lundy and McGovern 2008).

Kosovo (Duijzings, 2003).<sup>5</sup> I do, however, focus my study here on Serb–Albanian relations in the context of the new post-Yugoslav realities, and more specifically, the realities created after June 1999.

The literature about Serb–Albanian relations in Kosovo mostly captures relationships defined by conflict and victimization, competing narratives of the past, animosity, and ongoing state of crisis (Zdravković-Zonta 2009; Zirojević 2000). The aim of this research is to uncover additional forms of relations existing today, resulting on one hand from everyday needs (and from the change in the power relations) (*unstructured daily encounters*), and on the other hand from civil society initiatives (*structured encounters*) that may offer an additional perspective and shed light on possibilities for transformation of current and future models of relationships.

## About the Research

My interest in studying these issues in Serbia and Kosovo stemmed from my former experiences in Israel during the 1990s, first as a participant and later as a facilitator of political encounters between Israelis and Palestinians. The impact this work had on my political and social awareness and therefore my approach to the field of peace and conflict studies was and still is invaluable as it shaped my understanding of the internal dynamics of societies in conflict, group dynamics, and work towards transitional justice and conflict transformation. Seeing the similarities and differences between the dynamics of groups from the Middle East and the Balkans has sparked my interest in learning and writing about encounters in the post-Yugoslav context.

While the topic of structured facilitated encounters between Israelis and Palestinians was well researched in the last decades and generated a solid body of literature (Bekerman 2007; Maoz 2000; Sonnenschein 2008) and pedagogical discussions and debates,<sup>6</sup> publications analyzing similar work and issues in the context

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<sup>5</sup> In *Religion and the Politics of Identity in Kosovo*, Duijzings captures realities... that in many ways no longer exist in Kosovo after 1999. I particularly think of the author's postscript comment in the Preface, as he explains that his manuscript was finalized before the start of the NATO actions against Serbia and therefore were not included at his account: "although these developments have put my work in a completely different light, I could not include them in my account. It is sad that this book now bears testimony to a world that may have ceased to exist" (Duijzings 2000, p.12).

<sup>6</sup> By pedagogical discussion I refer for example to debates among practitioners and educators in encounters between Israelis and Palestinians who over the years have come to criticize the "contact hypotheses" model of encounters. This model assumes that the act of bringing together people who belong to groups that are in conflict, cutting them off from their group affiliations, and introducing participants on a personal basis, can reduce both their alleged hatred for one another and the stereotypes they have about each other. Such an approach was highly criticized by some practitioners as it became clear that such encounters, not only disregard the controversial issues that are in the heart of the conflict, but also generate the same inequalities existing in the realities from which participants are coming, and therefore depoliticize the encounter and the issues between them. Approaching such encounters as political education offers an approach that understands any of such encounters to be a mean for political/social change, and not an aim in of itself (Halabi and Sonnenschein 2004).

of the post-Yugoslav conflicts are scarce. In that sense, this chapter aims to broaden the literature and discussions on encounters in the context of today's post-Yugoslav states looking at Kosovo–Serbia in particular.

In the successor states of the former Yugoslavia, all educational and encounter projects, dealing with the recent wars of the 1990s and their legacies, are initiated and implemented solely by civil society actors/groups, absent from official curriculums of state institutions. Leading actors in prominent civil society groups frame their work in the pedagogical lenses of what is generally referred to as to the “Dealing with the Past Project” theoretically leaning on transitional justice models of peacebuilding and reconciliation (Rangelov and Teitel 2011).<sup>7</sup> Projects of encounters between Serbs and Albanians were not thoroughly researched by social scientists, nor were they analyzed through the lenses of understanding groups in conflict or the political aspect/impact of group encounters. While descriptive materials of projects implementation are available (Nansen Center for Dialogue 2007), analysis and discussion of the pedagogical approaches to work with groups in conflict or of the impact this work has in shaping participants' perspectives towards the past and the present, as well as their civic engagement is limited. In that sense, this chapter may also offer a bridge between literature analyzing bottom up approaches to transitional justice processes and literature focusing on peacebuilding and education for peace in the context of conflict transformation. As Lambourne suggested “analyzing and evaluating transitional justice in terms of its contribution to peacebuilding enables a more holistic perspective that takes into account the expectations of conflict participants, as well as links between dealing with the past and building peace for the future” (2009, p.29).

Based on the materials and data collected for this project, I here discuss not only structured encounters such as the *Visiting Program* and their impact, but more so, I generate a discussion on what else can such encounters tell us about the post-Yugoslav conflicts, and the related experiences and perceptions they generate. Given the limited scope of this chapter, my discussion will not focus on analyzing the pedagogical aspects of this work, but rather, it will focus on its contribution to our understanding of the conflicts, their legacies today, and the way they shaped Serb–Albanian relations.

The data collected and analyzed for this project comprises general observations and informal conversation I began to have from my very first visit to Kosovo and more than a decade ago, and culminated in two main phases of field research that took place from 2009 to 2011 and included: (a) interviews conducted in Belgrade and Prishtina with young participants of the *Visiting Program* from Serbia and

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<sup>7</sup> Most of the available work and the writings focus on the triangle of Serbia-Croatia and Bosnia-Herzegovina, not including Kosovo. See for example (Franović 2008). The work of the Center for Non-Violent Action (*Centar za nenasilnu akciju* (CNA)) with former combatants is framed in terms of Peace Education (Vukosavljević 2007). An exception to that is a text about the work of the Nansen Center (Steinar 2011).

Kosovo as well as with the organizers from the Youth Initiative offices in both cities<sup>8</sup>; (b) participant observation of the *Visiting Program* itself.<sup>9</sup>

## Structured Encounters

I approach structured encounters as the *Visiting Program* as a matter of choice, rather than the result of everyday needs or the necessities of life (as in the case of the unstructured daily encounters). Such meetings and projects are initiated and facilitated by local as well as international groups and organizations to generate exchange and interactions between young participants from Kosovo and Serbia proper who otherwise would not have the opportunity to meet each other as equals or to interact directly.

Such encounters should be understood in light (or in the shadow) of the reality of a deepening disconnect between Belgrade and Prishtina. The two cities and their populations seem to be miles away from each other, with barriers and distance that only grow, as the conflict remains frozen. Even though an official dialogue between Belgrade and Prishtina started again in late 2010, it has not yet generated any sense of change. On the contrary, official statements of politicians continue to create an atmosphere of unwillingness to transform the conflict, or the relationships it has generated over the past decades.<sup>10</sup>

Even if occurring on a small scale, structured encounters between activists, educators, and artists who believe in the importance of generating open lines of communication and exchange between the two capitals despite the general atmosphere of stagnation and conflict—may shed light on some links still existing between Belgrade and Prishtina, its populations, their pasts and futures, in spite of lack of will for change among politicians.<sup>11</sup>

One platform of such exchange takes place on Radio-Free Europe, in its program *Most* (Bridge) hosted by Omer Karabeg. The program has initiated a series of dialogues between prominent individuals from Serbia and Kosovo on the question of “how to unfreeze Serbia-Kosovo relations.” On January 5, 2009, Karabeg’s interlocutors were two writers: Migjen Kelmendi in Prishtina and Vladimir Arsenijević

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<sup>8</sup> While the visits and interviews took place in Belgrade and Prishtina, some participants were born and raised in other towns or cities in Kosovo and Serbia, but currently attend universities and reside in the capitals.

<sup>9</sup> The data collected for the unstructured daily encounters portion of the project also includes interviews conducted in Prishtina and Gračanica with young Serbs from Kosovo working or studying in Prishtina and daily crossing imaginary borders by entering the city.

<sup>10</sup> See for example in the interview with the chief negotiator of the Serbian team upon his return from Brussels from negotiations with the Kosovar team who referred to Albanians as to “people from another planet” in an interview on Blic daily newspaper (Spaić 2011).

<sup>11</sup> See for example transcripts available from a seminar that took place in Prishtina in 2008, titled: “Cultural Policies as Crises Management?” (Heta and Osmani 2008).

in Belgrade (Belgrade is a Far Away Place for Albanians from Kosovo 2009).<sup>12</sup> The exchange between the authors was far more political and direct than any of the structured or unstructured encounters I have observed thus far. They were free to talk about real issues with a high level of self-confidence and self-criticism. Additionally, they were not bound by the language of the international community, in the sense of using the paradigm of multiethnicity and multiethnic society—a discourse that does not leave much room for meaningful/open discussion on issues of the past as well as the present.<sup>13</sup> In this exchange, the two writers spoke as equals, as two statesmen from their capital cities of Belgrade and Prishtina and no longer as the oppressor and the oppressed.

While the recognition of Kosovo's independence is experienced as a direct threat reinforcing the fears among many Serbs in Kosovo, for Arsenijević from his perspective as a Belgradian the declaration of Kosovo's independence has created “the first serious basis for a complete re-definition of Serb-Albanian relations, and thus for a new future” (Belgrade is a Far Away Place for Albanians from Kosovo). Such redefinition takes place in the interactions between young Kosovar Albanians and Serbs from Serbia Proper, as part of YIHR's *Visiting Program*. In this case, the change in power relations that occurred in 1999 offers the possibility for an encounter between equal citizens from Serbia and Kosovo, unlike the oppressive relations that existed prior to 1999.

### Sites of Structured Encounter: The *Visiting Program*

The *Visiting Program* began in 2004 as an exchange program for journalists between Serbia and Kosovo, later developing into a broader exchange program for young people of various profiles from Serbia and Kosovo. The aim of the program is to “tear down the ‘wall’ between the Kosovo and Serbian societies, in order to enable young people to see the actual situation and social changes in Serbia and Kosovo through the direct experience of life in Pristina/Belgrade” (YIHR website). The program also aims to “connect (young people) with their peers ‘from the other side,’ meeting people with similar interests and establishing new relations and

<sup>12</sup> Karabeg also published his conversations between Albanians and Serbs (Karabeg 2000).

<sup>13</sup> The shift in the asymmetry of power relations in Kosovo has created a new reality on the ground, which culminated in Kosovo's declaration of independence in February 2008. However, much of the discourse on intergroup relations in Kosovo, shaped by the massive presence of the international community, is frequently reduced to the term *inter-ethnic society*, a phrase which in my opinion is emptied of the political context of minority-majority relations and identities whose power relations have been reversed. Terms such as *inter-ethnic society* and *inter-ethnic cooperation* shape meetings hosted by international organizations, constitute structured and planned facilitated encounters between local politicians as they focus on an open discussion that may “encourage cooperation on non-status issues ... and provide assistance in building a stronger multi-ethnic society in Kosovo” (Strengthening Interethnic Political Dialogue in (Kosovo 2008)). My question here is can such encounters help address the issues stemming from the change in power relations between Albanians and Serbs in Kosovo?



communication between the two societies” (Visiting Program 2006).<sup>14</sup> Finally, the *Visiting Program* aims to establish a network of young people with various interests who will remain involved in civic activism (ibid).

Visits usually last for 3 days and the agenda of the visits is created according to the interests and wishes of the participants, with different areas of interest: from visits to institutions, political parties, universities, local non-governmental organizations, museums, media houses, etc. In the discussion that follows I will address and analyze some of the dynamics and experiences of this program. I focus on differences in the aims and motivations between participants from Serbia choosing to visit Prishtina and participants from Kosovo who choose to visit Belgrade (often for the very first time), as well as differences in the motivations and experiences of organizers and participants.

## **The Ride from/to Prishtina and Belgrade and the Border Control**

The participants of the *Visiting Program* use the Belgrade-Prishtina-Gračanica route, operated by a privately owned Gračanica-based company. In many cases, the participants do not know each other prior to the start of the program, and meet for the first time at the departure meeting point.<sup>15</sup> For those traveling to Belgrade or Prishtina for the first time, much remains unknown, and hesitation or even fear may color the start of their journey. These fears however are *not* similar.

The Belgrade participants going to Kosovo may at times keep their participation a secret from their immediate family and friends, worried about a general disapproval. Often the trip to the unknown is accompanied with hesitation about what it will be like in Prishtina. Will it be safe? Will they be able to speak in Serbian or will they need to conceal their Serbian identity and speak in English only?

For the Prishtina participants, visiting Belgrade primarily means traveling to a big city. While these participants also express concerns about safety, their fear as related to crossing the border is more specific. It is related to the fear of facing the Serbian border police, and men in Serbian uniform again. As some interviewees put it, this was the first time, since the end of the war that they encountered again the Serbian uniform. Such an experience immediately recalls painful memories from the 1990s, flashbacks from the war and harsh feelings. They are all of an age to clearly remember the war, to remember how they were forced to leave their houses by Serbian armed men. This was a theme that arose in all the interviews I conducted

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<sup>14</sup> According to the organizers, more than a thousand young people, students, activists, journalists and professionals from various fields have gone through the Visiting Program, and for all of them it was the first time they saw Belgrade, Pristina and later Sarajevo.

<sup>15</sup> The Prishtina meeting point for the departure to Belgrade is Hotel Victory, while the Belgrade meeting point of departure to Prishtina is the train station. This is set in accordance with the existing Belgrade-Prishtina-Gračanica line.



with youngsters from Prishtina who visited Belgrade through the *Visiting Program*. In the words of one of them:

in the border we saw the police, they reminded us of when we last saw the police in our streets ... at that time I was scared. When I saw them at the border I was not scared but I remembered that bad time ... I have strong memories of the Serbian police in Prishtina ... I was ten years old when the police came to our house and ordered us to go out ... we then had to leave to the train station and on our way [to Macedonia] they were maltreating us ... the police, uniforms and flags of Serbia, all make me feel unsafe (Interview with the author, Prishtina, June 30, 2011).

Indeed for the young participants from Prishtina, the border is an important reminder of the past inequalities as well as of the former power relations when Kosovo was under the control of the Serbian police.

The bus rides I joined in both directions revealed some of the existing gaps between the participants from Belgrade and from Prishtina. From either direction, approaching the border generates some loud silence among the passengers; conversations now take place in lower voices or grind to a complete halt. The distance of Belgrade from Kosovo reveals and emphasizes the lack of knowledge of the situation in Kosovo by ordinary people in Serbia. The daily news coverage from Kosovo in Serbia mostly emphasizes contested issues and violence, with barely any reference to Kosovo as a place where life has continued to develop since 1999, or as a place of normality. Even though Belgrade is covered with graffiti stating that “Kosovo je srce Srbije” (“Kosovo is the heart of Serbia”), most people (especially younger generation) have never been to Kosovo and in fact have very little interest in going there. As one of the visiting program organizers explained: “the majority of young people in Serbia are completely ignorant towards Kosovo and Prishtina, they truly do not care about it, do not want to think about it ...” (Interview with the author, Belgrade, July 15, 2009).

Though program participants are clearly more curious than their peers, they too lack current knowledge of what they can expect. On the road to Prishtina, I noticed that some of the participants were not quite sure who will check their document at the border (internationals or local Kosovo police) or what the procedure will be like. Is there a border at the administrative line? If so, who is in control of it? This lack of knowledge in my understanding contributes to a sense of fear, nervousness or simply lack of interest to go. As a result, Kosovo’s independence, and the recognition or lack of recognition of its independence, seems like a distant idea in the hands of politicians, detached from the lives of ordinary people.

For the young Albanian participants on their way to Belgrade, much more is known about Serbia and unlike for Serbs going to Prishtina, recognizing Serbia’s independence and its sovereignty is not in question. The encounter with the Serbian border police after crossing the Albanian side of the border generates some tension and discomfort. On the ride that I joined, the policemen instructed all passengers with other documents than Serbian IDs to step off the bus. This included the four participants, the YIHR coordinator and myself. We were asked to get off the bus, show our bags, and answer to: “where are you going and why” type of questions. The participants were taken aback by the fact that the policeman addressed them in Serbian even though it was clear that they do not speak the language.

But interestingly enough, in spite of the discomfort and the imposed interaction in Serbian, there may have been something empowering about that border encounter for them: as some mentioned in interviews conducted few months later, being treated as foreigners meant at that moment, they are not considered to be coming from Serbia, but crossing the border, with what it meant, politically.<sup>16</sup>

## Structured Encounters: Issues and Realities

### *Motivations*

#### Civic Engagement and the “Dealing with the Past” Project

The difference in how the war in Kosovo was experienced by young Albanians from Kosovo and young Serbs from Serbia proper is important here in understanding the motivation of the organizers. While for young people from Serbia proper, the war was happening somewhere far away or seen on the TV screens only, with the NATO bombing being the event that shaped their war experiences, young Kosovar Albanians en masse experienced 1999 as a catastrophe, as they escaped their homes and became refugees. The levels of awareness are therefore different and generate somewhat different political agendas as well as understanding of the “dealing with the past” project.

From the point of view of the organizers at the Belgrade YIHR office, the aim of the *Visiting Program* is to inform people, raise awareness, and normalize relations between Belgrade and Prishtina. Additionally, they aim to expand the circles of young members of their society who are “dealing with the past”; increasing the number of young people interested in learning more about the events that took place during the wars of the 1990s and consequently enlarging the antinationalist circles among young people in Serbia. In that sense, this project has to do with enforcing the issues of the recent wars on a society that wishes to forget. It offers to break the silence, allowing young people to move away from discourses of victimization in order to enhance the engagement of young people in civic action.<sup>17</sup>

I therefore understand the *Visiting Program* to be an educational project about the recent past, offered to a generation that came of age during the 1990s, who did

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<sup>16</sup> Later on, the visits from Prishtina to Belgrade were put on hold, as participants who after the declaration of independence carried Kosovar travel documents (while before they carried UNMIK passports or still the Yugoslav passports), could not enter Serbia who refused to recognize Kosovo’s independence and all symbols generated from that unilateral move, including the new passports. Serbs are still able to enter Kosovo with their travel documents (ID is in fact sufficient). Following the February 2012 round of negotiations, it seemed like Serbia will allow Kosovar Albanians to enter Serbia with their Kosovo IDs. At the mean time YIHR were able to receive special permits for the visits, and the visitors had to leave their travel document at the border, and receiving them back upon their return to Kosovo.

<sup>17</sup> About Silence breakers in Serbia see (Fridman 2011).

not know about what was happening, at times in their name in the neighboring countries. As mentioned above, this agenda of raising political and social awareness in Serbia today is still completely in the hands of civil society organizations, absent from the official education system.<sup>18</sup>

The initiators of the program define their aim to raise political and social awareness, by highlighting the experiential component of the program: visiting Bosnia-Herzegovina (including visits to sites of war crimes) and visiting Kosovo.<sup>19</sup> In that sense such projects are at the heart of their social and political agenda, as stated by the organizers: “the visiting program aims to establish a network of young people with various interests who will remain involved in civic activism” (Visiting Program, p.47). While this statement may be read as a vague one, in essence this work is extremely political and should be framed and understood as political work and political education. However, the organizers do not often use terms as such and prefer to think of politics as something that they bring, but only from the back door.

### **Visiting Prishtina: Reclaiming the Yugoslav Space?**

Rebuilding bridges between the citizens of the former Yugoslav republics, especially between the young generations who came of age during the post-Yugoslav wars, is a theme of numerous current civil society run educational projects in the post-Yugoslav states and particularly in Serbia. The participants of the *Visiting Program* are all young people in their 20s who were born during the very last years of Yugoslavia or as it was already disintegrating. They have never experienced Yugoslavia as adults, and barely as kids. Does the *Visiting Program* have elements of reclaiming the Yugoslav space?

The differences between the Serb and Albanian participants here is most apparent, as well as the generational differences with their parents’ generation. While their parents’ generation who grew up and came of age in Yugoslavia, may have met each other studying on faculties in larger cities, or (fathers) in military service, their generation already had no opportunities to meet each other.

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<sup>18</sup>I heard reference from activists, referring to themselves as people who “professionally are dealing with the past” referring to that as to more than a job, more as a way of life a matter of values. Images of civil society in the Serbia vary among ordinary people but are mostly negative: as if it is common knowledge outside of these circles, that NGOs have a lot of money, but since the results of their work are not seen, they must be doing nothing, or as earlier addressed to, still in the 1990s, they are anti-war profiteers (who should be therefore seen just as culprits as the war profiteers). In a conversation with one of the YIHR coordinators, she explained how prior to joining YIHR she had a very bad image of NGOS in a very abstract way: “yes I was aware of their anti-war action, but even that was not enough for me; during my studies, in the late 1990’s and even after 2000, I was not in these circles, I didn’t know much about what they were doing, but I knew that a priori they were bad. I think it had to do with my ignorance and lack of knowledge. And this is still the connotation people have with NGOs” (Interview with the author, Belgrade, July 19, 2009).

<sup>19</sup>The importance of seeing in one own eyes is crucial in the approach to raising awareness and generating change in the process of knowing and breaking the silence. See also projects as the Helsinki committee for Human Rights School.

The difference between visiting Prishtina and visiting Sarajevo or other cities in Bosnia–Herzegovina from Serbia is interesting in understanding the motivation to organize and participate in the *Visiting Program* to Prishtina. While visiting Bosnia–Herzegovina especially Sarajevo was already normalized in the eyes of many people in Serbia, a similar process did not take place in regard to Kosovo and Prishtina. As one of the organizers explained: “most people in the streets of Belgrade will be happy to talk to someone from Sarajevo, someone who speaks with a Sarajevo accent ... it is more familiar and acceptable. But at the same time, people from Belgrade would not be happy to know that next to their table in at café or at the restaurant someone who is from Kosovo sitting, someone who is Albanian” (Interview with the author, Belgrade, June 3, 2011). From that point of view, going to Prishtina is something that is still not acceptable nor is it normalized in Belgrade. It raises questions such as “why would you want to go there? What is in Prishtina for you?”

I see this as part of the motivation for young people from Serbia to go to Prishtina, searching for more cutting edge activism, for the adrenaline to flow: while going to Sarajevo is now normalized again and may be perceived by many as an ordinary or touristic thing to do: visiting Bašćaršija, the summer film festival, enjoying the best Burek and Čevapi though not disregarding still the politics of that, there is no tourism to Prishtina from Belgrade, and going there may now be seen by some people as a betrayal, especially if it is in order to meet with Albanians and take part in such projects of structured encounters.

The generational difference among activists here is again insightful: while for the older generation of antiwar activists going to Sarajevo right after the war was emotional and painful, given that for them, Sarajevo was their city too, and was attacked brutally in their name; for the younger generation of activists it was already different. In the words of one of them who explained: “people my age, we do not have any memories or emotions regarding Sarajevo, it was never part of our country” (ibid). However, even for the older generation of activists, Prishtina never seem to hold a special or emotional role. For the younger activists it did become meaningful, as offering a real possibility to transform their relations with Albanians, and as an opportunity to allow them to form their own thoughts, independently, based on their own experiences, and based on access to knowledge and information, enjoying the kind of activism with a flavor of engaging with the forbidden.<sup>20</sup>

## Visiting Belgrade

Some curiosity or attraction to the forbidden is also involved in the choice to visit Belgrade for youngsters from Prishtina. As one of them put it: “everything that is prohibited to do is attractive” (Interview with the author, Prishtina, July 1, 2010). Most of all, Belgrade is seen as a large, cosmopolitan city that has a lot to offer, both

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<sup>20</sup> This as a motivation I especially noticed among the organizers of the program. Some of them joined activism in YIHR through first participating in the *Visiting Program*.

culturally and socially. But connections between Belgrade and Prishtina were completely broken, and while for some it is too early to reestablish them again, the *Visiting Program* is doing just that, allowing young people to meet each other and reestablish connections.

Discussing these broken ties on the radio program *Most*, Omer Karabeg (the host) asked Migjen Kelmendi: “do Albanian artists from Kosovo want to work with Serbia, to have their books translated there, to exhibit their paintings, to have a theatre performance there, or do they want artists from Serbia to come to Kosovo, to Prishtina?” Kelmendi replied:

No. They are definitely no longer interested in Belgrade and Serbia. They are fully oriented towards Tirana and Albania. It is there that they wish their works to appear. I would say that the Kosovo Albanians have turned their backs on Serbia for good. There is not the smallest wish to know what is going on there. It seems at times that Belgrade for them is a faraway city, that Serbia is a faraway land ... apart from occasional individual contacts, communication has practically ended (Belgrade is a Far Away Place for Albanians from Kosovo).

As an alternative to this perspective, it seems that most young people who choose to visit Belgrade, do see it as a city and that has something to offer them in spite of the recent past, the wars and the way Albanians were and are treated there. Visiting Belgrade means that one has to struggle with what the city, and Serbia in general, represent for many Kosovar Albanians: the home of the Milošević regime and of Serbia as a crime machine in the 1990s. As one of the organizers from the Prishtina YIHR office reflected on the first time he visited Belgrade: “in 2007 I went to Belgrade for the first time, it was April 1, 2007, exactly 8 years after I was forced to leave my home on April 1, 1999 by Serbian police” (Interview with the author, Prishtina, June 30, 2010). Going to Belgrade is a challenge, it means taking the time and space to think for oneself, and think critically, learning that in fact the way Serbia and Belgrade are represented in local media in Kosovo is also one-dimensional. Wanting to form their own opinion and to decide for themselves seems to be an important factor in the decision to go. Among friends and family, reactions may be discouraging. For many, Belgrade is the city of the enemy, especially for families who lost their loved ones during the war. For some, this is exactly the reason why they choose to go: “the *Visiting Program* is a small step for a big change in the relations between Kosovo and Serbia; this is the best way for us to get to know each other” (Interview with the author, Prishtina, July 1, 2010).

The wish to travel freely, to have options and opportunities, also has to do with the decision to go to Belgrade, as young women and men in Kosovo still feel isolated. Currently for those carrying a Kosovo passport, the only destinations they can travel freely to, with no need for a visa or a special permit, are Macedonia, Montenegro, and Albania. Traveling to Belgrade helps to break this sense of isolation.

Understanding this choice through generational differences may shed light on the communications that were broken and on the current sense of isolation. For young participants from Prishtina, visiting Belgrade is something their parents’ generation can relate to. While for them there is almost nothing left from Yugoslav times or Yugoslav memories, their parents did come of age and live in Yugoslavia;

they speak fluent Serbian and in some cases are even nostalgic about the days of socialism as I heard in some of the interviews and conversations in Prishtina.<sup>21</sup> Many of their memories about Yugoslavia that they shared with their kids have to do with traveling. Thus, some of the parents do encourage their kids to take this opportunity and travel to Belgrade, talking about the days when they could travel freely, everywhere.<sup>22</sup>

One participant spoke about her father, who used to work in Belgrade: “when I went to Belgrade he wanted to come with me, for both my parents had jobs, security and stability during Tito’s Yugoslavia” (Interview with the author, Prishtina, July 1, 2010). In that sense, reference to Socialist Yugoslavia was often mentioned, mostly in juxtaposition with what came after, the Milošević regime. For some, this shared past still holds meaning as something that should not be erased or ignored completely. The *Visiting Program* may allow these shared pasts to resurface again or at least to be explored.

While in Serbia, some participants from Kosovo see it as an important opportunity to change the image people have about Kosovo and about Albanians, and even more so, about the right of Kosovars for an independent state. As one participant who returned to Belgrade several more times after her participation in the *Visiting Program* put it:

During my very first visit, I was more in a position of observing and absorbing, trying to see what Serbian society is like, what do they have to offer me as an Albanian from Kosovo? Can they treat me equally? Did they change their approach towards Albanians [after the war]; the next time I visited the city, I was already louder, expressing my beliefs and also making a point of going there from a better position, visiting a neighboring country Serbia, saying “I have a state now too” (ibid).

Connecting with like-minded young people from Serbia, those who are not nationalists or radicals, allows such statements to be made, and therefore may offer an empowering experience.

### ***Revisiting What Used to be Home***

A few of the participants of the *Visiting Program* choose to participate in the program and visit Prishtina because they were born and raised in Kosovo, members of families who left Kosovo when the war ended the way it did in 1999. For them, this is the first opportunity to go back and visit their sites of childhood, the city where they were born and grew up. This may be an emotional journey, mixed with personal memories and heavy feelings. I asked Jana, a young participant of the program

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<sup>21</sup> More on memories of Socialist Yugoslavia in post-war Kosovo see (Schwander-Sievers 2010). The biography of Adem Demaçi is illuminating in portraying the images and of Yugoslavia in Kosovo (Gashi 2010).

<sup>22</sup> Similar sentiments towards the Yugoslav days were heard in Serbia prior to the abolishment of the visa requirement to enter the EU in December 2009.

who left Prishtina as a refugee to Belgrade when she was only 10 years old, if she had found what she was looking for. She replied: “I went there to search for feelings, I wanted to see the city and the people there and to compare it with my memories ... I also wanted to talk to people from Prishtina to see what were their emotions towards the situation that Serbs are no longer there” (Interview with the author, Belgrade, December 29, 2010). Through her eyes, while walking in the streets of Prishtina, the other participants could learn more about the way the city was before; the layers of the city that changed completely, as the names of the streets and the buildings are no longer the same.<sup>23</sup>

The meetings held in local organizations and with local people while visiting Prishtina usually begin with the participants introducing themselves and where they are from. With younger presenters these meetings take place in English; with people who are a bit older (in their late 30s and older) the exchange takes place in Serbian, as they are all bilingual. In a meeting at one Prishtina-based NGO, Jana introduced herself as born in Prishtina and now living in Belgrade. In a powerful gesture, the presenter welcomed her back to *HER* hometown, emphasizing how he would love to see all people who were forced to leave the city in 1999 return. This was a powerful way to enter the presentation with the group, as the presenter had positioned himself to make a point about where he stood politically.

### ***Possible Transformations/Movements/Changes?***

Unlike participants born in Kosovo who came back through the program to see their childhood city, most of the participants from Serbia who visited Prishtina through the program did so for the very first time. They had an image of Prishtina as a small town, even village-like (often using the term *seljački*, meaning peasant). After spending a few days in Prishtina, meeting young, energized people, and being exposed to fascinating information generates a whole new image of a city they realize they knew so little about. As one participant put it: “going to Prishtina was as if someone showed me I was in the darkness [in my thoughts about Kosovo and about Albanians] ... it made me understand that my thoughts are based on pure ignorance” (Interview with the author, Belgrade, July 19, 2009). The concept of the *Visiting Program* exactly builds on this recognition that the dominant discourses in Serbia make use of such ignorance for manipulation and anti-Albanian propaganda. The organizers’ way to resist that is to offer people an experience through which they can define their own thoughts for themselves, through their own eyes, to take a stand that is based on knowledge, information, and firsthand experience.

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<sup>23</sup>For example she kept referring to names of the streets and buildings that have changed. The *Lepa Brena Building*, which is now called the KEKS building, Kosovo’s electric distribution company seemed as a marker for her to find her way around. For a discussion and analysis of changes in space and landscape modifications as related to citizenship and identity in Kosovo see (Krasniqi 2012).



It is important to mention that stereotypes in Serbia towards Albanians are not new or so recent. In some ways Albanians were always seen as “the other,” which goes back to relations during Socialist and the kingdom of Yugoslavia. The language was always a divider between these communities; Albanians were not Slavs and earlier in the second Yugoslavia were subject to oppressive mechanisms of control (Malcolm 1999, pp.314–334).<sup>24</sup> As one participant from Belgrade put it: “for me change only came when I realized I was a racist, that this is racism and that it was present in Yugoslavia towards Albanians, and not among Serbs only. But I needed to go there [to Kosovo] have that experience, so I could become aware of that” (Interview with the author, Belgrade, July 19, 2009).

Listening to firsthand stories from young Albanians who lived through the war seems to be a very powerful and important experience of the program. Such exchanges do not occur in the format of a lecture, but in arranged meetings by the organizers, taking place in offices and cafes, in quite an informal atmosphere. For some, the impressions left by such an encounter are so strong that they could not stop talking about it upon their return home. For some, this was their entry point to activism with YIHR, leading to volunteering and even taking full-time positions within the organization. What they encounter while visiting Prishtina is a celebration of Albanian identity, a sense belonging and pride, that many of them sense nothing of in Serbia. While in Serbia such sentiments would be connected with Serbian nationalism, from their point of view, in Kosovo this nationalism bears no such negative connotation yet, but a sense of pride and of freedom that people were denied of, for a long time.

While a change in opinion may occur for some, for others this encounter may generate more hesitation. Here as well as in other cases of such encounters, some participants end up engaged in a competition over victimization. This is a common phenomenon amongst other groups in conflict and participants in educational projects that aim at raising awareness (Fridman and Abu-Rish 2008). In this case, it may also be attributed to the way the war in Kosovo ended and how the events after 1999 have played out: after all it was quite clear that Serbia and Serbs in Kosovo emerged as the losers of this war and that the power relations shifted. As one participant put it: “visiting Kosovo made it clearer that they [Albanians] are the winners in this historic battle of Serbia and Kosovo; they got what they wanted, they got their independence and their state ... in general, the public in Serbia has a feeling that we lost in this conflict, but it is hard to say it openly and publicly” (Interview with the author, Belgrade, June 16, 2010).

As a young man with political ambitions in Serbia, he was reluctant to openly acknowledge the independence of Kosovo, and chose not to post on his Facebook wall any of the many pictures he took, while visiting Prishtina with

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<sup>24</sup> For further discussion on Serb stereotypes towards Albanians see (Marković 2003). Slobodan Naumović’s analysis on popular narratives on Serbian disunity also sheds light on those dynamics (Naumović 2007).



the *Visiting Program*. And yet many others were surprised by the warm and positive welcoming attitude towards them, what helped break many of the images they had prior to the visit (such as that Albanians are less educated, hate Serbs, etc.), shaped by TV and newspapers images in Serbia. Being exposed to the Albanian point of view and narrative is almost impossible in Serbia, and yet is a key to any change or movement that may occur in the perceptions and world-views of young people.

## Closing Remarks

Through an investigation of encounters, this chapter sought to offer a more complex approach to the study of conflict transformation in Kosovo and Serbia and more insights to dealing with the past processes in those societies. By analyzing structured encounters in the context of the change in power relations that took place in Kosovo, this study highlights the need for an in-depth analysis that approaches Kosovo not as a disputed territory only. A program such as the *Visiting Program* and the processes and dynamics it generates as analyzed above, shed light on the difference between Serbs from Serbia proper and Serbs from Kosovo in relation to the challenges and dilemmas they face in Kosovo today.

Both among young participants and activists from Serbia and from Kosovo, I did not encounter any individuals who discuss their everyday experiences or work in terms of peacebuilding or reconciliation; the use of these terms are usually made use of only by members of the international community. Nevertheless, the analysis of the *Visiting Program* offers an insight into its potential to become transformative in the awareness and understanding that it raises among its participants, towards the conflict. It does suggest though that relations between Prishtina and Belgrade may be easier to restore or transform than those between Serbs and Albanians within Kosovo itself.

Additionally, analysis of the dynamics and processes of the *Visiting Program* suggests that more work needs to be done in Serbia in order to transform the official and public approaches towards Kosovo. Public discourse in Serbia generally refers to Kosovo as a territory only, with no reference to the population living there, or with reference to the Serb population only. Stereotypes in Serbia that are tainted with racism towards Kosovo Albanians are commonly present, especially among those who have never been to Kosovo. Such racism is not a new phenomenon; however, the events of the past decades seem to have further entrenched such views as the result of a lack of direct knowledge of or contact with the population of Kosovo. In that sense, the *Visiting Program* interrupts and even combats such ignorance, offering a more engaged form of citizenship based on access to firsthand experience rather than propaganda. Even though such stereotypes are not completely absent among members of the Serbian communities in Kosovo, they too are often looked down at by urban population in Serbia proper.

These structured encounters therefore should be understood as encounters between young urban people. As such, they do not explicitly combat segregation but rather help to generate a sense of freedom as well as more critical thinking and the critical consumption of knowledge. As many young participants in the *Visiting Program* have explained, they wanted to have the opportunity to meet young people who are the same like them. This may raise the question as to what extent this program addresses otherness and differences in a systematic or complex way. More broadly, it sheds light on the contribution of such a project of structure encounters to the ongoing processes of transitional justice in the region; more particularly it sheds light on perspectives “from below” and their affect on young people. It raises yet another question as for how far below even civil society can reach. It points at the challenges of civil society groups to broaden the circles of participation in their projects that are often perceived as elitist; as well as at the complexities in enhancing more engaged forms of citizenship as part of transitional justice processes.<sup>25</sup>

Pedagogically speaking, while the program at first may seem to be leaning on the contact hypothesis model,<sup>26</sup> it may in fact offer a new and locally developed model for conflict transformation work, education for peace, and/or mechanisms for transitional justice from below in the post-Yugoslav successor states. While the program is not defined in pedagogical terms and is not even framed as political (or as political education) by its organizers, it clearly has the intent of including more young people in civic engagement, in particular of enlarging the circles of those involved in the *Dealing with the Past* project, which is seen as the main mechanism for peacebuilding and transitional justice in the region.

In such a model, the *Visiting Program* does offer elements of reclaiming the past Yugoslav space. But even more so, by offering young people from Serbia and Kosovo the opportunity to visit Belgrade and Prishtina, it accepts and acknowledges the change that has occurred in the power relations between Serbs and Albanians, as well as between Belgrade and Prishtina. This is the entry point of the project, which rebuilds bridges between the citizens of the former Yugoslav republics, especially between the young generations who came of age during the post-Yugoslav wars or after. As a consequence of their participation in the program, it may be possible for some of these young people who did not experience Yugoslavia as adults to find and redefine these lost connections as a platform for change in future relations, between equal citizens of now various independent states.

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<sup>25</sup> My thinking about engaged forms of citizenship is shaped significantly by the work of Ariella Azoulay (Azoulay 2008).

<sup>26</sup> See endnote 5.

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# Chapter 10

## What About the Women? Transitional Justice and Gender in Bosnia and Herzegovina and Northern Ireland

Michael Potter and Hedley Abernethy

### Introduction

In the context of challenges to the traditional transitional justice framework, this chapter takes two transitions that featured peace agreements in the 1990s which brought overt armed conflict to an end and established new post-conflict political institutions—in Bosnia and Herzegovina (BiH) and Northern Ireland—and examines the experiences of women in these contexts. The chapter is written from the perspective of practitioners working with individuals affected by armed conflict and reflects on the nature of justice in transition in a wider sense in a way that is meaningful to a broad range of individuals affected by conflict.

Processes which bring violent conflicts based on disputed space between ethno-national identities to a conclusion—or at least a pause—create opportunities for shaping new political and social landscapes in the transition from conflict. Commonly referred to as “transitional justice” processes, these opportunities for change tend to focus on areas such as individual prosecutions, reparations, truth-seeking, institutional reform and vetting and dismissals (United Nations Security Council 2004: 4).

Received wisdom would suggest that all matters pertaining to the restructuring of society after violent conflict should be addressed. This must include issues of marginalisation, which, although not necessarily the root of the conflict, is none the less exacerbated during or ignored by the conflict. The concepts underpinning transitional justice should result in widespread social and structural change. Yet civil and political rights often appear to trump other rights, including social and economic

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rights. This has led to traditionally marginalised groups like the poor and women still unable to enjoy the benefits of the new order (Roht-Arriaza 2006).

The UN Security Council recognises that there is not a “one-size-fits-all” approach to transitional justice. However, the Security Council was clear to state explicitly that any transitional justice efforts are based upon meaningful public participation of a number of groups including women (UN Security Council 2004: 7). While the report goes on to state that reform must also be “cultivated” amongst elites and ex-combatants, it appears that a tacit hierarchy has developed with the needs of elites and ex-combatants taking precedence under transitional arrangements over marginalised groups such as women (ibid.). Women, being largely absent from the perpetration of violence in conflict, are often under-represented in the formation of post-conflict arrangements, although increasingly international involvement in transitions has led to the insistence on measures to increase the participation of women, at least outwardly.

It is not intended to imply that the conflicts in BiH and Northern Ireland are directly comparable: they are not, whether in terms of geography, economic situation, political influences, conflict structure, intensity or outcome. However, it is suggested that there are conceptual similarities in the way individuals respond to the impacts of conflict upon them and how they see their place in the post-conflict environment.

## Women and Ethno-National Conflict

The notion of “ethnic conflict” can have the effect of simplifying complex phenomena to the extent that the terminology can be counter-productive and misleading for the purposes of analysis (McGrattan 2010). However, ethno-national identity can become a rallying point in times of tension or fear, leading to a retreat into a basic, secure group identity (Smith 1999: 276). This response is harnessed by “ethnic entrepreneurs” (Rothschild 1981), who formulate symbiotic relationships with fearful populations in conflict (Voutat 2000: 286), deriving power from both voicing the fears of a community under threat and also exacerbating concerns, real or imagined. In this context, “cohesion and identity in contemporary conflict tend to form within increasingly narrow lines” (Lederach 1999: 12).

This distilling of identity in simplistic terms with ethno-national reference points becomes such a strong bond that the process continues well after violent conflict has abated. Indeed, democratisation can lead to these essentialist ethnic markers being the dominant force in post-conflict elections (Snyder 2000). Evidence from BiH and from Northern Ireland demonstrates that political parties with more distinct ethno-national identities are those which have gained increasing electoral success (Mujkić and Hulsey 2010; Mitchell et al. 2009). Rather than ethno-national identity also being an area for negotiation after violence, the formation of identity during conflict has a significant influence on who is present and who is absent in post-conflict power relations.

Some authors have commented that the formation of national identity tends to take place in the public arena according to male norms and male reference points in the absence of women (Yuval-Davis 1997: 2). The idea of “nation” as a large, extended family consigns women to subordinate roles as carers for and reproducers of the community, but women are also appropriated to define the limits of the identity of the nation as “cultural markers” (Moghadam 1994: 2–3; Beasley and Bacchi 2000: 338; Timmerman 2000: 15). This has an impact on how the nation conducts its business in the spheres of governance and the application of justice with the criminal justice system tending to be retributive in nature and lacking any sense of gender-sensitivity. In its 2011–2012 report, the UN Women organisation asks if “the rule of law rules women out”, continuing that “... laws tend to reflect and reinforce the privilege and the interests of the powerful whether on the basis of economic class, ethnicity, race, religion or gender” (UN Women 2011: 11). The difficulty in reconciling notions of the “nation” and social justice in gender terms, particularly in the context of nation-building, post-conflict or otherwise, has led to an observation that feminism and nationalism are incompatible ideologies for the manner in which this process has been acted out in reality (Kaplan 1997: 3).

Likewise, where ethno-national identity is the reference point for conflict, it is men who are predominantly active in the process. Northern Ireland during the conflict has been referred to as an “armed patriarchy” and the Stormont government as an “ethno-gender regime” (Monica McWilliams, quoted in Miller et al. 1996: 217; Racioppi and O’Sullivan See 2001: 93–5). Violent conflict has been viewed as a response to male needs in a male value system (Brock-Utne 1989: 15; Enloe 2000; Skjelsbaek and Smith 2001: 165) and gender relations even being seen as a root cause of war (Cockburn 2010). Whatever the explanation, there appears to be a distinct lack of women in decision-making roles during conflict.

While some have argued a biological pre-disposition to peace for women and to violence for men (Galtung 1996: 40–3), or that many women have developed a more protective stance towards the community due to learned mothering roles (Ruddick 1990: 23, 80), this stereotypical essentialising of women is seen as unhelpful (Moser and Clark 2001: 4; Reardon 1993: 15). Certainly, the impacts of war have a differential effect on women, who “suffer most, both in the perpetual violence against women during the occupation and through the deaths of sons, husbands, lovers, brothers and fathers” (Alonso 1993: 57).

The positioning of women as passive victims of conflict and men as dominant actors, it has been observed, plays into the hands of patriarchal norms (Karam 2001: 22). Yet, while there are women who play active roles in conflict, they are in a minority, and even then, the expectation has often been that once they have played their part, women would simply revert to an assumed pre-conflict role of domesticity and motherhood (Cherifati-Merabtine 1994: 40). In both Northern Ireland and BiH, women have been active in both fighting and peacebuilding, with the former in a minority and the latter largely unheard and celebrated. A stark contrast can be seen in BiH where the former President of the Republika Srpska, Biljana Plavšić, was indicted for genocide, crimes against humanity and violations of the laws or customs of war, while a figure such as Munira Subašić, head of the association



Mothers of Srebrenica, has been a significant figure in campaigning for justice for victims of the massacre in July 1995.

Whatever the circumstances of the involvement of women, it is male voices that are dominant during conflict, and if it is the conflict-related identities and reference points that exclude women that are carried over into the transition process, it is unsurprising that women's voices are absent there too.

## **The Nature of Post-conflict Transition**

Attempts at ending conflicts perceived in terms of ethno-national identity over contested space have been approached by various methods of political accommodation. One to have gained significant currency in recent years is that of consociationalism, which, depending on the variant in use, comprises a "grand coalition" of ethnic groups, mutual veto in decision-making, ethnic proportionality in the allocation of offices and a certain degree of ethnic autonomy (Lijphart 1975: 166; Lijphart 1977; Horowitz 2001: 569–70). Essentially, elites of groups in conflict agree to manage their separate populations, divide up the executive roles and cannot make significant decisions without the consent of the other groups in the arrangement.

Such power-sharing systems have the potential to bring conflict elites together in a co-operative political structure in order to end violent conflict, but the approach has been criticised for privileging the identities that are associated with the conflict to the detriment of other identities and viewpoints, having the effect of perpetuating lines of division rather than fostering mixing or reconciliation between groups (Manning 2002; Taylor 2001; Wilson 2010). Political parties therefore develop along ethnic lines, having a centrifugal effect on social and political forces, rather than the cross-cutting, centripetal effect of non-ethnic parties (Horowitz 2001: 347). Conflict elites re-invent themselves as political elites while society remains divided along the lines of conflict in a form of suspended animation and the identities which lacked power and prominence during the conflict remain on the periphery.

However, this is not the full story. In the bargaining process that is a feature of post-conflict transition, Ní Aoláin (2009: 1056) notes that the "experiences and needs of women are markedly absent or silenced by the general discourse of accounting for the past." That said, actors in peacebuilding have sought to develop civil society in parallel to the political structures to foster the organic transition to a more peaceful, participative society, which has been referred to as "complementarity" (Bloomfield 1997). Non-governmental organisations (NGOs) are encouraged to become involved in the process of post-conflict transition through contributing to the political process while building capacity at community level to raise confidence, develop trust and provide opportunities for middle-range and grassroots actors to shape post-conflict relations (Lundy and McGovern 2008; Kumar 1997: 2; Lederach 1999: 39, 51).

If conflict elites are present at the negotiating table, then women are generally absent. It is assumed that if men are the ones with the guns, then women need not be

involved in discussing decommissioning (Potter, A 2008). Yet the predominance of women in civil society organisations and the co-operative methods used by women active at community level makes women's presence in making decisions about the post-conflict society essential (Potter, M 2008). This is not to say that women conform to the "natural peacemakers" stereotype discussed above, but reflects the fact that women tend to predominate in civil society organisations and it is these organisations which have been at the forefront of reaching out to opposing communities.

Transitional justice requires a reassessment of violence and security to include re-examining repressive policies that impact upon women and not merely subsuming violence against women into existing and usually inadequate legislation (Ní Aoláin 2009: 1066; Oosterveld 2008: 75). The Nairobi Declaration goes some way to codifying this in that reparations "must address structural inequalities that negatively shape women's and girls' lives" (cited by Couillard 2007: 445). While conflict can impact upon women differentially to men, the process of change, violent or otherwise and the formation of a new society, can provide significant opportunities for women that may not have been available before (Timmerman 2000: 15; Karam 2001: 22; Hughes 2008). In its series of recommendations, the UN Women organisation says there is an imperative to "recognise the differential impact of conflict and rule of law deficits on women and children and the need to ensure gender sensitivity in restoration of rule of law and transitional justice, as well as the need to ensure the full participation of women" (2011: 21). These opportunity spaces can be brief and the participation of women is reliant on mechanisms that favour inclusion.

On 31 October 2000, the UN Security Council passed Resolution 1325 (2000), which called for the increased participation of women in decision-making roles, in all levels of negotiations, peacebuilding and UN field operations, and a gender perspective to be integral to all transitions from conflict. This was echoed the following month with a similar commitment by the European Union with European Parliament Resolution 2000/2025(INI) and 4 years later by the Council of Europe with Resolution 1385 (2004). These commitments amount to a structural application of gender equality provisions in post-conflict transition and the acknowledgement of the particular needs of women emerging from conflict and of the need for women to be present at every level and at every stage of the process.

While the key transition moments of the conflicts in BiH and Northern Ireland predate these resolutions, they are still cited as a rationale for the full participation of women in both contexts.

## Challenges to the Transitional Justice Framework

Transitional justice can be broadly or narrowly defined. In its narrow sense, it refers to issues such as legal redress, truth recovery, reparations, prosecution of perpetrators and the establishment of international human rights standards. In its broader sense, "it involves anything that a society devises to deal with a legacy of

conflict and/or widespread human rights violations” (Roht-Arriaza 2006: 2). The transitional justice framework has been increasingly challenged, with arguments that a “universal toolkit” is limited in its application to different contexts, for example, in a discarding of international mechanisms in favour of local processes (Shaw and Waldorf 2010: 3–4).

An expanding body of literature challenges the traditional transitional justice frameworks as being too narrowly focussed on legal and retributive processes, truth recovery and addressing human rights violations. While these issues are important in the transition from conflict, transitional justice, by these critiques, requires a wider application of inclusion and participation in post-conflict social and political life, particularly for women (Bell and Ní Aoláin 2004; Bell and O’Rourke 2007; Ní Aoláin and Rooney 2007; Rooney 2007).

It is contended in this chapter that meanings of justice in transition differ significantly between, on the one hand, those involved in judicial processes bringing to trial individuals who have committed human rights violations during the conflict, and on the other, people in wider society for whom the impact of the conflict varies considerably and whose understanding of justice has a broader meaning of participation and living in a fair society. Both BiH and Northern Ireland saw transitions that were subject to agreement between warring communities, where, although some recourse to justice processes for past wrongs are possible, the majority of victims will not see perpetrators come to trial.

## **Transitions from Conflict in Bosnia And Herzegovina and Northern Ireland**

The armed conflict in BiH was halted with the Dayton Agreement of 1995, where new power-sharing structures were agreed in a short, sharp negotiating process (Holbrooke 1999). These new structures comprised three levels which assumed a need to accommodate ethnic differences through separation at community level. An overarching Parliamentary Assembly brings together the three identities in a grand coalition, below which are the two entities of the Parliament of the Federation of BiH and the Parliament of the Republika Srpska, the former of which also has a power-sharing arrangement. Then there are ten cantons within the Federation based on assumed ethnic identities. As a mechanism for ending the conflict, the arrangement has been successful, but divisions are maintained by the system and critics have suggested that it fails as a long-term solution, as elites are comfortable with a status quo that does not require inter-communal reconciliation (Glenny 1999: 651–2).

Women emerged from a conflict where there had been a significant level of gender-related violence and abuse (Benderley 1997: 66; Boeschoten 2003). In addition, women were the primary sustainers of community and the key elements in holding families together during and after the conflict (Robertson and Duckett 2007). While

it has been claimed that transitional justice is merely a perpetuation of patriarchy (Ní Aoláin 2009), that is, a continuation of power systems that privilege male dominance, rather than a transformation to social justice, the experience of women is significantly different in that it has been a transition from a more liberal, egalitarian social context under the former Yugoslavia to what has been described as a “backlash” or “re-patriarchalisation” in the post-conflict experience (Skjelsbaek 2009; Majstorović 2011).

A Law on Gender Equality in BiH was passed in 2003, guaranteeing equality in a range of areas and a commitment to equal representation in government, including the judiciary, legislature and executive. At the time of writing, 9 of the 42 members of the House of Representatives are women and 2 of the 15 delegates to the House of Peoples. At the entity level, 23 of the 98 members of the House of Representatives of the Federation of BiH are women and 18 of the 83 members of the Parliament of Republika Srpska.

To complement the gender legislation, there is a range of structures dedicated to gender equality in BiH. The Gender Programme of the UN Development Programme oversees gender issues at the regional level and a Gender Equality Agency promotes gender equality at the national level. Both of the entities have Gender Centres with scrutiny roles in the area of advancing equality between women and men and there are Commissions for Gender Equality at cantonal and municipal levels.

Despite the efforts of the international community to develop sustainable gender equality norms and early optimism about the opportunities for women to take the initiative in the transition process (Draculić 1993: 129–30), it has been claimed that the majority of women have not benefited from the new structures, except for a small number of middle class women from an urban elite who have had the opportunity to do so due to the nature of top-down international development approaches (Pupavać 2005). Civil society organisations have been developed through international investment of which, on the one hand, it has been claimed that international models not suited to the context have been imposed (Belloni 2001), but on the other, while such critiques are valid to a certain extent, indigenous NGOs had existed from before and during the war and have had the opportunity to develop (Simmons 2007).

Generally speaking, the situation has been described in BiH as a model of men inside the political institutions in positions of power and women active in the community. Notions of women as “peacemakers” outside the formal political setting risk falling into essentialist stereotypes of male and female roles in the post-conflict society, but it has also been observed that politics is regarded as male and corrupt and women’s activism in informal settings serves to maintain moral authority (Helms 2003).

Northern Ireland’s conflict reached a settlement after protracted all-party negotiations (Mitchell 1999), culminating in the Belfast Agreement of 1998. After a number of false starts, primarily over the decommissioning of paramilitary weapons, the Northern Ireland Assembly was established, which has been described as consociational (O’Leary 1999). Members of the Legislative Assembly (MLAs) have to register as “nationalist”, “unionist” or “other” on taking their seats and on

important issues or where a petition of concern has been raised, a majority of nationalists and a majority of unionists are needed for decisions to be made. Therefore, the value of being an “other”, i.e. not aligning oneself with the reference points of the conflict, is undermined when it comes to deciding key issues. In terms of gender balance in the institutions, at the time of writing 20 of the 108 MLAs are women.

While there were women who became directly involved in the conflict through participation in paramilitary organisations or security forces, women in Northern Ireland, as in BiH, have been regarded as sustainers of community, maintainers of families, tenders of the wounded and carers for those affected by the conflict (Potter 2004: 35). Women have been largely invisible in analyses of the conflict and the intersection of gender and other identities has been generally ignored (Rooney 2006). However, a sense of being left out of the transition from conflict led some women to organise to earn a place at the negotiating table, forming a political party for women’s issues, the Women’s Coalition (Fearon 1999). Fitzduff (1999: 91) describes how, initially, party members were treated with hostility including blatant sexism, although they provided a vital role in enabling the more extreme political parties to negotiate their way through the issues of releasing prisoners and decommissioning weapons. However, rather than benefitting from the tenets of consociational politics it was to be their demise as the electorate again voted along traditional political lines with the more extreme Unionist and Irish Nationalist parties seeing a rise in the number of seats gained to the Northern Ireland Assembly at the cost of moderates, including the Women’s Coalition.

The Belfast Agreement and subsequent Northern Ireland Act 1998 contained commitments to equality and human rights, but rather than singling out gender in the post-conflict dispensation, equality between men and women was one of nine grounds about which equality impacts have to be taken into account and gender equality law proceeded in line with UK law in general. At the institutional level, there were no government agencies dealing specifically with gender. The Equal Opportunities Commission, the independent institution working in the field of sex discrimination, was absorbed into the more general Equality Commission and, although there is a Gender Equality Strategy, it is one of many across different equality grounds. Hence, there are no post-conflict mechanisms to promote gender equality in particular, and the UK Government does not intend applying UN Security Council resolution 1325 to Northern Ireland.

In some senses, to compare Northern Ireland and BiH as contexts of conflict fails to recognise specific differences in the nature and course of those conflicts. Deaths in Northern Ireland, at around 3,000 over 30 years, could not begin to equate with the around 100,000 of BiH over 3 years,<sup>1</sup> and the missing from Northern Ireland number fewer than 10, compared with the 13,000 still unaccounted for in BiH (Popović 2009: 32). Likewise, Northern Ireland was a low-intensity conflict in an affluent, resource-rich region of Europe, where casualties could expect high-quality

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<sup>1</sup> The numbers of people killed in BiH have remained a matter of dispute. These figures are taken from the *Bosanska Knjiga Mrtvih*, a project by the Research and Documentation Centre in Sarajevo.

medical treatment within hours, if not minutes, of injury, and conflict-related damage to property was compensated for by the government. No such support or provision existed in BiH. Furthermore, the Northern Ireland conflict operated under a legal system which, although criticised as partial, did give some recourse to justice or appeal against state or third-party action was at least possible. BiH was in a state of war where legal and governmental structures were suspended.

Yet, the mechanisms and legacies of conflict fall into certain recognisable patterns and the differences are largely a matter of scale and severity. Loss or trauma can be as significant for an individual whether it takes place in isolation or in a context where they are commonplace. The experience of women can also be compared. While there were not the incidences of massed crimes against women in Northern Ireland that took place in BiH, patterns of essentialisation, appropriation and marginalisation of women are common patterns in the literature of both conflicts.

## **The Experience of Women**

The evidence for this chapter is derived initially from consultations in 2005 as part of the development of the gender dimensions of the European Union Peace Programme for Peace and Reconciliation in Northern Ireland and from discussions at a workshop at the “Pathways to Reconciliation and Human Rights” conference in Sarajevo on gender and transition, which informed a formal research project in Northern Ireland and BiH with key individuals working with women at community level in 2007/2008. The themes of the research were then further expanded at the “Peace by Piece” conference in Belfast in 2008, involving women from conflict areas internationally, including BiH.

In Northern Ireland, the research was carried out with groups involved in women’s training projects through the EU Peace Programme supported through the intermediary funding body Training for Women Network (TWN), including project officers at the funding body and project promoters and participants at Ballynaveigh Community Development Association, East Belfast Community Development Association, Short Strand Partnership and Women’s Tec in Belfast, Positive Steps Learning Centre in Cookstown and the victims group Homes United by Recurring Threat (HURT) in Lurgan. In all, 20 individuals were interviewed, one of which was male. Information was also gleaned from project evaluations across 20 women’s training projects. The Northern Ireland fieldwork was carried out at a time when the impact of the Peace Programme on women was being evaluated.

Interviews in BiH were carried out in Sarajevo with international agencies with gender programmes in the country (British Council, UNDP Gender Programme and Catholic Relief Services), the government Gender Equality Agency, the Centre for Interdisciplinary Studies at the University of Sarajevo and community-based organisations (Žene Ženama, Cure Foundation and Organisation Q), and an additional interview was carried out with an unaffiliated community activist. In all, 20 women were interviewed. The fieldwork in BiH was carried out in the context of a joint

Government and UN Development Programme project to promote and consult upon how to progress with transitional justice in BiH.

The war in BiH had a huge impact on women from many perspectives. Thousands of women were directly affected through being targeted for gender-based war crimes, menfolk were killed or disabled through the war, community infrastructures were destroyed, and, according to representatives of international agencies interviewed, facilities used by women, such as childcare providers, were appropriated for the purposes of the conflict. Justice for women in this instance lies in the restoration of community facilities that were formerly relied upon to facilitate social and economic participation as well as personal autonomy. In Northern Ireland, a range of community-based facilities for women developed as a result of the EU Peace Programme and other conflict-related programmes, but these facilities are heavily reliant on external funding, which has been diminishing with the increasing distance from the Belfast Agreement and the development of a more stable society.

One significant impact of the war in BiH has been the increase of women as heads of households. As in Northern Ireland, BiH is mostly rural, where, according to interviewees, there are stronger gender-based traditions of women in the home. These traditions also exist in rural areas of Northern Ireland, but there was more emphasis on this factor among interviewees in BiH. With the loss of the male head of household, many women have found themselves having to take the initiative with no credit history, no formal employment experience and the house remaining in the name of a husband who is dead or missing. A representative of the Catholic Relief Services interviewed stated: “now they are the man,” indicating the change of gender roles still presents attitudinal and procedural barriers based on assumed positions in society of women and men. Women have had to organise out of necessity and try to make ends meet in a context of high unemployment and poor infrastructure.

Some international NGOs in BiH, such as Catholic Relief Services, have established micro-credit arrangements and provided training in business start-up and management for women. While successful businesses have been established by women, there are still attitudes among many in society who see entrepreneurship as a male preserve. In Northern Ireland, training and support projects for women’s entrepreneurship have been funded through the EU Peace Programme, such as the Weave project in North Belfast, which trains women to develop traditional handicraft skills into viable businesses, but equivalent micro-credit programmes for women are not available. While born in adversity, transitions in both of these contexts provide opportunities for the building of more just gender relations in terms of economic independence for women and finding a place in a male-dominated economy.

Local NGOs such as *Žene Ženama* in Sarajevo have provided programmes for education, psychosocial support, campaigns against gender-based violence, health, gender awareness, promotion of rights and equality, civic participation, political participation, social care and peacebuilding. These activities represent the broad scope of issues that are affecting women’s lives in the post-conflict context and, using the broader understanding of the term, cover many of the dimensions of



transitional justice. For example, at the time of the interview, a course funded by the Spanish government was being developed focussing on women in transition from conflict, with supported discussion sessions around how conflict differentially affects women, understanding the processes of conflict and exploring how women can contribute to post-conflict reconstruction. Multi-faceted approaches to empowerment in settings in which women feel supported have a major role to play in promoting participation in both BiH and Northern Ireland.

However, while there have been some tentative cross-community initiatives among women's groups in Northern Ireland that endeavour to engage with divisive issues around the conflict itself and to challenge elements within their own communities over their role, it has been commented that this process has been more difficult in BiH, where there is a tendency not to challenge the dominant community perspective with regard to the conflict.

One community-based interviewee in Sarajevo commented that, while some NGOs have managed to secure funding from international NGOs for activities, the majority are small groups with little or no external support. Indeed, interviews with representatives of international agencies bemoaned the turning of UN attention to Kosovo, which has meant diminishing sources of funding for all NGOs and a need to become more self-sufficient. This sense of diminishing resources to fund empowerment activities was also a feature of interviews in Northern Ireland, where all project promoters interviewed held concerns regarding the finite nature of project-based funding in the community.

In theory, governmental structures in BiH, particularly the Gender Equality Agency, are to work co-operatively with community-based NGOs to promote gender equality, but a community group representative in the research complained that there is a sense of a division of labour, where some NGOs have felt that the Gender Agency takes the lead on policy, leaving NGOs to continue the work on the ground. This limits the potential of NGOs to convert civic activism into political activism and have an influence on the development of gender equality policy, leaving a feeling of exclusion from the political and policymaking arena.

Evidence from some international NGOs suggested that exclusion is also felt across BiH due to geography and the nature of the political structures, for example, co-operation between agencies is difficult. Also, it was claimed by a community-based interviewee that some of the smaller NGOs feel that an elite of strong personalities within the women's sector has developed their own work and organisations with international support, but there is a disconnection with other groups elsewhere in the country. This was also felt by a number of community-based project promoters in Northern Ireland, where groups with more resources were considered to have more access to decision-making processes. Indeed, a representative from a rural project in Northern Ireland highlighted how exclusion is compounded by rural isolation, the lower capacity and confidence of rural women and distance from the political centre, and rural groups receive fewer resources and less support than their urban counterparts. The distance from the centre of power, therefore, whether physically or in terms of access, has significant implications for a just transition.

An academic interviewee stated that gender issues are not popular in BiH from a range of perspectives. It was explained that the more liberal aspects of pre-war Yugoslav society did not penetrate far from urban centres in BiH, and traditional structures were disrupted by the conflict. By this, the interviewee meant that, while women's lifestyles and clothing, for example, were less prescribed in pre-war urban settings, there remained more restrictions on women's lives in rural areas, but the processes of conflict created opportunities and often compulsions to move out of traditional gender roles in order to adapt to new circumstances. Currently, there is a belief that the post-war social and political context is trying to place women back into the domestic sphere. This is complicated by the ethno-national nature of the political divide, where identities are defined in terms of mutually exclusive traditions. Women are caught in the middle of this process, where feminism and women's emancipation is seen not just as a challenge to a male social and political order, but a betrayal of cultural identity and a diluting of fundamental values on which conflict-related markers are based. Such processes have also taken place in Northern Ireland, for example, with the return of released prisoners to households where women had taken on new roles in the absence of male partners, but this was less stressed by interviewees in Northern Ireland compared with those in BiH.

This resistance to women's emancipation is complicated by a segregated education system, where there are different values taught from different perspectives, which in the context of transition and the formulation of new ethno-national identities does not have room for challenging social norms. Indeed, the reproduction of the national community takes place in the classroom and stereotypical images of women are markers of cultural identity. Justice in this sense is served by ensuring that individuals have equal access to participation and a fundamental mechanism for addressing stereotypes and prejudice is through education.

While there are extensive structural and legislative provisions for gender equality and the organisation of women emerging from the domestic sphere in the post-conflict context, women still struggle to be heard or be present at decision-making levels. As with many societies emerging from violent conflict, new systems of justice tend to be retributive in nature, more focused on individual perpetrators, less on victims and rarely cognisant of the gender consideration. Despite increased awareness of cases of sexual and reproductive violence, the place of women is still marginalised (Duggan et al. 2008: 193).

The interviews in Northern Ireland highlighted the extent to which women have been organising at community level, engaging in informal reconciliation processes and supporting people affected by the conflict. Thus, both bridging and bonding social capital have been developed to a high degree in some areas, largely through the efforts of small groups of women active in the community.

The conflict has produced a legacy of distrust and polarisation, particularly in areas with high levels of social housing. Representatives of rural groups noted that the conflict has been less overt in the countryside, but the impact of violence has led to fear and isolation, extending well beyond the cessation of direct hostilities and difficulty in addressing the conflict that has been possible in some urban areas, where populations live closer and contact is more regular. As one interviewee put it,

there is a “rural politeness” which belies a simmering animosity. At the same time, there are many women for whom disconnection with the community has led to a considerable need for social, emotional and psychological support to re-engage with society. Re-connection with society is a central theme in work with victims and survivors of the conflict and also an important factor in processes connected with transitional justice in its broader, societal sense.

The violent conflict, according to one project promoter in Northern Ireland, led to equality being “put on hold.” To a certain extent, women’s empowerment projects have been trying to regain the ground that has been lost. The conflict created a division of labour while it was going on and also after the ceasefires. While it was mainly men engaged in violence and politics, the interviewee continued, “the women just kept things going: educating families and getting the children to school.” After the violence, it was men at the negotiating table, but women are still dealing with the legacy, that while young people are no longer rioting, there are problems with drink, drugs and violence against older people. Both transitions from conflict recognise the need to realise equality goals, but if women have been marginalised during the conflicts and conflict elites take priority in the post-conflict arrangements, women are starting from a position of disadvantage that needs to be bridged before genuine equality can be realised.

Reflecting a general feeling among many interviewees in both contexts, a project promoter in Northern Ireland suggested women are more suited to reconciliation, a rationale that is seen as gender-specific; as another interviewee stated: “We need to do something for our children and grandchildren. We do not want a repeat of this.” Acknowledging the gender stereotype this viewpoint perpetuates, women are seen as an important resource for reconciliation, but if women have been the main sustainers of families and communities, there is also an argument that it is they who are more in touch with the social impacts of violence and therefore are best situated to understand it.

The projects in Northern Ireland offered a space where women from different backgrounds could come together, form relationships across communities, develop personally, receive support and learn new skills. As one project promoter put it: “Women are more open, more willing to talk. There is a thing in men to fight, isn’t there?” With practical measures to facilitate access, such as childcare provision, transport and individual support, spaces are provided for dialogue and to share experiences. For example, separate projects in a Loyalist area of East Belfast and the Irish Republican Short Strand area formed a cross-community women’s group where it was found that, between women of different backgrounds, according to one group member: “the issues are the same; the only thing that divides us is politics.” Justice, for these women, is working towards a society where conflict between them has been addressed and they and their families can live peacefully together.

Women working with women in the community is only part of the story. The lack of women in political, social and economic leadership creates a need to bridge the gap between community-based empowerment and taking an active part in decision making where power lies. Female role models in positions of power help to encourage women to follow in their footsteps and the development of skills in

sectors where women are under-represented contributes to a more balanced, equal society, for example, in business or in information technology. For example, the Women's TEC in North Belfast combines cross-community and capacity-building activities with training in non-traditional skills, such as plumbing, electrical engineering, technology or business start-up and development, to place women in previously male-dominated industries. Other projects try to encourage more women into politics.

The dominant message from the interviews in both Northern Ireland and BiH is that projects developing women in the community have the potential to have wider impacts in cross-community engagement and in the building of community competences to deal with the legacy of the conflict and engage in the process of peace-building between communities. However, there are problems with this picture. Reinforcing the stereotype of community-based women activists and men in politics has to be addressed using the capacity-building process to bring more women into decision-making positions in economic and political arenas.

## **Bringing Justice into Transition**

In terms of formal transitional justice processes, neither Northern Ireland nor BiH have established truth commissions, although there have been inquiries into individual events in Northern Ireland, such as the 1972 Bloody Sunday events, and commissions in BiH in individual areas, such as Srebrenica. However, the position of the UK Government is that there are to be no more open-ended inquiries into incidents relating to the conflict in Northern Ireland. The Historical Enquiries Team (HET) of the Police Service for Northern Ireland is not a satisfactory replacement for a formal truth process, due to a lack of resources, an extensive backlog, having been criticised for a lack of independence, being a police team, and lacking any wider involvement beyond the investigation of unsolved cases.

The International Criminal Tribunal for former Yugoslavia (ICTY) was established by UN Security Council Resolutions 808 and 827 in 1993, and departments for war crimes were set up in the Prosecutor's Office for BiH following UN Security Council Resolution 1503 in 2003. Significantly for women (and for some men), the ICTY defined rape as a war crime and almost half of all accused at the time of writing had charges of sexual violence included in their indictments. In terms of gender justice, this was a major step forward in comparison with other transition processes. In contrast, there have been no significant studies of conflict-related sexual violence in Northern Ireland. These judicial processes bring a degree of truth and closure to many and they are a symbolic demonstration of the re-establishment of justice and human rights norms following conflict. However, the majority of the population remains untouched by their deliberations.

Transitional justice encompasses all these things, which remain essential to any post-conflict process, but also to a far greater extent the embedding of equality, human rights and reconciliation throughout the communities in conflict.

Without a transformed society, punishment and restitution are transient, more or less clearing up the mess of one conflict, without laying the foundations of preventing the next one.

It is true that there are victims' groups in Northern Ireland and in BiH that do not see the possibilities of reconciliation without justice, that is, the punishment of those who have wronged their loved ones or the return of property that they have lost in the conflict. The needs of people directly affected by conflict cannot be overlooked or ignored. Yet the participants in the research referred to here, which included individuals who had lost family members in the conflict and, in the case of Northern Ireland, a victims' group, considered justice to mean equal participation in and contribution to the post-conflict society. With all their cultural, geographical and historical differences, this theme remained constant with interviewees in both Northern Ireland and BiH.

The representation of women in decision making is one area that, in international terms, is promoted as a means for promoting justice in the political arena. However, it is in civil society organisations in both Northern Ireland and BiH that women are most abundant and in significant leadership roles. Mechanisms for giving civil society access to the processes of deliberation, such as meaningful consultation, and the promotion of civic activism are just as important in empowering women in post-conflict settings.

Transitional justice for the women interviewed meant gender justice and a just and peaceful future. To some, this means equal and meaningful representation at political and decision-making levels. For others, this means being able to run a business on an equal footing to men. For others again, this means access to facilities where they and their families can develop personally, professionally and socially. However, the focus for all involved was that creating a just society must be undertaken together, rather than apart.

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# Chapter 11

## ‘Pillar of Shame’: Civil Society, UN Accountability and Genocide in Srebrenica

Olivera Simić

### Introduction

Our wish is to create a world without genocide and war. This can only be achieved by learning from mistakes and by assuming responsibility for them<sup>1</sup> (Fig. 11.1).

The genocide in Srebrenica was the worst massacre in Europe since WWII. In July 1995, more than 8,000 Bosnian Muslim men and boys were killed while their female relatives were deported, killed, or raped by Bosnian Serb forces.<sup>2</sup> The killings took place in a UN ‘safe area’,<sup>3</sup> where Bosnian women, men and children had sought refuge after being displaced by the ethnic conflict that followed the dissolution

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<sup>1</sup> Interview with Hatidza Mehmedovic, President of the Mothers of Srebrenica Association, [http://subsrana.com/index.php?option=com\\_content&view=article&id=13%3Aintervju-sa-hatidom-mehmedovi-predsjednicom-udruenja-srebrenike-majke&catid=3&Itemid=11&lang=en](http://subsrana.com/index.php?option=com_content&view=article&id=13%3Aintervju-sa-hatidom-mehmedovi-predsjednicom-udruenja-srebrenike-majke&catid=3&Itemid=11&lang=en). Accessed 11 November 2011.

<sup>2</sup> The number of women who were raped or killed during the genocide has not yet been established.

<sup>3</sup> UN Safe Areas were established in 1993 in the territory of BH by the UN Security Council. The territories under the protection of the UN Protection Force (UNPROFOR) included Srebrenica, Sarajevo, Zepa, Gorazde, Tuzla and Bihac. UN Resolution 819 (S/RES/819, 16 April 1993) and 836 had established Srebrenica as a ‘safe area’ to be protected by all necessary means including the use of force.

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**Fig. 11.1** The image from the campaign ‘Pillar of Shame’. Photo is courtesy of Phillip Ruch



of Yugoslavia. Each year, a commemoration for victims of the genocide is held in Srebrenica–Potocari, and thousands of people from BH and abroad come to pay their respects to those whose lives were taken so abruptly. Over the years, the Srebrenica annual commemoration has become not only a place of mourning but also an event of ‘international consumption’ where people from all walks of life gather to pay their respects (Duijzings 2007, p.161; Simic 2009). The Srebrenica anniversary is organized annually on July 11 and attracts and mobilizes local and international human rights activists, relatives, survivors and governmental representatives from around the world. Tens of thousands of people gather to pay their respects to the dead and to bury those who have been found and identified after years of being missing.<sup>4</sup> However, although a number of heads of state have made their way to Srebrenica–Potocari to express their condolences and remorse,<sup>5</sup> no UN Secretary-General has ever visited the graveyard.

The responsibility for not preventing the Srebrenica genocide has been apportioned largely to the UN and the Dutch peacekeepers that were stationed in Srebrenica at the time the killings took place. The release of a 2002 Dutch report on Srebrenica led to the resignation of the Dutch Government, even though the report claimed that the Dutch troops were put in an ‘impossible situation’ (BBC News

<sup>4</sup> An estimated 40,000 people gathered in Srebrenica on July 2011 to mark the 16th anniversary of the genocide. See, ‘Thousands Gather to Remember Srebrenica Massacre’, *VOANews*, 12 July 2011, [http://sofiaecho.com/2011/07/12/1121775\\_thousands-gather-to-remember-srebrenica-massacre](http://sofiaecho.com/2011/07/12/1121775_thousands-gather-to-remember-srebrenica-massacre); ‘Tens of Thousands of People Gather to Commemorate Srebrenica Massacre’, *European Forum for Democracy and Solidarity*, 12 July 2010, [http://www.europeanforum.net/news/919/tens\\_of\\_thousands\\_of\\_people\\_gather\\_to\\_commemorate\\_srebrenica\\_massacre](http://www.europeanforum.net/news/919/tens_of_thousands_of_people_gather_to_commemorate_srebrenica_massacre).

<sup>5</sup> For example, Serbian President Boris Tadic, Former President of the United States, Bill Clinton, Members of the United States Presidential Delegation of Barack Obama, Croatian President Ivo Josipovic, the European Union High Representative in BH Valentin Inzko, Deputy Turkish Prime Minister Bulent Arinc, and the President of the Republic of Slovenia, Danilo Turk.

2002). Dutch peacekeepers have been blamed by survivors of Srebrenica for witnessing and standing by as Serb soldiers took men and boys to execution sites while deporting their wives, mothers and daughters from Srebrenica.<sup>6</sup> Thirteen years after the genocide, in June 2008, the non-governmental organization 'Mothers of Srebrenica' began a court battle before the International Court of Justice (ICJ) against the UN and the Dutch Government for failing to prevent the massacre. In this landmark case, the plaintiffs claimed that both entities needed to bear responsibility for not preventing the crimes that occurred in the summer of 1995. Lawyers brought the lawsuit in the name of 6,000 survivors of genocide and argued that compensation should be paid to the victims for the loss of loved ones despite the UN claim of immunity (Charter 2008). Alex Hagedorn, acting on behalf of the victims, reportedly stated:

Functional immunity does not mean that international organizations are above the law. Boundless immunity of the UN is both unacceptable and undesirable for the proper functioning and credibility of the UN. (Charter 2008)

In July 2008, the District Court of the Hague ruled that it had no jurisdiction to hear the civil case brought against the UN, given the general immunity of the UN from prosecutions pursuant to international conventions. Such immunity is regarded, according to the Court, as 'absolute immunity' (Appeal Court in The Hague 2010). In explaining its decision, the court stated:

That the Mothers of Srebrenica seek redress in the court of law for this is wholly understandable... As has been considered before, a substantial general interest is served if the United Nations is not forced to appear before a national court of law. In this field of tensions pros and cons must be balanced ... (Judgment, 30 March 2010, para 5.9)

The court recommended that the plaintiffs should take the actual perpetrators of the genocide to court. In May 2010, the Court of Appeal upheld a decision on the immunity of the UN and rejected the Mothers appeal (Radio Netherlands Worldwide 2010). This decision, while not entirely surprising, resulted in disappointment and bitterness among survivors, but also a desire to find a way to shame the UN for failing to act.<sup>7</sup>

This chapter documents a campaign led by two non-governmental organizations, the German Center for Political Beauty (Center for Political Beauty) from Berlin and the Bosnian Society for Threatened People (Bosnian Society) from Sarajevo, which launched a joint project in 2010 called the 'Pillar of Shame' This project aimed to erect a permanent monument in the shape of two UN letters that would be filled with 16,744 shoes symbolically representing 8,372 victims killed in genocide.<sup>8</sup> The monument was

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<sup>6</sup> See Hasan Nuhanovic, *Under The UN Flag; The International Community and the Srebrenica Genocide* (DES Sarajevo, 2007), Emir Suljagic, *Postcards from the Grave* (Saqi Books, 2005)

<sup>7</sup> On April 13, 2012, the Mothers of Srebrenica lost their case against the UN before the Supreme Court in Holland. The final ruling was the last legal option in the Netherlands for the Mothers. An appeal would need to be filed at the European Court of Human Rights within 6 months. See Anthony Deutsch, 'UN Can't be Tried for Srebrenica Massacre in Netherlands', *Reuters*, 13 April 2012.

<sup>8</sup> The exact number of people killed in Srebrenica is not known and there are different estimates. The number cited in this paper is taken from the Center for Political Beauty leaflets and materials about campaign.

intended to serve as a permanent reminder of the UN's responsibility for not preventing the Srebrenica genocide. In the first part of the chapter, after outlining the methodology, I situate this inquiry within the theoretical framework of transitional justice, in particular symbolic reparation. The chapter then analyses the campaign and evaluates its impact in BH and Germany. It argues that campaigns of symbolic reparation such as 'Pillar of Shame' need to be documented, brought to light and analysed. Such 'bottom top' campaigns are largely under-analysed, yet are of the utmost importance as civil society and local justice mechanisms, which promote participation and sense of local ownership of justice (Olsen et al. 2010).

This research draws from media, documentaries and interviews with the two founders and leaders of campaign and one of its volunteers from BH. With permission and consent of the interviewees, the analysis draws from interview and email correspondence with Phillip Ruch, the executive director of Center for Political Beauty, Belma Zulcic, the co-ordinator of the project 'Pillar of Shame' with the Bosnian Society, and Aldijana Mustafic from Bihac, a BH volunteer who gave us permission to reproduce a number of photos about the campaign. The interviews were carried out during fieldwork in BH in November and December 2011. With consent and courtesy of the Center, the chapter draws also on internal office documents sent to the author via email and official web page produced for the purpose of campaign. Finally, it draws on informal conversations about this project with representatives of the 'Mothers of Enclave of Srebrenica and Zepa', based in Sarajevo.

## **Mobilizing Civil Society Across National Borders**

The past two decades have seen new social movements, organizations and networks emerging at the transnational level (Batliwala 2002, p.393). In transitional states, civil society actors engage in practices, politics and contests over strategies for dealing with the past. Many organizations operate solely at the local level while others draw on national, regional, or even transnational organizational structures (Boesenecker and Vinjamuri 2011, p.347). In the absence of international justice mechanisms, the creative energy for transition is coming 'from below' (Campbell and Ni Aolainn 2003, p.871). In settings where national and international justice systems are ineffective, victim and survivor groups, community and civil society organizations have been the engines of change (McEvoy and McGregor 2008, p.3). For the purpose of this chapter, the term 'civil society' refers to actors who associate voluntarily to advance common interests, and who are officially separate from the formal state apparatus, which often translates into an assumption that civil society actors are grounded in a common set of beliefs, values, interests and networks (Boesenecker and Vinjamuri 2011, p.348; Anheier 2004, p.22).

There are various definitions of transitional justice but the one most commonly cited is proposed by the International Centre for Transitional Justice as 'a response to systematic or widespread violations of human rights that seeks recognition for victims and to promote possibilities for peace, reconciliation and democracy' (ICTJ 2011).

In order to confront legacies of abuse, a variety of transitional justice mechanisms have been developed that fall within two broad categories: judicial and non-judicial. The former focuses on civil or criminal trials at local, national, or international levels, while the latter encompasses activities such as truth and reconciliation commissions, amnesty, vetting, lustration processes, reparation, memorialization, reconciliation, institutional reform, security sector reform and demobilization, disarmament and reintegration. The concept of transitional justice has evolved and is no longer focused on the role of states but has become more complex, integrating various levels of analysis (international, national and local) and different actors, such as states, international organizations, non-governmental organizations, epistemic communities and global policy networks (Crossley-Frolick 2011, p.33).

An important mechanism of transitional justice processes is symbolic reparation, including public acknowledgment, responsibility and remorse for crimes committed. Reparations are an increasingly frequent feature of post-conflict processes and there is a growing conviction that doing justice in these contexts requires not only doing something against the perpetrators but also doing something for victims (Rubio-Martin 2009; Pablo de Greiff 2006). In BH, the Srebrenica genocide has mobilized survivors and served as a catalyst for the formation of transnational activism that seeks to re-invent and broaden the meaning of accountability and justice. Accountability and justice is a more expansive concept than that designated by the international community's emphasis on prosecutions. Such an emphasis not only limits but also may undermine the search for comprehensive and contextually relevant justice (Hovil and Okello 2011, p.343).

Justice should not be confined solely to the legal processes and outcomes carried out by state entities, or even those of customary law or local courts, but should also extend to processes carried out by members of civil society (Simic and Daly 2011, p.480). Some studies have shown that local communities may understand 'justice' very differently from the way in which it is defined by official institutions (Stover 2005). In the former Yugoslavia, transitional justice strategies have been reduced to the prosecution of war crimes and full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). As such, the ICTY is the main actor of transitional justice, while other mechanisms have been marginalized and largely ignored (Armakolas and Vossou 2008).

However, sustainable peace requires more than trials and the prosecution and punishment of a relatively few high-placed officials. It requires more than state-sponsored or administered forms of truth-telling and reparations. Transitional justice is a complex and long-term process that needs to involve all layers of a society and 'anything that a society devises to deal with a legacy of conflict and/or widespread human rights violations' (Roht-Arriaza 2006, p.2).

Civil society organizations play a critical role in deconstructing authoritarianism, rebuilding the state and establishing a firm foundation for strong democracies. Through their various activities they have the potential to ensure that any transition is genuinely transformational by promoting justice mechanisms that adequately engage with and include citizens (Hovil and Okello 2011, p.333). It is important to consider the ways in which individuals and communities 'within particular localities'

appropriate, negotiate with, understand and seek to transform transitional justice discourse and practice (Hinton 2010, p.1). As Kent argues, far less attention has been paid to these *unofficial* local practices of remembering, commemorating and responding to the violence of the past in transitional justice body of literature (Kent 2011, p.435).

In this chapter, however, the dynamic explored is not between state and civil society but between the international community embodied in the UN and civil society. The 'Pillar of Shame' targets a global community and decision makers and asks not only for their remorse but also for legal and moral accountability since they failed to prevent genocide. Some scholars and commentators argue that although the UN Secretary-General at the time, Boutros Boutros-Ghali, understood the situation on the ground, in BH, he did not make the war priority, nor did he think it deserved to be (Nettelfield 2010, p.65; Ajami 1996). Although the UN General Assembly has stated that, 'we in the United Nations share in that responsibility [for genocide in Srebrenica]', the UN has done no more than express sorrow and partial responsibility for not preventing murder (UN General Assembly 1999, para. 6). Disappointed with the UN's conduct, survivors have decided to raise the issue of shame and blame that resides within the UN. As Wachman argues, there is an assumption embedded in such campaigns that shaming will cause a desirable reaction in the targeted object and that, once subjected to international scrutiny and denunciation, an object of shame will necessarily take steps to remedy and improve a situation (2001, p.260). Similarly, Nathan states that 'by publicizing abuses, human rights NGOs seek to mobilize psychological and political pressure against violators' (1999, p.139). In the Pillar campaign, embedded in naming and shaming has been the expectation from organizers that the UN would react to the campaign and offer support. Although it is debatable whether shaming can promote human rights, it is still a compelling alternative to remaining silent in the face of injustice, when one is not able to exert more tangible pressure on the regime one reviles (Wachman 2001, p.265).

The Pillar of Shame campaign is an example of a particular type of civil society justice mechanism commonly called 'symbolic reparations' that may (depending on the context and purpose) bring forward the complexities and complicities of often overlapping and shifting categories of perpetrators, victims and bystanders; seek reparations or to rebury and remember the dead; and combine and blend reparations, reflection, truth-seeking, multiple truths, reburial and remembrance (Arriaza and Roht-Arriaza 2010).

Walker calls attention to the 'expressive' dimension of all types of reparations, which is the 'communicative act of expressing acknowledgment, responsibility, and intent to do justice' (2010, p.529). This expressive dimension takes a variety of forms including (but not limited to) art installations, literature projects, media programs, theatre, symbolic courts or popular tribunals, material reparations, remembrance and reflection activities. Such activities may 'partly fill the vacuum when leaderships are reluctant to initiate' them; and they may 'tap into the agency of survivors ... , foster the integration of cultural practices, promote participation and a sense of ownership,' although they are not without limits or problems (Dudai and Cohen 2010, p.234). One limitation of the 'Pillar of Shame' campaign was a lack of engagement with the Serb population in the Republika Srpska (RS) and Serbia.



In BH, it is still necessary to reconcile competing versions of individual, public and collective memory. The 'Pillar of Shame' campaign attempts to establish a transnational 'collective memory' and develop a culture of remembrance beyond national borders. Yet this campaign failed to cross ethnic boundaries. One country, BH, is still deeply divided, with an 'enduring enmity between Bosnia's three peoples' who live in ethnic ghettos created after the war (Parish, 9 April 2012). The situation in BH could be described as post-conflict, yet with a strong potential to return to violent actions in order to address the traumatic past (Kurspahić 2003; Erjavec and Volčič 2007). The war in BH, and also in the former Yugoslavia more broadly, was the result of organized and planned nationalistic politics, especially Serbian policies from the mid-1980s onwards (Woodward 1995; MacDonald 2002; Ramet 2005). As a result, the fact that there was a mutual lack of interest from both sides in working together (organisers of the campaign and local civil society organizations in the RS) is of no surprise. Likewise, the reluctance to engage with a similar campaign run at the same time by 'Women in Black' (WiB) from Belgrade, Serbia, is of no surprise. Nonetheless, this does not necessarily decrease the significance of the Pillar campaign, in which local and German actors sought to jointly re-invent justice and demand survivors' rights to truth.

## **'Pillar of Shame' Across Europe: From Berlin to Srebrenica**

Srebrenica was a collapse of our humanistic claim (Phillip Ruch, 2011).

Phillip Ruch, the executive director of the Center for Political Beauty, a non-profit organization from Berlin, is the founder of the campaign titled 'Pillar of Shame'. Together with the Bosnian Society, he decided to act on the ICJ's failure to bring justice to the survivors of Srebrenica genocide. The focus of this campaign was on the 'UN betrayal' in BH, and its goal was to erect a permanent sculpture in the Srebrenica cemetery. The installation of the monument was originally planned for the 2011 commemoration of the genocide; but due to a lack of financial means, the installation was delayed, and subsequently suspended.

It was planned that the monument would take the form of a sculpture comprising two huge letters ('U' and 'N') filled with 16,744 shoes, representing 8,372 victims. The erecting of some sort of permanent monument that would 'shame and blame' the UN is also a long-term wish of the survivors of Srebrenica. As Zulcic reported, 'The survivors of genocide have always wanted to erect a monument in Srebrenica on which the names of all people who could, but did not, prevent genocide should be written down'.<sup>9</sup> Still, according to Zulcic, the original idea to connect the

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<sup>9</sup>The author was told that the names most often mentioned as intended to be written on the monument are: General Philippe Morillon of France, Commander of the United Nations Protection Force (UNPROFOR) based in Srebrenica, Yasushi Akashi, the chief UN envoy in the former Yugoslavia, Boutros Ghali, former UN Secretary-General, and Thomas Karremans, the commander of Dutchbat troops in Srebrenica at the time of Srebrenica genocide.

monument to shoes was Ruch's, who was inspired by the journalist who threw his shoe at former US president George Bush in Iraq.<sup>10</sup> The shoe represents to Zulcic, 'a scream, a protest and a legacy of crime committed' and to Ruch, 'empty shoes on the street are example of loneliness, of not having a shelter, being abounded ... and this is the feeling I wanted to catch that people had in July 1995'.<sup>11</sup>

Ruch's personal and emotional involvement with the Srebrenica genocide began during his studies when he was introduced to the BH war as part of his academic course. Around that time, he befriended a classmate who had left a besieged Sarajevo when he was thirteen. A strong sense of injustice haunted Ruch and propelled a desire to assist survivors of the genocide in some way and to initiate broader discussion about how genocide can be prevented. As an artist, Ruch has been determined to make the injustice of Srebrenica visible and public. In July 2009, he was instrumental in establishing a street performance in Berlin in front of the Bundaberg gate. The street performance was a reconstruction of the UN crisis meeting that had unfolded a day before Srebrenica failed. The performance was based on original testimonies of high-ranking UN officials who met that day and was played in the street for four days. Thousands of Berliners watched this play and Ruch and his colleagues made a video of the performance that they showed in schools, universities and other public places. He said that:

The play gave a close detail of this day, how genocide progressed and how Western decisions are being done. In the background of this play, original footage was played so people get to see not only how decisions were made, but consequences of these decisions.

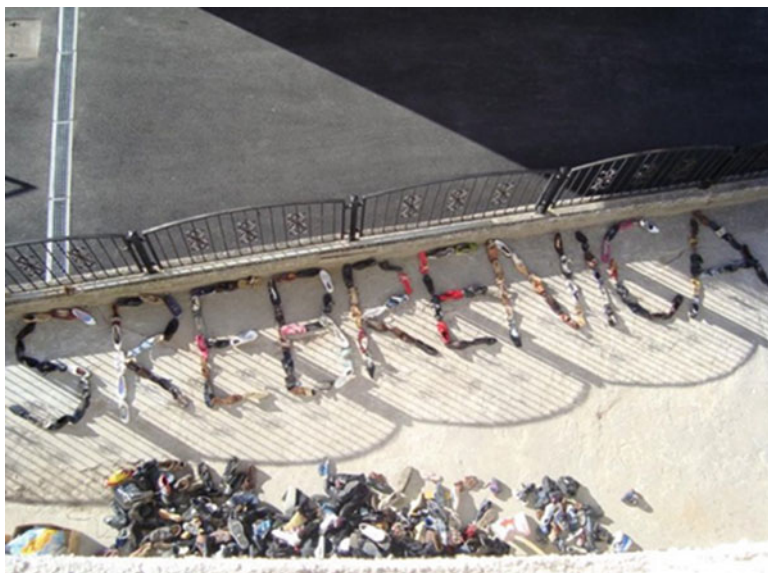
Although this performance was, according to Ruch, 'well done, structured and extremely well followed by audience', none of the German media reported on it, despite Ruch's invitation to German media houses. Building on this performance, Ruch initiated the idea to collect shoes that will serve as a permanent symbol of shame to be erected in Srebrenica/Potocari. Ruch's overall message with this project has been that:

The people have not forgotten 1995 and the decision makers involved in the genocide, and we are reminding them that whatever they do, whatever actions they were involved in, this is not something they can get away with. Since it is not possible to sue the UN, because they are legally immune, the only vulnerable place we can hit them is to question the good reputation they enjoy.

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<sup>10</sup> In December 2008, an Iraqi journalist threw shoes at the then US president, George W. Bush, during a press conference held in Iraq.

<sup>11</sup> The idea of organising a public display of shoes as a memorial to victims of genocide is not new. For example, the Auschwitz Museum in Poland houses a permanent display of about 25,000 pair of shoes titled 'The Wall of Shoes Under Glass'. At the Majdanek Memorial Site, also in Poland, thousands of shoes of Jews killed in the camp were on display in three warehouse buildings until damaged by fire in 2010. Several thousands of shoes from Majdanek were loaned to the United States Holocaust Memorial Museum and are now on display in the Museum's Permanent Exhibition. Similarly, in Budapest, a memorial titled 'The Shoes on the Danube Promenade' was created to honour Jews who were shot at the edge of the river such that their bodies fell into the water, leaving empty shoes behind on the bank.



**Fig. 11.2** The artwork made from donated shoes by volunteers in Bihac. (Photo is courtesy of Aldijana Mustafic)

The main aim of the monument is thus threefold: to reveal UN responsibility for not preventing the genocide; to name, shame and point to the representatives of the international community who are guilty of complicity in the genocide; and to symbolize the broken promises of protection, the treason of Bosnia and the shattered dream of western will that the genocide would not take place (*Pressekit, 2010*).

In May 2010, Ruch, along with German and Bosnian–German colleagues, asked the Bosnian Society to become a partner in this project. Together they called on survivors and citizens of BH, and also of Austria, Germany, and other Western European countries, to donate shoes by either mailing them to Berlin or placing them in one of the five open collection centres. There were a number of activists and volunteers who worked on the collection of shoes across the Federation of BH. Both organizations asked for support from the association of survivors in Srebrenica–Potocari and also from the BH public. However, support mainly came from citizens in the Federation of BH and to lesser extent from the RS entity (Fig. 11.2).

The campaign was supposed to have three phases. In the first phase of the project, a pile of shoes symbolically representing missing lives was to be temporarily erected in the front of Bundaberg Gate in Berlin on July 11, 2010 to mark the 15<sup>th</sup> anniversary of genocide. The second phase was a travelling exhibition of the shoes that would visit the Hague and the ICTY, London, Paris and other cities. This second phase did not materialize. The third phase was building a monument, the



**Fig. 11.3** Shoes piled in one of the collection centres. (Photo is courtesy of Aldijana Mustafic)

‘Pillar of shame’, in Potocari/Srebrenica. This phase also failed to materialize due to lack of financial means.

The first phase of this project was successfully realized. The idea was to publicly condemn the failure of the UN and to remember all those killed and missing in genocide. In less than 2 months, with the help of a number of volunteers, the two organizations mobilized thousands of Bosnians in BH as well as abroad. The cities in which the centres for collecting shoes were established were all in the Federation of BH, the entity with a predominantly Bosniak population. Apart from these established centres, Zulcic reported that many people decided to collect shoes and become involved in campaign on their own initiative. Aldijana Mustafic, one of the volunteers, called Ruch and asked if she could organize the collection of shoes in the city of Bihac. Once Ruch accepted this offer, Aldijana mobilized her community through posters, flyers and media and invited them to donate shoes for campaign. The owner of a coffee shop in Bihac offered his shop as a collection point where people could leave their shoes from 8 am till 11 pm. Aldijana also involved schools and children in the campaign. The children and adults were asked to write messages in the shoes they donated.

Shoes were also collected in Austria, Germany, Italy and other countries, mainly from Bosnian diaspora. A few packages arrived from the US too. However, in RS there were no collection centres, which was, as Zulcic argues, ‘expected’. Although Zulcic sent a flyer to press centres in the RS about the campaign, ‘this information had not been published’. A few organizations that were of mixed ethnic origin gave their support to campaign but the ‘only Serb’ organizations did not (Fig. 11.3).

**Fig. 11.4** Piling shoes in Berlin, 11 July 2010. (Photo is a courtesy of Phillip Ruch)

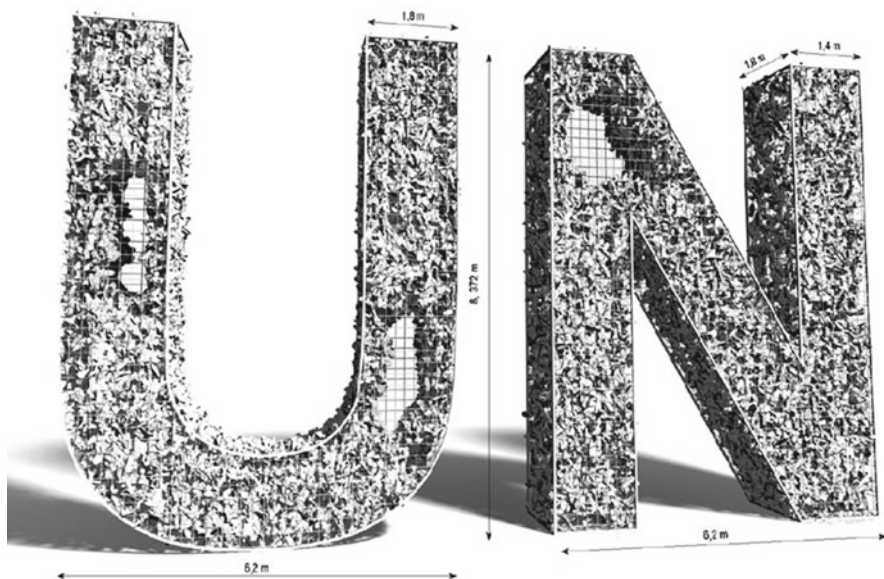


In only 40 days, the Center for Political Beauty had collected 16,744 pair of shoes and placed them in front of the Brandenburg Gate in Berlin on July 10, 2010. Berlin was supposed to be only the first in a number of locations for the exhibition but due to lack of financial means it has remained the only one. The largest number of shoes was collected in BH and dispatched to Berlin for the exhibition. Shoes from other countries were directly sent to Berlin by private or organized transportation (Fig. 11.4).

At the same time as the 'Pillar of Shame' campaign was initiated, a similar campaign was organized by WiB, Belgrade. The author interviewed WiB about their campaign 'One pair of shoes, one life' and published an earlier paper on this campaign (Simic and Daly 2011). At the time of that interview, the author was aware that the German Center and Bosnian Society had run a similar campaign in Germany, so the author asked the WiB whether they were also aware of the 'Pillar of Shame' campaign in Berlin. They said that they were, but had never made contact with either the Center for Political Beauty or Bosnian Society. In interviews conducted with Ruch and Zulcic, the author was told that they were both aware of the WiB campaign as well. I found it striking that these two similar campaigns which were organized at the same time (May, June 2010) with the same aim (to erect a permanent monument made of shoes), used the same methodology (invited people to donate shoes and messages to specifically organized collective centres in Belgrade) and were aware of each other's campaigns, did not make contact with each other or explore working together. The two campaigns were simultaneous but with no communication between the organizations that led them.

It is not quite clear why there was no cooperation between these organizations working on the same issue. Ruch said that, 'due to internal conflicts that arose during the campaign amongst the organizations involved, the idea of involving WiB was rejected'. One of the organizations explicitly rejected the notion of cooperating with the WiB. Ruch said he regrets that he did not contact the WiB because, according to him, 'joint action with the WiB, Belgrade would bring much stronger message, politically and morally, of accountability and reconciliation between Bosnians





**Fig. 11.5** A draft of the monument. The holes will be filled with real shoes found in mass graves. Photo is a courtesy of Phillip Ruch

and Serbians'. On the other hand, Zulcic reported that she believes that they would work together if the campaign entered into its second phase and the exhibition travelled to Belgrade. She also stressed that the key messages of the two campaigns were different. 'Pillar of Shame' was meant to send a message to the international community, while messages from the WiB campaign were aimed at Serbian citizens and asked them to express remorse and guilt for the Serbian government's actions in relation to Srebrenica (Simic and Daly 2011) (Fig. 11.5).

I suggest that another reason for the lack of cooperation may lie in the difficulty of mixing shoes donated by Serbian citizens with those donated primarily by Bosniaks. What would this symbolically mean? Given that no 'Pillar of Shame' collection centres were established in RS, and no potential partners for this project were approached in that part of BH or Serbia, there seems to have been a reluctance to engage with the Serb population, which is often perceived as the ethnic group that should bear collective responsibility for genocide (Franovic 2008). The atrocities committed by the Serbs include mass killings, torture, annihilation, property destruction, execution, elimination, and destruction of cultural, religious and other societal symbols (Wachtel and Bennett 2009). As a consequence, it may be too much to expect survivors to accept shoes from Serbs, even if the shoes were willingly donated for good cause. Although not surprising, this campaign and its methodology demonstrate the complex and difficult environment in which the BH society functions,

an environment in which both a lack of trust, resentment and even fear remain pervasive (Subotic 2009; Franovic 2008).

Although in theory anyone could participate in the 'Pillar of Shame' campaign, the organisers emphasized that the campaign should not be used for political gain and, particularly, could not be hijacked by certain political parties. In BH, the Bosnian Society engaged with several primary schools that were based largely in remote areas of Sarajevo. With the consent of directors and teaching staff in these schools, the Bosnian Society entered classrooms to present the campaign to the kids. The aim was primarily educational: to raise awareness about genocide among kids and to invite them to respond by drawing pictures, writing messages, or possibly donating a pair of shoes. The children were encouraged to leave a message in the shoes for the 'international community, to those who had power to do something, to make a difference, to prevent genocide but they decided not to do so'. This was, according to Zulcic, significant for the children. Even the children who could not write, contributed by drawing pictures of war and telling stories about their memories of war, and often about parents they had lost in war.

The majority of the children were refugees and Internally Displaced Persons (IDPs), living below the poverty line. It was intended that some of the shoes that were in good condition would be given to children who lived in extreme poverty and could not afford clothes and shoes. Although the organisers asked for old shoes, some people donated new shoes. Zulcic reported that a few politicians bought new pairs of shoes and brought them to the campaign straight from the shop to show 'how much they care'. As she argues, that was 'not the point at all of this campaign but that by merely giving a pair of shoes one demonstrates the protest ... so the value of shoes or condition of the donated shoes were irrelevant'.

Adults were also encouraged to write messages to 'the UN, international community and European Community' since, as Zulcic argues, 'they are all responsible for not preventing genocide'. Some people donated shoes that had special meaning to them. A man from Capljina donated shoes that he had worn on the day he was forced to enter the concentration camp.<sup>12</sup> He had kept these shoes since that time and did not wear them, and when he heard about the campaign, he decided to donate them. Another woman from Sarajevo donated shoes from her child who was killed during the siege in Sarajevo, and a mother from Srebrenica donated shoes of her child killed in the genocide. All of the messages from the shoes are in the Center for Political Beauty in Berlin, while the shoes are stored in Tuzla.

The first phase of the 'Pillar of Shame' campaign was finalized but with financial difficulty. The two other phases have not materialized because of lack of financial support. It is uncertain whether they will ever eventuate.

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<sup>12</sup>During the war in BH, concentration camps were set up mostly for Bosnian Muslims by Serb and Croatian authorities. Dretelj-Capljina prison camp for Serbs civilians and Muslims was run by the Croatian Defense Forces (HOS) and later by the Croatian Defense Council (HVO). See *Prosecutor v. Jadranko Prlic et al.*, Indictment, 2 March 2004.



**Fig. 11.6** Photo of donated shoes with a message. (Photo is a courtesy of Aldijana Mustafic)



## **(Lack of) Support for the Campaign**

I believe they are hoping that we—the eyewitnesses of the crime committed—will die one day, so that there will no longer be anyone reminding them of the global shame they caused. (Fazila Efendi, returnee to Srebrenica) (Fig. 11.6).

A few employees within UN agencies in BH called the Bosnian Society to give support to the campaign and expressed a willingness to have their photo taken with the shoes for the media. However, as Zulcic reported, on the day when the photographing was scheduled, literally hours before, they all cancelled their appointments for taking the photo and said that:

They received the threats from their employers that if they do this, they would be fired from their jobs. They did not get any written correspondence about it, but orally they had been told to withdraw from any support for this project. They apologized and said they cannot participate since they were threatened by a term of notice.

There was no public support from any UN agencies for the campaign. None of the international organizations, either formally or informally, gave support to the campaign nor did any call the organisers to inform themselves about the campaign. Zulcic reported that she heard from insiders that ‘the UN agencies do not support the campaign, do not like it and will try to prevent it if possible’.

With respect to local politicians, a number of Bosniaks in the Parliament gave support as did the Presidency of BH. Also, Tanja Fajon, a Slovene delegate to the European Parliament, took a photo with the shoes. However, no one from the RS political elite gave support for the campaign. By contrast, in Germany, there has been lot of discussion about ‘iconography of shoes’. As Ruch reported, the heated debated has not centred around Srebrenica and the project itself but around the shoes and what the meanings that have been ascribed to them in German history:

There is no copyright of shoes, concluded one paper published in daily paper in Germany. The discussion was about Auschwitz and that shoes belong to Auschwitz and that you could not use them to represent the genocide in Srebrenica and that by using such artistic language you relativize the uniqueness of Holocaust.

As reported in *Der Tagesspiegel*, Cilly Kugelmann, the Deputy Director of the Jewish Museum in Berlin, insisted that the metaphor of a pile of shoes in a public space 'had already been occupied'. She has reportedly stated that shoes had been used historically in this way as a symbolic demonstration of the Nazi politics of mass murder and accused Ruch of trying to 'transfer emotion between Srebrenica and Auschwitz' (Schoenberner 2010). Rosenbaum contends that a presumption of the uniqueness of Holocaust may be entirely warranted provided that it does not diminish the moral authority that must be accorded to other groups whose members have also been forced to endure death and suffering in their history (2009, p. 3). However, Hancock argues that there is a disturbing trend emerging in Holocaust studies to deny recognition of other peoples, apart from Jews, as victims (2001, p. 123). As a consequence, it is not surprising that any perceived attempt to endanger the Jewish 'unique' position and the use of shoes as a symbol of Holocaust might be received unfavourably by certain commentators. For example, expressed aspirations and requests from Roma people to be recognized as victims have been harshly criticized as an 'insult of memory of Holocaust victims' (Anonymous 1986).

According to some scholars, other groups, such as Roma, 'do not qualify for inclusion in the Holocaust' (Lewy 2000; McFee 2009). In light of this discourse, it comes as no surprise that members of the German public found offensive the perceived attempt of the Pillar of Shame campaign organizers to draw a comparison with the Holocaust deeply offensive. Simply, within Germany, the Holocaust is not comparable with other genocides, including the Srebrenica genocide, to the extent that the victims of other genocides are denied the 'right' to be recognized as genocide victims too. By using Holocaust images and imagery, the Pillar of Shame organizers were thus open to accusations of relativization and of downplaying the Holocaust.

Despite a lack of support from the German media and public and from Serbs in BH, Zulcic reported that the campaign was a success. The fact that many people donated shoes and had a chance through this campaign to express their opinions and positions in relation to genocide was deemed as a measure of success in itself. Yet, as Zulcic argued, 'we were not happy that reaction from UN is lacking'. The campaign organisers also reported a disappointing lack of reaction from other international players. In June and July 2010, a world championship in football took place in South Africa. The Bosnian Society together with the Mothers of Srebrenica sent a statement to the organisers and asked them to pay one minute of silence at the final football game, which was scheduled for July 11. They requested the organisers not to sell the tickets for 8,373 people and to leave those seats empty. They hoped that this action would send a symbolic message that 8,373 people would have been able to be there if they had not been killed at Srebrenica. However, they received a negative response from the organisers, who told them that although they express their empathy, they decided not to involve 'such things in sport'. The organisers also

refused the request to mark the anniversary of Mandela's arrest,<sup>13</sup> which is on the same date. Zulcic said this was 'very disappointing and unjustified with the false argumentation ... This was an example of a world organization that has no understanding and empathy for victim request'.

Although Zulcic and Ruch remain positive and enthusiastic that the project will be realized one day, Mustafic, a volunteer from Bihac, reported that she was disappointed by the end result of campaign. She feels an enormous responsibility towards the people who donated shoes and worries how she will explain that all their effort was in vain and why the project failed. Mustafic feels betrayed because the campaign did not achieve its end goal of building a monument. There are no indications whether and when the project will be finished. The shoes are stored in a locker in an abandoned factory in Tuzla, BH, awaiting additional campaign funding. The main problem is the lack of financial means to finish the project. In the meantime, the shoes decompose in Tuzla, waiting for a better time.

## Conclusion

This case study underscores the complexities of local and transnational understandings and negotiations with justice. As Van der Merwe argues, the notion of justice is inspiring and powerful, but also illusory and elusive, especially for victims of mass atrocities (2009, p.115). The two organizations, the Center for Political Beauty and the Bosnian Society, acted on the failure of international community to be held accountable for failing to prevent genocide. A feeling of disappointment with the international community, and of justice denied and truth untold, was overwhelming among Bosnian survivors and German activists (Subotic 2009). This feeling galvanized a joint collective campaign that crossed the national borders and mobilized people's activism and a sense of ownership and justice for those who had been betrayed by formal justice mechanisms. The impact of many civil society activities, including this one, 'can only be seen years, if not decades, later', thus the impact of this particular social movement on the international community is yet to be seen (Hovil and Okello 2011, p.339).

This chapter has argued that although civil society justice mechanisms can play an important role in societies in transition, they are not without limits. One of the concerns raised in relation to the Pillar of Shame campaign has been the exclusion of Republika Srpska and its citizens and the reluctance to involve WiB from Serbia, which had a similar campaign underway at the same time. This supports the thesis that Bosnian society is still beset with interethnic mistrust, denial and fear (Fischer 2006, p.442). As Franovic argues, the situation in the former Yugoslav region cannot be defined as war since 'we have stopped shooting at each other', but neither is it peace (2008, p.17). Issues surrounding the lack of engagement and participation

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<sup>13</sup> Nelson Mandela, former President of South Africa, was arrested on August 5 not July 11.

in the Pillar campaign raise questions about the symbolic nature of the campaign and about the implications for transitional justice if Bosnian people from other ethnic groups, the WiB and the UN, were not interested or not invited or did not want to participate. Rather than confronting existing ethnic tensions, it could be argued that the Pillar campaign exemplified these tensions and brought them into focus.

The adoption of shoes by the Pillar campaign as a symbol of genocide provoked concern amongst the German public and media, which focused solely on the nature of the shoes used in the campaign rather than the campaign itself. The campaign produced heated debate about who possesses copyright to the symbolic use of shoes and whether the metaphor of pile of shoes in a public space has already been 'occupied'. It is unfortunate that the campaign received no other media recognition apart from being accused of appropriating shoes as a sacred symbol of Holocaust.

Despite these shortcomings, campaigns of symbolic reparation such as 'Pillar of Shame' enrich the transitional justice discourse, which has recently acknowledged a 'clash' between 'local' and 'universal justice' norms (Shaw and Waldorf 2010, p. 5). This particular campaign took place in the absence of 'universal justice' and served as a 'local justice' call for the legal accountability of the UN and the international community. Since formal justice mechanisms have been too weak to challenge UN immunity, a transnational network of human rights activists was mobilized to put pressure on the UN by, as Ruch stated, targeting its most vulnerable place: the good reputation it enjoys. In that sense, this campaign is unique since it is externally driven and oriented by German artists, whose aim is to address the UN and bring it to *the moral court* in which survivors and their followers will judge its (non)actions. However, the lack of reaction from the UN and international community to the campaign poses questions as to whether the campaign was able to meet its aim to shame and put pressure on the UN to any noticeable degree.

Campaigns of symbolic reparation lack research and evaluation. As Olsen et al. argue, this is not because they are unimportant, but because of the difficulty of finding systematic accounting for the wide range of processes involved, such as creating museums and memorials (2010, p.37). It is likely that many more civil society justice activities like this have occurred in conflict and post-conflict zones, but they have seldom been researched or theorized. In part, this may be because researchers may not have access to sites, local language, or contacts with local people to document the activities fully and accurately. Likewise, civil society and local justice mechanisms have only recently received attention in the transitional justice literature, thus civil society mechanisms are often overlooked in researchers' analyses of reparation and reconciliation (Simic and Daly 2011, p.491).

This case study fills a gap in the current literature by documenting a campaign of symbolic reparation that crosses the borders of the local context. By taking a deeper, critical look at such campaigns, and exploring the conflicting interests and different responses of the actors involved, the chapter aims to broaden discussion and understanding of justice in specific places and times. Without acknowledging and understanding the contested and often conflicted meanings of justice, attempts at long-term and sustainable peace shall be deemed to fail.

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## Chapter 12

# Afraid to Cry Wolf: Human Rights Activists’ Struggle of Transnational Accountability Efforts in the Balkans

Arnaud Kurze\* and Iva Vukusic

*If he has a conscience he will suffer for his mistake. That will be punishment-as well as the prison*

(Dostoyevsky 2000, p.226).

Throughout the 1990s the breakup of the former Yugoslavia led to horrendous conflict among the newly proclaimed independent states. Since, dealing with past war crimes and accounting for mass atrocities has constituted a very intricate and contentious process, mainly led by state-centric international retributive justice initiatives. In fact, the International Criminal Tribunal for the former Yugoslavia (ICTY) was created in 1993 amidst flaring conflict with the aim to push for accountability for war crimes and human rights violations. Over the years, the ad hoc United Nations (UN) Tribunal’s work has led to a spillover effect of international criminal

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law into domestic judicial systems in the region. As Ruti Teitel, a law professor at New York Law School, points out:

In the post-Cold War context, we can see that there is an evident transformation in the significance of an expanded role for international criminal justice. Clearly, international criminal justice aims and contributions are complex and in transformed political circumstances inevitably imply diverse understandings of rule-of-law values. Consider, for instance, the extent to which international law at The Hague affords the rule-of-law values of fairness and neutrality, often perceived as fragile or non-existent in domestic processes (2010, 9).<sup>1</sup>

Initially, civil society actors, in particular human rights organizations, supported these retributive justice efforts by participating in different programs, including witness protection and trial monitoring.<sup>2</sup> More recently civil society actors expanded their influence and impact—reaching beyond the initial judicial support, in which NGOs have been invited to participate by state actors—and created a deliberative space to increase victims’ voices in society, so-called ‘invented spaces’ (Jeffrey 2011). Although several scholars have questioned the progress and effectiveness of Bosnian civil society in post-conflict transitions (Belloni 2008; Fischer 2005; Chandler 1998), in a case study Alexander Jeffery underlines efforts by the Bosnia and Herzegovina (BiH) Court to integrate NGOs in transitional justice processes. He describes a court support network, which was established by the BiH Court’s Public Information and Outreach Service in 2005 and which aims at integrating the mission of the Court into Bosnian society. To this end, the Court approached various human rights NGOs located in different Bosnian towns, such as Sarajevo, Prijedor, and Mostar, among others. As Jeffrey writes, “[t]he idea was to reach a wide geographical spread and through these organizations establish a sustainable network that would spread information about the Court, and in particular the [War Crimes Chamber of the BiH Court]” (2011, p.352). Such scholarly insight is important, as several past restorative justice attempts across different countries in the region resulted in limited success (Jouhanneau 2010; Grodsky 2009; Pejic 2001). Notwithstanding, social activists and civil society organizations have incrementally increased their role and reach in transitional justice processes.<sup>3</sup> In this chapter, we discuss the ongoing transnational fact-seeking initiative, called the Coalition for a Regional Truth Commission (RECOM), to elucidate the sociopolitical struggle of coalition members to advocate for alternative models to cope with mass atrocity in the former Yugoslavia.

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<sup>1</sup> See also (Martin-Ortega and Herman 2010).

<sup>2</sup> Other authors, such as (Subotić 2009), and annual activity reports of NGOs, such as Documenta Center for Dealing with the Past and the Humanitarian Law Center, among others, have criticized the effectiveness of this justice cascade model by (Lutz and Sikkink 2001). Ellen Lutz and Kathryn Sikkink argue that through transnational advocacy network of lawyers and activists have fueled domestic judicial processes across Latin America.

<sup>3</sup> Several authors have addressed the question of human rights activism in transitional justice processes and in particular highlighting the important impact of local NGOs in different regions (Roht-Arriaza 2005; Collins 2006; Burt 2009).

Drawing on concepts of sociology of spaces—based on the study of establishing spaces through action and the interdependence of action on spatial structures (Urry 2000)—we illustrate how activists move between different spaces constituted by narratives of justice and truth. More precisely, confronting mass atrocities in post-conflict societies can take place in many different ways, with human rights trials and truth commissions as two very important mechanisms.<sup>4</sup> Our study is particularly interested in the complementary use of truth commissions and trials. To this end, we have carried out over two-dozen semi-structured interviews with key actors, such as human rights activists, representatives of domestic and international judicial institutions, and international organizations, among others.<sup>5</sup> Early on, human rights organizations in the region acted primarily within the legal space. They helped for instance improve domestic war crimes prosecutions by providing victim and witness support. In fact, some of the witnesses and/or victims were initially exposed to intimidation and death threats due to the absence of anonymous testimonies in the courtroom during hearings and the lack of media responsibility.<sup>6</sup> Subsequent projects of human rights activists, such as the RECOM initiative, were therefore an attempt to further develop victim-oriented transitional justice strategies. Additionally, it was an attempt to expand their domestic justice-oriented activities to regional fact-finding efforts. In this study we discuss and illustrate the persisting obstacles that hamper the successful implementation of the RECOM truth commission and human rights activists' attempts of claiming and institutionalizing extra-judicial space thus far.

Indeed, the expansion of so-called truth spaces poses myriad challenges. The attempt of establishing a fact-finding body for the former Yugoslavia has faced different types of opposition, ranging from external critique and politicization across the region to internal disapproval and politics by certain of its members. With the aim of creating a broad regional fact-finding initiative, the RECOM campaign also grapples with different types of victims (including families of victims, prisoners, and veterans, among others) who have, sometimes, conflicting needs and expectations. Different narratives of the past, however, also result in elusive consensus building attempts. Yet another reason was that the initiative's members were part of a regional network from different states that were initially united under of one federal nation-state before the conflict. Now, however, state borders separate this originally common space and, in spite of commonalities among participating actors across the region, several obstacles still impede a successful mobilization thus far. These conditions are unique to the Balkan region, as past truth commissions in South Africa, Peru and East Timor, among others, were established in more homogenous geographical spaces where atrocities were generally committed within the territorial boundaries.

This chapter is organized in two sections. First, we describe the continuous struggle of human rights activists to create a transnational extra-legal space—in

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<sup>4</sup> Other forms include reparations, lustration and vetting, among others.

<sup>5</sup> Additionally, the study draws from various reports, policy briefs and strategy papers, among other documentation.

<sup>6</sup> See for instance (Kurze 2012, Chap. 4).

particular a fact-finding commission—to deal with past atrocities across the former Yugoslavia. We focus on internal and external obstacles the movement faces. Second, we discuss issues of multiple narratives of victimhood, as a consequence of the transnational character of restorative justice efforts in the post-conflict Balkans. In order to do so, we draw on several different cases. With our research we show that despite the increasing importance of NGO actors in transitional justice processes in the region, several factors still hamper the successful creation of extra-judicial space and the implementation of alternative accountability mechanisms, such as the regional truth commission RECOM.

## **The RECOM Initiative: Struggling to Create an Extra-Judicial Space**

Several authors have explored the sociopolitical role of NGOs in society using a sociology-of-space perspective in order to illustrate their active involvement in shaping policy processes (Miraftab and Wills 2005).<sup>7</sup> Drawing on Faranak Miraftab and Shana Wills' notion of invited spaces—more precisely, spaces in which state institutions provide opportunities for civil society to participate actively in certain problem areas—Alex Jeffrey recently analyzed the creation of space (invented space) by human rights organizations in BiH to allow for deliberate conceptions of justice that go beyond legal institutions and processes (2011). His study defies a legalist approach, illustrating how activists who initially cooperated with the judiciaries have established alternative ways to implement transitional justice in post-conflict settings. While we employ these concepts to investigate regional transitional justice activities of a number of NGOs across the former Yugoslavia in this chapter, we concentrate on a series of factors that have thus far constrained the effective implementation of regional restorative justice efforts and truth spaces by human rights activists. Initially, however, we will address the problems of international criminal justice efforts promoted by the ICTY, which fueled these alternative accountability efforts.

The recent attempts to institutionalize an interstate fact-finding body—to account for past human rights violations and war crimes in the former Yugoslavia—emerged as a response to the rising critique of international and domestic war crimes prosecutions in the region.<sup>8</sup> In fact, retributive justice mechanisms to cope with the past, such as the ICTY, despite the great global impact on and model character for international humanitarian and criminal law, has only partially helped war-torn and post-conflict societies in the region to transition (Subotić 2009). Some of the issues include: the geographical distance of the court between the Netherlands and the crime scene sites—which has often been criticized by victims/witnesses; the trial of

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<sup>7</sup>For an extensive discussion on time and space, see (Urry 2000).

<sup>8</sup>See for instance (Kurze 2012, Chap. 3).

selective cases only (both on the international as well as domestic level); and the politicization of cooperation processes between countries of the former Yugoslavia and the UN tribunal in The Hague (Teitel 2005). Victims thus felt alienated by international and domestic accountability efforts. Increasing critique from victims' associations and human rights organizations were therefore crucial in helping launch an alternative process to improve the relationship between law and society. The objective was to create a deliberate space to account for mass atrocities that was outside the judicial space. Below we briefly trace the genesis and discuss the ontology of the movement in recent years.

The idea behind the RECOM campaign was that progress did not lie in more personnel, better strategies, and on-site presence of the judiciary system, but in the way that those who suffered most during the conflicts were integrated into attempts to cope with the past. In fact, the activities of several nonprofit organizations in this context—many of which often started working at the outbreak of violence in the early 1990s<sup>9</sup> or shortly after—demonstrated the increasing efforts to raise victims' voices in transitional justice processes in the former Yugoslavia. In fall 2005, three established nonprofit organizations in the region—the Humanitarian Law Center in Serbia, Documenta Center for Dealing with the past (Documenta) in Croatia, and the Research and Documentation Center in BiH,<sup>10</sup> discussed the prospects of an independent regional commission to investigate and disclose facts about war crimes and other serious human rights violations in the territory of the former Yugoslavia.<sup>11</sup> By May 2008, these organizations had gained enough momentum and launched the RECOM initiative in Priština, Kosovo, with over 100 NGOs from the region (Coalition for RECOM 2009). Due to the still highly politicized landscape of war-crimes-related issues in the region, the founders of the initiative stressed the importance of establishing a platform offering victims an opportunity to express themselves and to counter the relativization of any crimes against humanity by local and national authorities or justification of crimes committed against opposing sides in the conflict (Coalition for RECOM 2010).

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<sup>9</sup> The activities of the Humanitarian Law Center in Belgrade, Serbia, are a good example of documenting war crimes in the former Yugoslavia. The center also promotes victims rights, based on various initiatives, at <http://www.hlc-rdc.org/stranice/Linkovi-modula/About-us.en.html>. Accessed December 5, 2009.

<sup>10</sup> These various organizations have as their core mission to document and disclose facts about the human rights violations and war crimes committed during the 1990s to educate society and create a voice for victims. Various forms of implementing this mission exist. Documenta, for instance, among other things, engages in commemorative culture, history teaching, and dealing with the past initiatives, thus emphasizing the interactive dialogue with society. The Research and Documentation Center, concentrates its work on documenting missing persons, and has published a comprehensive account of all the war victims in BiH, *The Bosnian book of the dead* (2009), as well as an interactive Google map that shows location, nature of the crime and number of victims. The Humanitarian Law Center, despite its involvement in commemorative culture, is known for its strong legal activities, providing support for victims in court and vis-à-vis state institutions.

<sup>11</sup> The International Center for Transnational Justice (ICTJ) and other prominent NGOs in the region also participated in this discussion.

Interestingly, despite coalition members of the RECOM campaign praising the work of the ICTY at conferences and other public events, their strategy clearly aimed at challenging the existing *modus operandi* of the UN *ad hoc* Tribunal. As the prevailing international transitional justice strategy in the former Yugoslavia—particularly advocated by the European Union (EU)—required state cooperation with the ICTY and improving domestic war crimes prosecution, official support of international organizations, such as the United Nations Development Program (UNDP) or the EU, among others, to promote the RECOM initiative was very limited.<sup>12</sup> Despite this drawback, the initiators considered the movement as a response to these retributive transitional justice mechanisms, which in their eyes proved only to be partially successful to cope with the violent past in the region.<sup>13</sup>

What were the tools RECOM coalition members had in mind to implement their goals? According to article 13 of RECOM's final draft statute the commission has six primary objectives. The main goal is to establish facts about war crimes and other grave human rights abuses that occurred during the conflicts in the former Yugoslavia from January 1, 1991 to December 31, 2001.<sup>14</sup> Moreover, it will also look at the socio-political circumstances that led to these crimes and their consequences. The commission also aims at acknowledging "injustices inflicted upon victims in order to help create a culture of compassion and solidarity with victims."<sup>15</sup> Other goals consist of promoting victims' rights, clarify the fate of missing persons and help prevent future human rights violations and atrocities. The RECOM commission's specific functions are listed in article 14 of the final draft statute. Its main tasks consist of collecting information on war crimes and other gross human rights violations as well as information on missing persons. The collected information is then stored in a regional database. Public hearings of victims and other persons about war crimes and human rights violations will also be part of the commission's functions. This function overlaps with the work of domestic judiciaries and has been problematized during several RECOM consultation meetings with lawyers, judges, and public figures (Kurze 2012, chap. 6). Finally, according to the draft statute, the commissioners<sup>16</sup> will provide policy recommendations to help prevent further atrocities and human rights abuses, which will be published in a final report.

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<sup>12</sup> Interviews held with several UNDP and EU officials in BiH, Croatia and Serbia during fieldwork between September 2009 and May 2011.

<sup>13</sup> See (Kurze 2012, chap. 3 and 4) and reports published by human rights organizations, including Documenta, the Humanitarian Law Center, Human Rights Watch, Amnesty International, among others.

<sup>14</sup> See Chap. 6 for a discussion on how the RECOM initiative members decided to define this specific timeframe.

<sup>15</sup> See final draft RECOM draft statute of March 26, 2011, <http://www.zarekom.org>. Accessed on March 1, 2012.

<sup>16</sup> According to the draft statute alleged war criminals and individuals with a political affiliation are ineligible for a position as a commissioner.

As a result, the RECOM movement aims at creating a space for victims to be heard in society, fueling sympathy and understanding. RECOM advocates hope to provide a regional mechanism that takes into account the context of past conflicts. Indeed, as several countries were involved in the breakup of the former Yugoslavia, dealing with past war crimes issues does not stop at national borders, but goes beyond the sovereign territory of the current states. The transnational context to create a regional truth commission, however, creates also several obstacles and challenges that we describe below. With regard to establishing a collective memory, RECOM coalition members also plan on creating a comprehensive database of victims to end the perpetual politicization of the number of victims in the region. In addition, RECOM advocates claim the data collection and the archives could help war crimes prosecutors with evidentiary material, witness handling and searching for the missing. Yet, as we will explain below, these ambitious goals are tainted by internal disagreements of different coalition members.

Since the official constitutional meeting of the RECOM coalition in Priština in 2008 the initiative has faced internal politicking and difficulties.<sup>17</sup> The driving coalition partners of RECOM, such as Documenta and the Humanitarian Law Center, in particular, have grappled with mobilizing coalition partners from BiH, after the head of the Bosnian Research and Documentation Center, for different reasons, refused to give his official support to the coalition at one of the meetings in winter 2008.<sup>18</sup> Void of an essential Bosnian member—BiH constitutes a symbolic member country due to its weighty history during the 1992–1995 conflict—Humanitarian Law Center director, Nataša Kandić, managed to fill the gap created by the loss of the influential Research and Documentation Center by partnering with the Association of BiH Journalists.<sup>19</sup> Yet, the fact that this organization does not essentially concentrate on war crimes reporting has affected its legitimacy within the coalition, according to a prominent member of the initiative.<sup>20</sup> Critique has also come from participating organizations that have deplored the lack of transparency in RECOM's decision-making process (B92 2011). Moreover, the uncertain outcome of whether the commission will be created and the long process in rallying financial and political support—both of which have been fluctuating and vague—has also led to a RECOM fatigue with each of the main partner organizations focusing their energy and resources on domestic and local programs in their respective home countries.<sup>21</sup> In addition to internal obstacles, the initiative's institutionalization

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<sup>17</sup> The movement was organized in three phases. The first phase assessed the needs and expectations of victims to create an extra-judicial to deal with past mass atrocities across the region. In phase two participants were incited to provide suggestions and recommendations for creating a regional commission. This took place in local, national and regional consultations and meetings. The last phase aimed at discussing and crafting a draft statute for the commission. It started in May 2010 and lasted until the adoption of a draft statute in on March 26, 2011.

<sup>18</sup> See interview with Mirsad Tokača, director of the Research and Documentation Center in June 2011.

<sup>19</sup> See interview with Nataša Kandić, director of the Humanitarian Law Center, in May 2011.

<sup>20</sup> See interview with official member of RECOM in Zagreb in February 2011.

<sup>21</sup> See supra note 21. See also programs by Documenta, <http://www.documenta.hr> or the Humanitarian Law Center <http://www.hlc-rdc.org>. Accessed November 23, 2010.

process of a regional truth space has faced difficulties fueled by other political and international actors in the post-conflict Balkans.

Although the political and institutional structures in the former Yugoslavia have become more favorable for the RECOM initiative in recent years, numerous obstacles still impede the creation of a fact-finding body.<sup>22</sup> In the following we describe the fragile political progress across the region and outline some of the inherent problems. The first important political wave of change in the former Yugoslavia occurred in the early 2000s. The death of Croatia's right-wing leader Franjo Tuđman in 1999 allowed the conservative nationalist era to end in which the narrative of the glorious homeland war to defend the young nation didn't leave any room for discussion of war crimes and human rights violations. Although this nation-building discourse is still promoted by large parts of the conservative political elite in Croatia, the socialist party has gained more political ground in recent years, which contributed to a political shift in Croatia's domestic memory politics. In December 2011 the *Hrvatska Demokratska Zdranka*<sup>23</sup> (HDZ) lost several seats in the legislative elections, ceding its majority rule to a coalition government, further contributing to the political change. As for Serbia, the notorious leader Slobodan Milošević was booted out of power after his 2000 electoral defeat amid rising protests from the streets after he attempted to unilaterally remain in power (Ramet 2010, Chaps. 12 and 13). During the past decade, several reforms and political initiatives demonstrated new governments' willingness to recognize and address war crimes and human rights violations. These efforts, however, are only the tip of the iceberg in a long process that is still ongoing.

Indeed, current political leaders in both countries, Ivo Josipović the president of the Republic of Croatia (who began his first term in February 2010), and Boris Tadić the president of the Republic of Serbia (in his second term, which started in February 2008), have both made important strides to foster a climate of rapprochement in the region. They represent a new political generation that has not been personally involved (be it directly or indirectly) in war crimes or the human rights violations of the 1990s conflicts.<sup>24</sup> In 2007, for instance, Tadić released a statement on Croatian national TV on the eve of the 16th anniversary of Croatia's independence, June 24, 2007, apologizing for crimes committed against the Croats by

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<sup>22</sup> Particularly during electoral campaigns, history is manipulated and old nationalist sentiments exploited by certain political parties or social groups.

<sup>23</sup> Croatian for: Croatian Democratic Union.

<sup>24</sup> In the 1980s, Josipović was a member of the League of Communists of Croatia, playing a key role in the democratic transformation of this party as the author of the first statute of the Social Democratic Party of Croatia (SDP) after Croatia's independence. He left politics in the mid-1990s, pursuing his academic career as a law professor at the University of Zagreb and only reentered the political realm in 2003, when Iвица Račan, then acting Prime Minister, invited him to join the government. Serbia's president, Boris Tadić, a trained psychologist, was part of the Democratic Opposition of Serbia, which was key in overthrowing Milošević in 2000. Politically part of the Democratic Party, he has made multiple symbolic reconciliatory public statements that are a sign of collaboration and understanding of both countries.



members of the Serbian population.<sup>25</sup> While then-president of Croatia, Stjepan Mesić welcomed the remarks, nationalist hardliners at home, such as Aleksandar Vučić, secretary general of the Serbian Radical Party, ferociously criticized him as a national traitor (Popovic 2007). Already in 2004, the Serbian president has made similar remarks while on a visit to Sarajevo, BiH.<sup>26</sup> More recently, on November 4, 2010, Tadić apologized for the massacre that took place 19 years ago in Vukovar, a town in Northeastern Croatia.<sup>27</sup> He said that “[b]y acknowledging the crime, by apologizing and regretting, we are opening the way for forgiveness and reconciliation”; yet not everyone received him with wide open arms. Several mothers of those killed in Vukovar, for instance, turned their backs while he gave his speech (Associated Press 2010). Both of these examples illustrate how the political landscape equals a minefield, as not only right-wing nationalist veterans feel betrayed, but also victims express their discontent with political symbolism that does not go far enough in their eyes. Tadić’s Croatian counterpart, Josipović, reciprocated these symbolic steps, and during the November 4, 2010 ceremony in Vukovar, he laid down a wreath in commemoration of over a dozen Serbs that had been killed in a nearby village (Associated Press 2010).<sup>28</sup> In addition, both leaders expressed their political backing of the RECOM initiative, in fall 2010 when RECOM members publicly asked for their support (Andrić and Hadžović 2011).

However, in spite of the symbolic gestures and discourses by heads of state in both of these countries (and across the region) institutional drawbacks remain—ranging from the lack of investigations of war crimes involving high-profile Croatian politicians, such as the former speaker of the parliament, Vladimir Šeks (Amnesty International 2010), to the appointment by the current Serbian government of Zoran Stanković as head of the Serbian Ministry of Health, despite his close ties with indicted war criminal Bosnian Serb General Ratko Mladić (Radio Free Europe/Radio Liberty 2011a).

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<sup>25</sup> The rising wave of apologies in the region of the former Yugoslavia is not limited to Serbia and Croatia. In November 2010, Bakir Izetbegovic, Bosniak member of Bosnia-Herzegovina’s tripartite presidency, apologized for deaths caused by his ethnic group among other ethnicities. This trend started in 2000 with Montenegrin President Milan Djukanovic, when he apologized for the 1991 shelling of the Croatian coastal city of Dubrovnik in which his country was involved. Since, the Serbian and Croat heads of state have apologized in 2003, and Tadić apologized to Bosnians in Sarajevo in 2004 for Serbian atrocities committed there. Additionally, Josipović has apologized at Jasenovac, a memorial site of a World War II concentration camp, where tens of thousands of people were killed. Public apologies are not the only trend, as there have been political and judicial conciliation as well. The Parliament of Serbia, for instance, voted on a resolution on the 1995 Srebrenica massacre, while Croatia is assisting Serbia in its bid to join the EU (Pejic 2010).

<sup>26</sup> See “Tadić se izvinio građanima Hrvatske,” *B92*, 24 June 2007.

<sup>27</sup> Vukovar is situated close to the Serbian border and a war site where Serbian forces took over 200 hospitalized Croats to a nearby pig farm in Ovčara and massacred them in November 1991.

<sup>28</sup> Already in spring 2010, when giving a talk in front of the Bosnian Parliament, Josipović apologized for crimes committed against Bosnians by the Croatian people. He also visited the site of the Ahmići massacre with Bosnian Catholic archbishop cardinal Vinko Puljić and the head of the Islamic Community reis Mustafa Cerić. See “Josipović apologizes for Croatia’s role in war in Bosnia,” *Croatian Times*, 15 April 2010.

Interestingly, support from international organizations to create RECOM's institutional framework also remains limited and further complicates human rights activists' efforts to account for war crimes. While the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe (CoE) has released a report expressing its support for regional reconciliatory justice mechanisms among states of the former Yugoslavia, such as the regional fact-finding initiative RECOM (Marcenaro 2011), other organizations, including the UNDP and the EU, among others, avoid public statements that engage in direct political or financial support of RECOM.<sup>29</sup> Politicking among Coalition members and the lack of external support, however, were not the only challenges that kept the RECOM initiative from getting off the ground. During the creation of this regional truth space, a debate about the meaning of victimhood has emerged, producing different opposing narratives that we discuss below.

## Multiple, Conflicting Narratives of Victimhood

Recent scholarship has grappled with the question of victimhood in post-authoritarian regimes. Drawing on interviews with war criminals and reports of the confessions of perpetrators in post-conflict settings in Argentina, Brazil, Chile, and South Africa, for instance, Leigh Payne analyzes the behavior of perpetrators (in terms of remorse, heroism, denial, or sadism) and the reaction of victim groups (Payne 2008). In the case of the former Yugoslavia, denial still remains an important phenomenon in society. Partly, as we will demonstrate in the following, because state institutions have sustained certain political discourses—such as the foundational myth of the Croatian Homeland War 1991–1995. In this context, veterans have generally enjoyed financial support in form of pensions provided by the state.<sup>30</sup> On the contrary, state institutions across the region have often ignored the fate of civilian war victims and their families. During the RECOM consultation process participating victims association have therefore stressed the need to define the meaning and status of a victim, illustrating RECOM initiators' conundrum of integrating different narratives of the region's looming past.

As a member of a local victims' association from Zvornik, a town in northeastern Bosnia from which nearly all Muslims were expelled during the 1992–1995 war, underlined:

Persecution of the civilian population can't be compared to the persecution of those who bore rifles and were members of a military formation. (...) This means that a civilian is a civilian, a soldier should not be mentioned because after all he was a member of the army,

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<sup>29</sup> See interview with United Nations Development Program and European Union officials in Sarajevo in May 2011.

<sup>30</sup> Veterans in BiH, for instance, have also benefitted from financial and political support by their respective governments. See Popić and Panjeta (2010).

those are separate issues. However, here I exclusively speak about civilians, people who were taken and killed at their doorsteps or a bit further depending on where one was killed (Cited in Coalition for RECOM 2009, p.8).

This narrative, however, stands in opposition to the RECOM members' goal to establish facts about human rights violations and war crimes of *all* victims.<sup>31</sup> And indeed, in some cases, the meaning of victim includes social groups that do not match the Zvornikan's above definition but include former members of the armed forces. Although the RECOM initiative counts only six veterans associations versus well over one hundred victims associations, this situation demonstrates the inherent predicament of RECOM's leading members to draw bridges among different local and regional civil society organizations during their consultation meetings.

In local and regional consultation meetings, such as in Vukovar in summer 2010 and in Skopje in winter 2010, for instance, members of different branches of the Association of Underage Volunteers of the Homeland War also participated in the discussion.<sup>32</sup> These organizations have been created for persons, who at the time of the war were not considered adults, yet fought in the 1991–1995 Croatian war. As underage participants in the hostilities, however, they are not entitled to any veteran pensions from the Croatian state.<sup>33</sup> Hence, the concerns of one of their representatives with regard to RECOM's task of registering human losses stands in contrast with the statement given by the member of the Zvornika victims association:

I am in favor of a register of all losses, which would include both civilians and military men, and that list must inevitably include foreign nationals who participated in those conflicts. How are we going to register them? We should include them in the same register, together with the members of international forces. And a separate register should be created for victims, primarily victims of war crimes.<sup>34</sup>

RECOM's policy strategy therefore does not necessarily receive the approval from its main target, support groups of war victims. As a result of its holistic approach, some victims' organizations, such as the Mothers of Srebrenica, do not participate officially as a member of the RECOM coalition because their members insisted on the exclusive definition of noncombatants (Coalition for RECOM 2009, p.8).<sup>35</sup> Narratives by political actors and state institutions also complicate RECOM advocates' mission to establish a regional commission and expand their extra-judicial spaces to deal with the past.

Nationalist discourses generated by (particularly populist) political actors across the region still pose an impediment to the successful creation of truth spaces by human rights activists. As a case in point, after the arrest of Ratko Mladić on

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<sup>31</sup> The final draft of the statute was adopted on the fourth Coalition for RECOM Assembly Meeting on 26 March 2011 in Belgrade. The draft is available at <http://www.zarekom.org/documents/Proposed-RECOM-Statute.en.html>. Accessed on May 2, 2011.

<sup>32</sup> See reports of the consultation meetings at <http://www.zarekom.org/Consultations.en.html>. Accessed on February 11, 2011.

<sup>33</sup> See informal interview with Documenta director Vesna Teršelić in Vukovar on 14 July 2010.

<sup>34</sup> *Supra* note 33.

<sup>35</sup> See also *Supra* note 21.

26 May 2011, the Serbian Radical Party organized a rally consisting of about 10,000 nationalist protestors who gathered—with a small amount of participants rioting—in front of the Serbian parliament in Belgrade to demonstrate against Mladić's extradition to The Hague (Erlanger 2011). A few months earlier, Croatia faced a similar situation with nationalists and veterans mobilizing large parts of Croatian society across the region in order to protest against the ICTY first instance verdict in the General Ante Gotovina case (Radio Free Europe/Radio Liberty 2011b). The verdict was handed down two days before the initial start date of the RECOM signature campaign in Croatia. Given the very tense political climate in the country, human rights activists postponed the launch of the signature campaign to a later date in order to prevent violence among their campaign volunteers and demonstrators.<sup>36</sup> Drawing on the latter case, we will explore the question of state victimhood, which acts as an institutional hurdle to the constitution of truth spaces in society—in addition to the differing narratives of victims mentioned above—and which further exacerbates the restorative justice efforts of NGO activists in the field.

Political symbolism has a very strong effect on the community if it is grounded in lived experience. Benedict Anderson explores the sociopolitical consequences on employing symbols for political means in a longitudinal studies stretching over centuries (1991), Alex Bellamy analyzes the question temporally and spatially more concise, focusing on Croatia (2003, pp.1–6). Not surprisingly, the foundational myth of former Croatian army commander, Gotovina—who has risen to an emblematic war hero figure in Croatian society, and who represents the ontological core of the nation's nascent identity incarnated in a fight of good (Croatia) against evil (Serbia)—has sparked ferocious criticism at the intersection between international and national politics. Despite the Croatian government's international cooperation which led to his arrest and transfer to the ICTY in December 2005, the normative shift in favor of international humanitarian law in the endlessly dragging—and politically highly explosive—extradition issue of Gotovina was incomplete. In fact, during the entire period, politicians strategically politicized various debates on Croatia's national foundational myths (Pavlaković 2008). After the verdict, the Croatian government even took the necessary steps to initiate an appeals process and provide questionable amounts of legal and financial assistance to Gotovina's defense team in The Hague (Croatian Times 2011). These contradictory narratives of victimhood have thus far impeded the successful implementation of a regional truth space and the creation of a transnational truth commission.

## Conclusion

This chapter has examined the ongoing struggle of a social movement to establish a restorative justice mechanism in the former Yugoslavia, the RECOM initiative. After the violent disintegration of Yugoslavia in the 1990s, the region has witnessed

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<sup>36</sup> See interview with Signature Campaign officials of the RECOM initiative in May 2011.

several retributive and restorative mechanisms to cope with the past, including war crimes tribunals—on the international and (to a lesser, but still noticeable extent) national level—and fact-finding initiatives. During these processes human rights activists have occupied an important intermediary function, communicating and interacting between spaces created by varying justice and truth narratives. The aim of this chapter was to analyze these different, intersecting spaces and the role of civil society within these spaces to help understand why recent efforts to establish a transnational fact-finding mechanism have been unsuccessful thus far. The first part of this chapter addressed the ongoing internal and external struggle of human rights activists to establish an extra-legal space to deal with the past across the former Yugoslavia. In this context, we then analyzed the conflicting impact of different victims groups' narratives that accompanied the institutionalization process. The road to sustainable transition in the region is still long and full of challenges, and future developments will show whether human rights activists will be able to sustain their grass-roots projects and establish a dialog between different victim groups across the former Yugoslavia or whether the described obstacles persist and cannot be overcome to create a transnational truth commission for the Balkan region.

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# Chapter 13

## From International Courts to Grassroots Organizing: Obstacles to Transitional Justice in the Balkans

Jill A. Irvine and Patrice C. McMahon

### Introduction

Despite the May 2011 arrest of Ratko Mladic, there is some consensus on the shortcomings of the International Criminal Tribunal for the Former Yugoslavia (ICTY) (McMahon and Western 2011). Although the court was seen as a judicial organ that would have both a legal and political impact, its effectiveness in both arenas has come under considerable scrutiny. Its primary intent was to prosecute individuals responsible for war crimes, crimes against humanity, and genocide in the Yugoslav wars, though it was also created to contribute to the restoration and maintenance of peace in the region (Hampson 1998). It was clear how the former would happen; it was never articulated how the latter would take shape. Most research suggested or assumed that these broader societal goals would transpire once domestic actors became more engaged in transitional justice and addressing the past (Peskin 2009; Subotic 2009; McMahon and Forsythe 2008; Meernik 2005; Kerr 2004). Yet, only recently, with the establishment of the Regional Truth Commission for the Former Yugoslavia (RECOM) have local organizations come together to organize around this issue. What are the origins of RECOM? What issues and strategies does it advocate? And, finally, does RECOM's development suggest that a regional justice movement is underway in the Balkans?

In the nearly two decades since the establishment of the ICTY in 1993, a substantial body of literature has emerged on transitional justice, its mechanisms, and practices (Forsythe 2011; McEvoy and McGregor 2008; Nettelfield 2010; Olsen et al.

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2010; van der Merwe et al. 2009). The early focus on international law and international institutions (Drumbl 2007; Paust et al. 2006; Akhavan 1998) has given way to more empirical studies that attempt to evaluate mechanisms, highlighting their relative weaknesses, and inability to deliver the desired outcomes (Miller and McMahon 2012; Lamont 2010; Subotic 2009; Grodsky 2007). Most research on transitional justice in the Balkans focuses on the problems with international and national transitional justice mechanisms, underscoring elites' instrumental behavior when it comes to cooperating with the ICTY (Nettelfield 2010; Fletcher et al. 2009; McMahon and Forsythe 2008; Kerr 2004). Little attention has been given to domestic activities because, until recently, there has been relatively little domestic participation and organizing around the topic of transitional justice. Our study seeks to fill this gap, examining RECOM's efforts to establish a regional truth commission, which began officially in 2006. Drawing upon insights from social movement theory and the literature on transnational advocacy networks, we analyze the conditions necessary for a regional justice movement to succeed in the Balkans. We begin by examining the origins of transitional justice in the Balkans, identifying *who* first started to push for accountability and justice. We then consider *what* RECOM is engaged in, explaining its origins and the motivations of local actors who united to form this coalition. We next turn to an analysis of *how* RECOM is doing, identifying the ongoing obstacles to its development, as well as the role and impact of international actors.

Given the recent development of RECOM and dearth of published material on this topic, we relied largely on primary sources, participant observation, and interviews for this research as well as secondary sources. Semi-structured interviews with elected officials, RECOM leaders, victims' and veterans' associations, (both RECOM and non-RECOM members), women's organizations, youth organizations, members of the media, and other civil society organizations were conducted during the summers of 2008 and 2011 in Bosnia-Herzegovina (hereafter Bosnia), Croatia, Kosovo and Serbia, and they constitute an important part of this qualitative research. We initially selected individuals in leadership positions in organizations affiliated with RECOM, but using a snowballing sampling technique we also interviewed individuals who were known to be actively involved in other transitional justice activities. In order to observe and interview a broad array of organizations operating in both urban and semi-urban settings, we conducted a total of 38 interviews in the capital cities and other towns of these countries—both entities of Bosnia and northern Kosovo were included in our visits and interviews. In these semi-structured and open-ended interviews, we asked participants specifically about the formation, goals and impact of RECOM. An important additional source of information was the International Forum on Transition Justice in the Post-Yugoslav Countries which one of us attended in June of 2011. Survey research, when available, as well as secondary material, together allowed us to develop an interpretive analysis of RECOM's intentions and ability to build a grassroots justice movement and to situate our analysis contextually and comparatively.

The arguments we present in this chapter are twofold. First, we contend that although justice and peace are moving forward in the Balkans, ongoing dilemmas underscore important lessons about transitional justice; specifically, grassroots

efforts to promote transitional justice must overcome significant obstacles in framing issues, creating coalitions and engaging the state. Different conceptions of justice and priorities among coalition partners, as well as struggles over coalition leadership and political partners have challenged RECOM's ability to create a viable regional movement. Second, we argue that international actors have fundamentally shaped the justice environment in the Balkans by affecting the supply and the demand for transitional justice in both the short-term and the long-run. In the short-term, the international community's decision to establish an international court directly affected the supply of domestic efforts to address the past, unintentionally rendering domestic mechanisms both unnecessary and undesirable. In the years since, the international community's narrow focus on cooperation with the ICTY has meant that it failed to elicit or sustain domestic participation in justice activities. Thus, although the region's transformation has indeed moved forward, we contend that domestic progress in this area has been slow in part because of the behavior and policies of international actors. To continue going forward, greater international support for grassroots efforts like RECOM may be necessary to affect real and enduring social change.

## **From International Prosecution to Domestic Organizing**

Although there is still some debate over why the ICTY was established by the United Nations, there is little disagreement over its relative weaknesses, particularly its inability to deter violence and stop the conflict. Supporters of the ICTY contended that the court reflected the world's commitment to human rights and justice and it would help the region rebuild their judicial systems and foster peace (Hagan 2003). Skeptics of international criminal justice have, instead, contended that the establishment of the ICTY represented a "fig leaf for inaction" and a way for the international community to "do something" while avoiding a costly war (Hagan 2003, p. 60). Some critics even argued that the ICTY would do more harm than good, provoking a negative backlash in the region (Snyder and Vinjamuri 2003/2004).

Regardless of why the ICTY was created and the theoretical merits of international criminal justice, its utility and viability started to wane by the late 1990s, and ICTY judges already started to think about the court's exit strategy and how it would transfer its responsibilities to local authorities. Meanwhile, research demonstrated clearly how uncooperative Balkan elites were and how hostile or uninformed the average person was to the ICTY (Peskin and Boduszynski 2003). The court, nonetheless, continued to work on its primary goal of prosecution while its other intended objectives, such as fostering progressive liberal change and societal reconciliation, were only rarely and sporadically evident in the ICTY's activities. Obvious contradictions in terms of what leaders say and do related to addressing the past and imparting justice continue to exist, damaging the overall case for transitional justice in the Balkans. In Serbia, in particular, elite

decisions that followed ICTY dictates, such as handing Slobodan Milosevic over to the ICTY, happened alongside intense criticism of the ICTY and international justice (Orentlicher 2008). Thus, despite the ICTY's good work, which has culminated in 161 indictments and numerous arrests and prosecutions, even of "big fish" like Milosevic, Karadzic, and Mladic, the international court has seemingly had a minimal impact on political behavior and political culture in the Balkans which remains defined by ethnic nationalism.<sup>1</sup>

Developing an exit strategy and shifting from international to domestic responsibility has proved complicated and domestic responses of any kind are, by definition, politically sensitive and financially costly. Domestic efforts to arrest, detain and try war criminals were considered arbitrary and politically motivated (Donlon 2008), and domestic trials were regarded as occasions for dispensing ethnic justice or exacting revenge (Bohlander 2003). In 2003, ICTY officials devised a Completion Strategy for its requiring cooperation and coordination with local justice systems in the Balkans. Although the Completion Strategy has moved forward, the ICTY has had to revise its timeline for closure because of unfinished and ongoing cases. During this same period, Bosnia, Croatia, and Serbia all established specialized War Crimes Courts to try cases that were transferred from the ICTY. In Kosovo and later in Bosnia, hybrid courts, containing foreign and domestic judges, were established because of the states' fragile institutional structures (Dickinson 2003).

Attempts to establish national truth commissions were uniformly not successful. For example, under pressure from the international community, Serbian leader Vojislav Kostunica, who came to power after the 2000 elections, established the National Truth Commission or "Kostunica Commission." Its stated purpose was to establish "the truth" and gather the facts about victims of violence during the wars of 1991–1995 and 1999. Generally seen as half-hearted and ineffectual, the commission was allowed to die a quiet death in 2003, having produced nothing of value. A similar effort was undertaken in Croatia shortly after Ivica Racan's government came to office in 2000 also producing little. A National Truth Commission was established in Bosnia in 1997, producing only periodic roundtables and discussions (Heil 2000). Perhaps the most successful of these efforts in Bosnia was the Srebrenica Commission, which produced a report in 2004 concluding that "grave crimes" had been committed in the region in 1994 in "violation of international humanitarian law" (Dragovic-Soso and Gordy 2010, p. 204). Nevertheless, while international actors lauded the commission's proceedings and conclusions, the local population viewed the commission with considerably more skepticism (S. Djuderija, personal interview, June 22, 2011).

Brian Grodsky (2007) argues that in the absence of strong domestic pressure and with only moderate international pressure, these forms of "compromised justice" have contributed little to transitional justice in the region. Thus, for almost

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<sup>1</sup> See the ICTY's website for more information on indictments and arrests: <http://www.icty.org/action/cases/4>. Accessed December 12 2011.

two decades, there has been a dearth of domestic engagement and few grassroots organizations that focus squarely on addressing the past and justice. Public opinion, moreover, has reflected considerable apathy, if not overt hostility toward the ICTY and international criminal justice. Surveys from Bosnia are telling; according to a 2002 survey, among international organizations, the ICTY was the least trusted, with 51% of Bosnians in the Federation, but only 4% in the RS indicating that they had trust in the court (International Institute for Democracy and Electoral Assistance 2002). Serbian views illustrate that the impetus for cooperation with the ICTY clearly does not spring from domestic support. Only 11% of Serbs in 2003 approved of cooperation with the ICTY; by January 2006, 16% felt this way, with 46% viewing cooperation with the ICTY as a “necessarily evil” to further relations with Western European countries and the US (International Republican Institute 2006). Many Serbs feel that the ICTY has targeted Serbs unfairly while many Croats object to the idea that any Croats should be tried for war crimes during what they consider a defensive “Homeland” war (G. Bosanac, personal interview, June 17, 2011). More general dissatisfaction with the ICTY has had to do with its lack of transparency, the belief that victims were not well served by the process, and by a general frustration with international involvement in the region.

This level of domestic apathy toward transitional justice is somewhat surprising and unusual because elsewhere in the world, domestic organizations and victims of abuses have generally led efforts to confront the past. As Eric Brahm (2007) observes, “civil society tends to be closely intertwined with the fate of transitional justice,” (p. 63) and if governments do not act quickly or appropriately, civil society has weighed in, even initiating its own investigations. Throughout Latin America, in Africa and Asia, there are countless examples of civil society organizations documenting human rights violations and pressuring governments to publicize and respond to these allegations, often at much risk to themselves (Hayner 2002; Bickford 2000). In most cases, domestic groups play a leading role in shaping the accountability mechanisms that have been adopted, bringing their legal expertise to bear and ensuring that proposed policies conform to the country’s legal structure. Frequently, domestic groups have had a hand in the construction of truth commissions and they regularly monitor the government’s behavior, provide assistance to victims, and, more generally, ensure that reconciliation efforts move forward.

Civil society has many potential and positive roles to play in seeking and promoting justice, but there are also dangers, including leaving the state outside the process, narrowing its scope too much on certain institutions or being co-opted by the state. Although the importance of civic activism and grassroots support cannot be overrated or ignored, the Balkans presents a very different model of transitional justice and the role of society in it because efforts to address the past have been dictated by external actors and imposed from above. Many analyses of the region not surprisingly conclude with the need for genuine local participation or with the expectation that civil society will eventually assume its natural role. Unfortunately,

there is neither a blueprint for how to inspire such actions nor a formula to ensure their success (Treves et al. 2005).

## Establishing the RECOM Coalition

After more than a decade of internationally dictated transitional justice, a grassroots effort emerged in late 2005, with the goal of establishing a regional commission on human rights violations. According to McEvoy and McGregor (2008), efforts from below arise in a situation where the state has failed to put into place sufficiently robust transitional justice mechanisms. Given the shortcomings of international efforts and states' unwillingness to develop state-led mechanisms, organizations in society responded. Three human rights organizations spearheaded the effort to promote transitional justice at the grassroots: the Humanitarian Law Center in Serbia, Dokumenta in Croatia, and the Research and Documentation Center in Bosnia-Herzegovina. At an initial meeting in September 2005, along with several organizations, they launched a regional process of consultation and discussion on the best mechanisms of truth seeking and truth telling. The organizers emphasized two points: first, that while they supported the formal judicial mechanisms for trying and punishing war criminals, these mechanisms could not fully satisfy the victims' need for information and truth telling; and, second, that any efforts to establish a comprehensive understanding of human rights abuses during the wars would necessitate a regional approach.

Over the ensuing months, consultations were held throughout the former Yugoslavia, involving small, local groups such as human rights organizations, women's groups, victims' organizations, veterans' organizations, and youth organizations.<sup>2</sup> In addition, consultations were held in larger cities with groups of intellectuals, journalists, and artists. Initial discussions focused on the general needs of victims and whether a regional truth commission should be established; later discussions focused on "objectives, tasks, responsibilities and role of RECOM in criminal proceedings, public testimony, and other elements of a Regional Commission" (RECOM 2011c, p. 4). Periodic regional forums, attended by hundreds of representatives of local groups as well as international advisors, considered thematic questions concerning truth seeking and truth telling mechanisms and occasionally heard the personal testimonies of war victims. Practically every aspect of a possible regional truth commission was the subject of heated debate, from the definition of victims to the post-Yugoslav countries to be included in the commission.

A more formal organizational structure for RECOM was established at the Fourth Regional Forum for Transition Justice held in Pristina in 2008. At this meeting, a decision was made to establish a coalition to promote the establishment of a regional

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<sup>2</sup> For a full list of the RECOM members and information on RECOM's history, goals and strategies, see <http://www.zarekom.org>. Accessed 21 October 2011.

commission and to solicit membership. Membership in the Coalition for RECOM grew steadily during the next several years. By 2011, RECOM membership has grown from approximately 100 organizations in 2008 to 342 organizations and 1,357 individuals. RECOM members claimed that consultations had reached at least 8,700 individuals (RECOM 2011c, p. 1). Nevertheless, the level of involvement among member organizations varies considerably and many organizations understand their membership to be more an expression of support for the idea than a commitment to participate in the process (S. Sarnavka, personal interview, June 16, 2011; G. Obradović, personal interview, June 17, 2011). Additionally, at least some member organizations have already withdrawn from the coalition even though their names remain on the membership roster, making a real assessment of organizational membership difficult.

In the spring 2010, experts drawn from the RECOM Coalition presented a draft statute for the establishment of a regional truth commission for consideration by RECOM Coalition members (RECOM 2011c, p. 4). The draft statute, adopted by the Assembly of the RECOM Coalition in March 2011, proposed a regional commission of 20 commissioners with a 3-year mandate, appointed by their national governments. Located in Sarajevo, the commission's objective would be to "establish facts about war crimes and other gross violations of human rights committed on the territory of the former SFRJ," as well as "the political and societal circumstances that led to the commission of these acts, and the consequences of these violations" (RECOM 2011a, p. 468). With the statute approved, and armed with public opinion polling that suggested high levels of approval for transitional justice initiatives in all ex-Yugoslav countries except Croatia and the Republic of Serbia in Bosnia, the RECOM Coalition launched a media campaign to familiarize the public with the RECOM process and mobilize popular support. This media effort included television and radio clips, newspaper ads, newspaper supplements, and on-line initiatives (RECOM 2011c). It culminated in a "One Million Signatures" campaign from April 26 to June 30, 2011 to gather signatures on a petition calling for the establishment of a regional truth commission to be presented to national governments. Youth groups, in particular, were enlisted and an effort was made to draw attention to the campaign in the press (M. Mažić, personal interview, June 16, 2011). When the signature drive was completed in June 2011, a total of 543,870 signatures had been collected, with the largest number, 122,540, coming from Bosnia (RECOM 2011c). The campaign fell considerably short of its goals in Croatia where only 19,674 out of the anticipated 220,000 citizens signed and where, as we discuss below, popular resistance to a regional approach to transitional justice remained high. Nevertheless, according to some participants, the effort was effective in drawing public attention to the proposed regional commission (E. Jaković, personal interview, June 18, 2011). In any case, at the Eighth Regional Forum on Transitional Justice in Sarajevo in July 2011, the Coalition decided to move forward with its next phase of activity in which the draft statute will be presented to the national parliaments of the seven ex-Yugoslav states for adoption.



As encouraging and necessary as these grassroots developments are, the coalition is still evolving and its future is unknown. In June 2011 Nataša Kandić, the Director of the Humanitarian Law Centre and one of the founders and leaders of the coalition, resigned as a member of RECOM's Coordinating Council. Although Kandić indicated that she was leaving because of lack of time, interviews in the region suggest that Ms. Kandić is a controversial figure and that some organizations did not join the coalition because of her leadership. A representative of Catholic Relief Services explained that Bosnian organizations were not very active in RECOM, in part, because of Kandić's leadership and because of the perception that the idea for RECOM was coming from Belgrade (G. Bubalo, personal interview, May 16, 2011). As RECOM moves forward, it is evident that the coalition of member organizations faces numerous and perhaps paralyzing obstacles.

## **A Movement in the Making?**

Although RECOM's efforts are relatively recent, theories on transnational social movements provide insight into the domestic conditions essential to the success of a regional justice movement (Tarrow 2005; Keck and Sikkink 1998). Drawing upon cultural theories of social movements that stress identity formation and issue framing, scholars such as Keck and Sikkink demonstrate the importance of framing issues in such a way that they can provide cross border unity while maintaining the flexibility for local applications. Resource mobilization approaches stress the importance of resources—organizational, financial, and leadership—necessary to building an effective transnational movement (McCarthy and Zald 1987). Finally, political process theories of social movements stress the importance of political allies in the formal political sphere (Meyer and Minkoff 2004). The following section discusses how the RECOM coalition tackled the tasks of framing issues, building coalitions, and engaging the state.

### ***Framing Issues***

Most important to the success of a transnational social movement is framing; without a clear articulation of the aims of a justice movement and the best means for achieving them, collective action is unlikely to ensue. In the case of RECOM, efforts to frame domestic action on behalf of transitional justice have revolved around the mandate of the proposed truth commission. According to founding member Natasa Kandic, at the minimum the RECOM process aims for “opening public dialogue on facing the past.”<sup>3</sup> Nevertheless, from the outset, fierce disagreement erupted about

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<sup>3</sup> International Forum on Transitional Justice in Post-Yugoslav Countries, 27 June 2011, Sarajevo, Jill Irvine's notes.

these aims as well as the means of achieving them. Disagreement has revolved around three major questions: justice for whom?; what kind of justice?; and how should justice be pursued? These were all issues that international actors either decided on—on behalf of victims and citizens of the Balkans—or failed to weigh in on, because of the international community’s desire to end the conflict quickly without significant losses. Without condemning or praising these decisions, we merely suggest that debates and outcomes today are path-dependent and the initial choices and behavior of the international community has constrained and shaped RECOM’s debates and the dilemmas it faces.<sup>4</sup>

Justice for whom is the most crucial and contentious issue because the RECOM process emerged from attempts to address the needs of victims which had not been fully met through formal judicial mechanisms. Are victims only those who had suffered directly or should it include those who had lost a family member? Should the notion of collective victimhood be considered? Were some nations, like Bosnian Muslims, by virtue of the sheer numbers of losses they suffered, be entitled to a special status (M. Tokaca, personal interview, June 20, 2011)? Should this definition of victimhood be based on the particular human rights abuses they or their loved ones had suffered? For some this is self-evident; while others worry that without a specific list of abuses, important classes of war crimes, especially gender-based crimes, might be overlooked (M. Mažić, personal interview, June 16, 2011). Relatedly, members have debated the question of whether perpetrators should be publicly identified. While everyone agrees that the commission should compile comprehensive documentation concerning victims of abuses, there is less agreement about whether and how to compile documentation of the perpetrators of these crimes or who, for that matter, should be considered a perpetrator? Should journalists, for example, whose “message of hate” contributed to the outbreak of war, be considered perpetrators?<sup>5</sup>

What kind of justice, or the kind of justice pursued, is also a subject of debate. Much of the literature on how civil society contributes to transitional justice assumes that while the courts meet out retributive justice, civil society concerns itself with restorative justice, or efforts to promote reconciliation and social peace (Kurze 2010). Judging from the RECOM consultations, this assumption must be reexamined. During the consultation process at local and regional levels, tensions emerged between the truth commission’s goal of responding to victims’ needs and its goal of promoting reconciliation. Participants in the consultation process across, particularly victims associations, overwhelmingly focused on the need to identify and punish perpetrators. When asked to describe what victims needed from the regional truth commission, the leader of the Movement of Mothers from the Enclave of Srebrenica and Žepa, Munira Subašić, asserted that the “best thing would be if judicial bodies

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<sup>4</sup>On this point and the role of the international community in statebuilding, see Patrice C. McMahon and Jon Western, “Introduction: the supply side of statebuilding,” in McMahon and Western, eds, *The International Community and Statebuilding* (London: Routledge Press 2012), 1–24.

<sup>5</sup>There was strong sentiment at the most recent regional forum that journalists should be held accountable for their reporting before and during the war. International Forum for Transitional Justice in Post-Yugoslavia Countries, 27 June 2011, Sarajevo, Jill Irvine’s notes.

could bring perpetrators to justice.”<sup>6</sup> Similarly, a representative from the Serbian Victim’s Association in Brčko answered in much the same way, emphasizing the need for local authorities to identify perpetrators and bring them to justice (Association of Missing Serb Fighters and Civilians of Brčko, personal interview, May 22, 2011). Victims continually expressed frustration about the courts’ inability to process the high number of potential war crimes cases they had before them in places like Jajce, where according to one RECOM member, “we won’t be able to complete all the cases in 100 years.”<sup>7</sup> In Brčko and in Sarajevo, victims’ association members made similar comments. Given that retributive justice is a main goal of many RECOM Coalition members, it was not clear exactly how or if RECOM will fulfill their expectations. Indeed, relatively few participants in the consultative process expressed a desire to engage in one of the main mechanisms of restorative justice—telling their individual stories (RECOM 2009, 2011a). While the truth commission could gather evidence of crimes and allow victims the opportunity to share their experiences, it was clearly not a judicial body with the power to punish.

Finally, “justice how?” is a question that has continued to arise, even after RECOM’s draft statute was completed. Is the Commission only to be tasked with establishing facts about crimes committed during the war, or is it also necessary for the Commission to identify the causes of the war? This goes to the heart of transitional justice for many, who feel that mere documentation of abuses is only a small part of the larger, most important role of a truth commission. That is to say, true justice demands a deeper understanding of causes of, and by extension, of guilt for, the wars and human rights abuses they brought. It was precisely this issue of the “relativization of guilt” that some objected to, while others questioned whether collective (national) guilt and apologies ought to be the business of the commission at all.<sup>8</sup> In any case, it is clear that for those whose main purpose is to create an “accurate” or at least more common narrative of the past, documenting abuses without examining causes is bound to end in failure.<sup>9</sup> Such a new narrative, which should form the basis of education about this period of history, is seen by proponents of examining causes as an indispensable part of the regional commission’s aims.

The RECOM statute adopted by the Coalition attempted to address these concerns and competing visions. While the statute emphasized the primary goal of

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<sup>6</sup> Speech given at the International Forum for Transitional Justice in Post-Yugoslavia Countries, 27 June 2011, Jill Irvine’s notes.

<sup>7</sup> International Forum for Transitional Justice in Post-Yugoslavia Countries, 27 June, 2011, Jill Irvine’s notes.

<sup>8</sup> Ivan Pšenica, Savez udruga obitelji zatočenih i nestalih harvatskih branitelja, Hrvatska, speech given at International Forum for Transitional Justice in Post-Yugoslavia Countries, 27 June, 2011, Jill Irvine’s notes. A representative of the Government Commission on Missing Person’s in Kosovo argued that Serbia must be held responsible for its role in the wars and its obligation to pay reparations. (Prenk Gjetaj speech given at International Forum for Transitional Justice in Post-Yugoslavia Countries, 27 June, 2011, Jill Irvine’s notes).

<sup>9</sup> Several panelists from the panel, “Tranziciona pravda iz ugla epistemološke zajednice,” reflected this view. International Forum for Transitional Justice in Post-Yugoslavia Countries, 27 June, 2011, Jill Irvine’s notes.

establishing a record of human rights abuses, it also endorsed an investigation into the causes of the wars. A precise list was included of the human rights abuses the commission would consider, as well as a disavowal that any particular national group would be accorded greater victim status. Finally, the commission rejected any role in granting amnesty or compensating victims. Nevertheless, various aspects of its proposed mandate continue to be contested by Coalition members as well as the public.

Failure to successfully frame the justice issues around a regional truth commission has made it difficult to garner popular support. Mobilizing widespread public support for a regional truth commission looked to some RECOM activists like “mission impossible” (G. Bosanac, personal interview, June 17, 2011). On the one hand, there was considerable opposition and disappointment with the ICTY throughout the region, which provided an opening for a grassroots strategy. Yet, opposition to a regional, grassroots approach was also high because of differing accounts and perceptions of the war (Stover and Weinstein 2004). This lack of public support for a regional body became increasingly evident during the one million signatures campaign, particularly in Croatia.

### *Creating Coalitions*

The framing of the regional truth commission directly affects the coalition’s ability to create a viable regional network of civil society actors and organizations. The literature on social movements draws our attention to the fact that transnational movements must address crucial issues related to membership, leadership, and linkages. These issues have proved difficult for RECOM to resolve thus far, particularly its ability to secure key constituencies and problems with its leadership. Perhaps the biggest challenge involves the cross border character of the RECOM effort, which requires overcoming significant resistance to establishing any regional bodies.

A serious organizational failure that emerged, at least as far as many Coalition members were concerned, was the overly centralized nature of the RECOM structure. As it turns out, RECOM did not emerge spontaneously or organically from many active organizations that finally came together but, instead, the structure is quite centralized, with the preponderance of power and authority resting in the Humanitarian Law Center in Belgrade (RECOM Coalition Members, personal interviews, June 13–July 4, 2011). The problems emanating from this appear to be twofold. First, international donor funding for the RECOM Coalition was funneled through the Humanitarian Law Center. While there may indeed have been sound accounting reasons for wanting the money to originate in one place, it had the result of alienating other organizational partners, particularly the two founding organizations, Dokumenta and the Documentation and Research Center (E. Jakovčić, personal interview, June 18, 2011). Second, the perception of over centralization was reinforced by Kandić’s

leadership style, which many found “dictatorial” and “imperial.”<sup>10</sup> As one leader of a veterans’ group IZMIR put it, “this non-violent group is using very hierarchical methods, eliminating groups of undesirables along the way” (G. Bodog, personal interview, June 15, 2011). Another member of the Muslim Victim’s Association in Brčko explained that “RECOM is not of interest to us; it doesn’t represent us” (confidential interview, May 21, 2011). These remarks illustrate how some organizations in the Balkans feel about the RECOM process. Other NGO leaders complained that agendas for the RECOM regional meetings were routinely ignored or changed at the last minute, and that representatives of organizations deemed “recalcitrant” were deliberately driven from RECOM or silenced in other ways.

The networks and alliances RECOM supporters hoped to build were further weakened by the failure of key constituents to endorse the regional commission. First among them were victims’ groups. While several important victims’ groups did indeed participate in the Coalition, including the Movement of Mothers of the Enclave of Žepa and Srebrenica, many others did not including the victims associations in the Brčko region. This reluctance to support the RECOM Coalition appears to stem from a variety of reasons, not least of which was the strong association of the RECOM effort with Belgrade and a sense that concerns of local groups were not being heard (M. Tokača, personal interview, June 20, 2011). This was a primary reason why the founding organization from Bosnia, the Research and Documentation Center in Sarajevo, withdrew from RECOM in 2008 (M. Tokača, personal interview, June 20, 2011).

A second key constituency that did not support RECOM in significant numbers was veterans’ associations. This is because the role of veterans in the RECOM process was contested from the outset and never resolved. Local consultations were held with numerous veterans’ organizations and those, such as Izmir in Croatia, which had been concerned with peace-building, were invited to RECOM meetings and to join the Coalition. Nevertheless, while some individuals joined during the next several years, the major veterans’ organizations withheld their support. Many, like those in Croatia, objected that the commission was engaging in the “relativization of guilt” and that any truth commissions should be formed within the confines of their particular states (Z. Pusić, personal communication, June 2011). Others suggested privately that they would like to join but worried that the government would withhold veterans’ pensions in retaliation (G. Bodog, personal interview, June 15, 2011). Whatever the reasons, and they are many, this key constituency did not throw its support behind the RECOM effort.

Finally, women’s organizations have expressed dissatisfaction with RECOM’s approach to gender and transitional justice. Many women’s organizations were initially receptive to the Coalition and were among the first members.<sup>11</sup> Over time,

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<sup>10</sup> One member described Kandić as brave but criticized her tendency to “see herself as a monument.” (RECOM Coalition member, interview with Jill Irvine, 16 June, 2011).

<sup>11</sup> For a discussion of how transitional justice mechanisms in Bosnia-Herzegovina have failed women see Amnesty International, *‘Whose justice?’: The Women of Bosnia and Herzegovina are Still Waiting* (London: Amnesty International, 2009); <http://www.amnesty.org/en/library/asset/EUR63/006/2009/en/8af5ed43-5094-48c9-bfab-1277b5132faf/eur630062009eng.pdf>. Accessed 14 November 2011.

however, this enthusiasm waned. Some leaders of these women's organizations, particularly in Bosnia, felt that RECOM leaders were unwilling to pay serious attention to gender-based crimes and that requests to insert discussion or training related to gender and transitional justice in RECOM meetings were rejected without explanation by RECOM leaders (L. Somun, personal interview, June 20, 2011; N. Zvizdić, personal interview, June 23, 2011). Moreover, the story telling and witnessing central to feminist approaches to transitional justice appeared to be of secondary concern to RECOM organizers. As a result, women's organizations decided to pursue their own transitional justice initiatives and to form a Women's Tribunal modeled after similar tribunals previously held in other regions. Plans to hold such a tribunal are currently underway (N. Zvizdić, personal interview, June 23, 2011).

An additional structural impediment to creating a robust cross regional alliance has been the problem that not all states in the region recognize the independence of Kosovo. To date, Serbia and Bosnia have not recognized Kosovo, calling into question the very basis on which the commission is organized. Organizations unwilling to join RECOM have pointed to this as evidence that such a commission is premature and unworkable in the current circumstances (A. Masović, personal interview, June 22, 2011; S. Madacki, personal interview, June 20, 2011). While RECOM has managed to include participants from all ex-Yugoslav states in the consultation process, many question whether this can be the case once the discussion moves into the formal political arena.

### *Engaging the State*

Literature on social movements also emphasizes the importance of engaging key allies within the state to build an effective social movement. Thus far, RECOM attempts to do this have proved only partially successful. The way in which political elites have instrumentalized transitional justice has been the subject of a great deal of recent attention. Scholars have pointed to ways in which political elites have "hijacked justice" to serve their own political ends, often creating forms of "compromised justice" that undermine the very processes they officially support (Grodsky 2009; Lamont 2010; Peskin 2008; Rangelov 2004; Subotic 2009). In this two-level game, elected officials weigh the necessity of international support, which rests on compliance with the ICTY, against the demands of a domestic electorate, which is perceived as hostile to the aims of the international court. Civil society organizations promoting transitional justice are relatively neglected in this analysis, though they have been the focus of other comparative approaches. Backer (2003), for example, attempts to account for transitional justice outcomes by examining this relationship between civil society and political elites, arguing that government support for transitional justice and the strength of civil society explain different outcomes. What he labels a "hands off the wheel scenario" where an activist civil society faces a lack of political will on the part of government structures seems an accurate description of the situation in the ex-Yugoslav coun-

tries we examine here. Nevertheless, there are signs of engagement with the RECOM process at some levels of government.

Political support for the idea of a regional truth commission has been sporadic at best, and thus far subject to the political calculations of particular leaders. The Serbian leadership has given it lukewarm support, although President Tadić has avoided publicly endorsing the commission. On the one hand, supporting the commission allows him to display his willingness to engage in transitional justice efforts to those in the European Union who are watching to see whether he is serious about meeting the conditions necessary for forming a closer relationship with the EU. On the other hand, the Europeans have been almost exclusively focused on Serbia's need to comply with ICTY demands when it comes to transitional justice, and President Tadić therefore has little incentive to take domestic political risks in order to appease EU officials. The Croatian government has been equally cautious, though for different reasons (Amnesty International 2010; Peskin and Boduszynski 2003). While President Josipović publicly endorsed the RECOM process in 2010, leaders of the two major political parties, the SPD and the HDZ, have been reluctant to lend their support.<sup>12</sup> Political support for RECOM in Bosnia runs strictly along ethnic lines; while Serbian leaders in the RS have opposed any transitional justice mechanisms, through judicial or extra-judicial processes, Bosniak leaders in the Federation are generally more receptive. Croat leaders in Bosnia have generally followed the lead of their counterparts in Croatia.

Although political leaders in Kosovo and Montenegro have recently endorsed the regional truth commission, support for RECOM from political leaders elsewhere has been lukewarm. Nevertheless, cooperation has taken place at the level of ministries and governmental departments. Indeed, representatives from the Ministry of Justice and the Prosecutors Office were present at the most recent RECOM meeting, where they expressed strong support for regional cooperation concerning transitional justice.<sup>13</sup> While such participation in the RECOM process cannot compensate for the lack of political will from elected representatives, it nevertheless suggests their willingness to support these processes behind the scenes; such cooperation may form a stronger basis for a regional truth commission in the future. However, the reluctance of elected officials to engage in this process does not bode well for the next step of procuring parliamentary endorsement of the regional commission. There is evidence that international actors, particularly from the EU, may exert more pressure on Balkan political leaders to pay attention to RECOM. Meanwhile in the absence of international pressure and popular support, domestic political elites may not see RECOM as a useful tool for gaining and sustaining their own political legitimacy.

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<sup>12</sup> MPs from the more liberal SPD ostensibly pledged their support earlier this year but were instructed by the party leadership to refrain from making such statements.

<sup>13</sup> International Forum on Transitional Justice in Post-Yugoslav Countries, 27 June 2011, Jill Irvine's notes.



## A Role for the International Community?

RECOM's challenges provide significant insight into why it has taken so long for grassroots organizations to mobilize. Such problems are not necessarily limited to the Balkans. In other parts of the world, civil society initiatives have also had a mixed record of success, and efforts have similarly been stymied by difficulties in framing issues, creating coalitions, and engaging the state effectively. Yet, efforts to address the past are still quite different in the Balkans than in most other parts of the world, such as Latin America and Africa, where transitional justice mechanisms have been shaped primarily by and for domestic forces instead of, as in the Balkans, by external actors for the region and different states. Given the unique situation in the Balkans, how have international actors responded to this grassroots effort, and what role should they play in the future? Using literature on transnational advocacy networks, which theorizes on when and how external actors support domestic organizations, the following section examines the international actors' outreach to domestic groups and how they have tried to influence and assist grassroots and normative change (Risse et al. 1999; Keck and Sikkink 1998;).

Transitional justice in the Balkans has been referred to as "justice from the outside in" (Olsen et al. 2010, p. 201) because of the predominate role of external actors. Much of the scholarly literature criticizes the international community for failing—or only belatedly—trying to reach out to citizens in the Balkans to educate them on what the ICTY does and to build domestic support for transitional justice. In 2004, for example, some self-described "moderate Serbs" acknowledged that they mistakenly believed that there had not been any indictments by the ICTY for crimes committed against Serbs, even though by that point 16 non-Serb individuals had been indicted (Humanitarian Law Center 2006, p. 29). Polls conducted by the Belgrade Centre for Human Rights in 2004 and 2005 confirmed how little Serbs actually knew about the ICTY, with some 77% of the Serbs polled indicating that they did not even know what the ICTY does (Humanitarian Law Center 2006, p. 29).

This ignorance is surprising given that in 1999 the ICTY established outreach programs throughout the region to inform the population and to offset such problems. Although no systematic research has been done on the effects of the ICTY's outreach, one Balkan commentator maintained that, "To be sure, few of the messages coming from The Hague have resonated with local audiences in Serbia as intended" (Rangelov 2004, p. 332). In the same year another commentator concluded that the ICTY's outreach program had very little visibility among the Serbian population (Mahieu 2004). More recently, a member of the war crimes division of the Bosnian national court indicated that a similar ICTY program in Bosnia seems to have had the same effect (Member of Bosnian National Court, personal interview, June 23, 2011). As members of the organization Track Impunity Always put it, the problem is that members of the international community and the ICTY have not supported victim's associations from the beginning and, thus, people in the Balkans did not know or trust what the international community was doing (L. Mamut and S. Korjenić, personal interview, May 17, 2011).

The behavior of the ICTY, its apparent disinterest in reaching out to the public, and the failure of other like-minded international groups to fill this void is at odds with international relations theory that explains how international actors act to encourage normative changes and support like-minded domestic groups. According to Keck and Sikkink (1998), transnational advocacy networks emerge when international groups work closely with domestic organizations to advance liberal norms in targeted countries, with the former providing the later with financial support, technical expertise, and in-kind assistance. The so-called “boomerang effect” that results from these contacts directly and indirectly strengthens the domestic organizations and pushes the targeted governments to change their behavior. Theoretically at least, transnational ties strengthen and empower domestic groups, raise awareness, and help push for domestic change.

In practice, however, outcomes in the Balkans suggest that sometimes transnational ties do not form and transnational advocacy networks do not develop. According to Christopher Lamont (2010), the failure or misfiring of the boomerang mechanism is due to the fact that much of civil society in the Balkans is still comprised of organizations that are hostile to transitional justice or the liberal accountability norms of the international community. That is to say, there is little to no demand for international support to seek truth or advance liberal norms of accountability. In discussing the relationship between the international community, the ICTY and civil society in Croatia he explains that, “To the extent that civil society did engage in the war crimes debate, major segments of civil society were intensely hostile to ICTY investigations of human rights abuses committed by members of the Croatian army” (Lamont 2010, p. 45). Thus, for more than a decade this transnational mechanism did not work in the Balkans; instead, civil society and local NGOs only served to “harden non-compliance” preferences, with local actors mobilizing against the ICTY and transitional justice (Lamont 2010, p. 42). Others in the region suggest that these transnational networks did not operate as theorized because international actors came to region with a finished program of what they wanted to accomplish and did not engage in consultations with local people (Member of Bosnian Ministry of Justice, personal interview, May 17, 2011).

This reluctance of local civil society organizations to engage international organizations and actors on behalf of transitional justice appears to have changed with the RECOM initiative. International NGOs have also played a significant role in the RECOM process, reaching out to members of civil society to strengthen and empower local actors. The International Center for Transitional Justice (ICTJ), for example, attended the first meeting of what would later turn into the RECOM Coalition, and it has remained an important advisor throughout the process, consulting with local organizations, drafting the RECOM statute and mobilizing popular support. The Institute for Missing Persons (ICMP) in Bosnia has also played a key role, particularly in helping with the collection and documentation of evidence concerning missing persons, though it has not taken an official position on transitional justice or reconciliation (M. Holliday, personal interview, May 18, 2011)

By far, the RECOM process has received its greatest financial and political support from the EU. Indeed, the European Instrument for Democracy and Human Rights (EIDHR) and the Dutch Embassy account for some 80% of RECOM's current budget (RECOM 2011b). American and European officials alike initially worried that the RECOM process might draw support and resources away from the ICTY, but these concerns appear to have abated when the ICTY officially endorsed RECOM in 2010, followed by EU bodies. The EU's Enlargement Strategy and European Commission reports praise the RECOM Coalition's effort to establish a regional truth commission. Meanwhile, American involvement in this process appears to be minimal, with officials initially expressing concern that a regional truth commission was an unrealistic goal in the current situation. USIP spokesperson, Neil Kritz, seemed to reflect this view when he cautioned that "A regional approach [to the truth commission] has no realistic future" (Gaffney and Alic 2008).

In total, international support for the RECOM process has been somewhat hesitant and mixed, and as of yet, no international actor has yet applied serious pressure on national governments in the Balkans to approve the RECOM statute. Perhaps most interesting is the impact that perceived international support and influence has on domestic actors. Although some see a regional truth commission as essential to improving their country's prospects for joining the EU, others view the RECOM process as "driven from abroad,"<sup>14</sup> thereby robbing it of legitimacy.<sup>15</sup> Such perceptions may prove crucial in either encouraging or discouraging domestic support for grassroots efforts to promote viable, homegrown justice mechanisms.

## Lessons Learned

Although the international community has played a central role in transitional justice in the Balkans, it is not clear from the evidence that this involvement has been either efficient or even that effective. It is certainly true that after more than a dozen years of activity, the ICTY has accomplished a good deal in terms of its primary task to prosecute individuals responsible for war crimes. The establishment of RECOM in 2006 offers some reason for optimism that the international community's other broader outcomes related to peace and justice in the region are also underway. To some degree, the development of RECOM signals a change in attitudes, as well as behavior toward transitional justice. What can this case and the development of RECOM tell us about similar efforts in other parts of the world? We believe that there are lessons for both international and domestic actors.

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<sup>14</sup> Several panelists on the panel, "Tranziciona pravda iz ugla medjunarodnih organizacija tranzicione pravde," expressed this view (International Forum on Transitional Justice in Post-Yugoslav Countries, 27 June 2011, Jill Irvine's notes).

<sup>15</sup> Vojkan Simić, Ministry of Justice Serbia, Speech given at International Forum on Transitional Justice in Post-Yugoslav Countries, 27 June 2011, Jill Irvine's notes.

First, it is difficult, though possible, to create crossborder networks related to transitional justice. However doing so may limit the scope and the effectiveness of a regional truth commission. Attempting to accomplish important tasks, such as determining the causes of the war or constructing a unified narrative may be extremely difficult in the context of a regional body. Second, any grassroots effort involves a trade-off between organizational efficacy and inclusivity; put differently, there will inevitably be winners and losers in the process and it will be impossible to please everyone. As McEvoy and McGregor have pointed out, there has been little attention paid to the way in which groups and individuals are marginalized in grassroots efforts to construct new justice mechanisms (2008). The RECOM process alerts us to the ways in which concerns that some groups of victims are privileged over others can reduce support for the justice process. It also reminds that victims and veteran's groups make uneasy coalition partners, who may not choose to associate with one another.

This leads us to a third, broad conclusion about efforts to promote reconciliation and societal peace. Despite the persistent theoretical association of civil society initiatives with restorative justice, an examination of the RECOM case suggests that the motivation of many of its participants may, in fact, be retributive in nature. Victims groups, in particular, are focused more on identifying and punishing perpetrators than any other issue. While these tasks may be partially accomplished by the fact-finding competencies of a truth commission, punishment will remain largely in the purview of formal justice mechanisms. Thus, the aims of the truth commission and the motivations of its supporters may be at odds. Finally, the RECOM experience cautions against confusing civil society with popular support. Although groups may come together for a variety of reasons in support of truth seeking and truth telling mechanisms, such efforts may continue to be opposed by the vast majority of the populace. Strategies like the One Million Signatures Campaign may create better knowledge and support, but they are no guarantee of success.

For the international community, it is obvious that its decisions, as well as its failure to decide on important issues—including who is deemed the winner in conflicts and who should be perceived as the victim—fundamentally shape the incentives and behavior of domestic organizations in a path-dependent way. Consequently, the effects of internationally led efforts, while positive in many ways, create certain dynamics and perverse incentives that negatively impact both the supply and demand for grassroots organizing. This leads us to reexamine the international community's choice for international criminal justice and to question its general effectiveness, weighted against the alternatives and in light of the international community's limited resources. The financial cost of using international criminal justice is significant and, by necessity, affects the resources and will for any form of domestic justice. Robert Hayden (n.d.) argues that the ICTY has not only been ineffective in promoting liberalization in the Balkans, but that it has also undermined reconstruction efforts, given the West's limited resources.<sup>16</sup> The ICTY

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<sup>16</sup> Robert M. Hayden, "Justice Presumed and Assistance Denied: The Yugoslav Tribunal as Obstruction to Economic Recovery," unpublished paper, used by permission.

budget in 1993 was about \$275,000; the next year, its financial needs jumped to almost \$11 million (United Nations 2003). For 2010–2011 alone, the UN estimated that the ICTY required more than \$300 million to conduct its work. ICTY, “The Cost of Justice” <http://www.icty.org/sid/325>. This amount is quite a deal more than the budgets for other international organizations involved in helping to rebuild Balkan countries. Without trying to put a price tag on legal justice, the expense of the ICTY until 2011 is approximately \$2 billion. Given this, as well as the opportunity costs lost in the process of focusing on international justice, a better investment of resources would be to direct them, from the beginning, toward domestic as well as international processes.

Whether the regional truth coalition promoted by RECOM will prove to be a successful local justice initiative remains to be seen. It will be difficult indeed for RECOM to succeed in the absence of a consensus on the commission’s mandate, genuine support from political leaders, and a strong coalition with effective leadership. Nevertheless, sustained international support for domestic processes will undoubtedly increase the chances of success of this homegrown mechanism of transitional justice.

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