

Dealing with the Past for a Better Future

Achieving justice, peace and social cohesion in the region of the former Yugoslavia



Summary of the Issue Paper



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Summary

Close to three decades after the wars that tore the region of the former Yugoslavia (the region) apart in the 1990s, time is pressing to achieve effective justice, reparations, and truth for the victims. Reconciliation and social cohesion remain elusive and even peace seems threatened. There is notable backsliding of the processes to deal with the past and this coincides with a broader decline in respect for human rights and the rule of law in several countries of the region. A decade after the first [Issue Paper](#) on this topic produced by the Office of the Council of Europe Commissioner for Human Rights, this current Issue Paper analyses the achievements and shortcoming of the processes to deal with the past in the region and analyses the factors that stand in the way of a more positive impact. It argues that dealing with a past scarred by gross human rights violations is not a past-looking endeavour but rather a necessary condition for a better present and future based on respect for human rights and the rule of law.

A considerable legacy - Before turning to the challenges and negative trends that are slowing down progress, the Issue Paper opens, in chapter 1, by acknowledging that several pioneering approaches developed in the region have left a considerable legacy in the field of dealing with the past. Five novel practices and lessons learned are highlighted.

The atrocities committed during the wars of the 1990s, which at the time were the worst in Europe since the Second World War, were met with a resolute shift **towards no impunity**. A multi-layered combination of criminal accountability efforts has been deployed in the region, consisting of a fully international criminal tribunal, domestic war crimes trials and internationalised or hybrid accountability mechanisms. Although several high-level perpetrators have been brought to justice, accountability for wartime crimes is far from complete. These international and domestic trials have sent a strong signal that justice must be done for gross human rights violations, and they have paved the way for a better response to such crimes in other contexts.

The region is furthermore considered a **blueprint for dealing with missing persons**. It is estimated that over 70% of the estimated 40 000 persons who went missing during the wars have been found and identified. Several

factors contributed to this high rate of resolution of cases, including strong legislative and institutional frameworks at the national level supported early on by international organisations, such as the International Committee of the Red Cross (ICRC) and the International Commission on Missing Persons (ICMP), and the effective involvement of the families of the missing. The use of modern forensic technologies, such as DNA identification led by the ICMP, was key. Regional cooperation is a condition of success but it has wavered over time. Besides the humanitarian dimension, relevant evidence about missing persons has been used to hold accountable those responsible for international crimes.

The Issue Paper further pays tribute to **the central role played by civil society and human rights defenders** in helping to deal with the difficult past of gross human rights violations. Civil society has resolutely advocated for national authorities to abide by their international human rights obligations in this field, often stepping in when they failed. Civil society in the region has produced a wealth of innovative projects that can be a source of inspiration in other post-conflict situations, a few examples of which are mentioned in the Issue Paper.

Examined next are the **lessons learned for the international community**, which underscore the need for long-term consistent and well-coordinated support. Financial support, monitoring and recommendations as well as political pressure, such as the EU conditionality policy over cooperation with the International Criminal Tribunal for the former Yugoslavia, have played a critical role in securing transitional justice processes. Yet shortcomings in the engagement of the international community, including intergovernmental organisations and individual donor states, such as a certain decrease in commitment over time, the prioritisation of immediate stability over dealing with the past, inconsistent messages and a short-term project-based approaches have diminished, among others, the impact of international partners. A lesson from the region is that dealing with the past to achieve reconciliation and prevent future violence requires ongoing support that needs to extend beyond one generation.

Finally, post-war processes in the region have contributed strongly towards **breaking the silence about conflict related sexual violence and the need for gender-sensitive approaches** when dealing with the past. The courage and determination of women survivors of rape and sexual violence have been the origin of groundbreaking international developments in the fields of criminal justice, reparations, attending to the psychosocial needs of survivors and truth-seeking and memorialisation practices aimed at addressing the issue of conflict related sexual violence.

Unfinished business - Regardless of the advances mentioned above, chapter 2 shows that the legacy of the past continues to linger in the region with many transitional justice processes at a standstill or unresolved.

Almost three decades after the end of the wars, with victims, witnesses and suspects growing old and passing away and evidence less readily available, time is running out for the realisation of **justice through domestic prosecutions**. Thousands of suspects have yet to be prosecuted. Notwithstanding this backlog the deceleration of justice efforts continues, with national war crimes strategies remaining unimplemented. National prosecutors are not proactive and often only proceed with cases transferred from other countries, against low level perpetrators, or against perpetrators who belong to the 'other' ethnic groups. The current climate of denial of war crimes and glorification of war criminals is not conducive to effective national accountability. The protection of witnesses and amnesty laws remain ongoing challenges. One key impediment to justice is the minimal or non-existent judicial cooperation between certain countries, including their continued refusal to extradite their own nationals who continue to enjoy impunity, sometimes through holding dual nationality of countries of the region. This has resulted in an increase of trials in absentia, the impact of which is limited in terms of securing justice given that the perpetrators continue to enjoy impunity.

Furthermore, many civilian war victims in the region remain without **access to effective and adequate reparations**. None of the countries concerned have adopted comprehensive reparations programmes in line with the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation. Some compensation has been awarded through social benefit schemes; however, these are generally more favourable for veterans and through various requirements they exclude many civilian war victims. As a result, these benefits are perceived as selective and instead of recognising and honouring the suffering of all victims equally, they feed divisive discourse about 'our' versus 'other' victims. Although there has been a slow improvement in recognising the needs of survivors of sexual violence and they have been included as civilian war victims in several national laws, the fear of stigma as well as exclusionary requirements continue to make it hard for survivors of sexual violence to obtain compensation. Seeking reparation through civil and criminal court proceedings is a long and costly process that exposes victims to the risk of re-traumatisation. Overall, the national authorities have given little attention to reparations other than compensation, such as rehabilitation, satisfaction through truth-seeking, public apology and commemoration, and guarantees of non-recurrence.

The majority of the 3.7 to 4 million **persons forcibly displaced** during the wars in the 1990s have been able to return or have found reasonable

alternatives. Regional cooperation in this field has been crucially important. Yet forcibly displaced persons still face several human rights issues that require attention. Almost three decades after the end of the wars, it is imperative to find a durable and dignified solution for displaced persons who still live in collective or temporary accommodation. The process of return and integration of refugees and internally displaced persons continues to be hampered by discrimination and local hostility in areas where they belong to the minority. The Roma, Balkan Egyptian and Ashkali displaced communities remain among the most vulnerable because of poverty and long-standing prejudice. The momentum in the region towards resolving the issue of statelessness, which primarily affects these populations, should be maintained.

Attempts to establish official **truth and reconciliation commissions (TRC) or other types of official truth-seeking mechanisms** have achieved little across the region, despite civil society's laudable truth-seeking projects. A particularly disappointing development has been the failure of governments in the region to agree to the establishment of a regional truth and reconciliation commission (RECOM). The absence of national and regional official truth-seeking mechanisms not only hampers reconciliation but also leaves a gaping space for the denial of atrocities committed during the wars. A concerning development in recent years is the attempt by ethno-nationalist politicians to divert truth-seeking mechanisms with the aim of producing revisionist views and reports.

The **search for missing persons** that also contributes towards establishing the truth has declined in recent years, despite the fact that 9 876 persons are still missing. It is urgent that these pending cases be resolved in order to end the suffering of the families. The passage of time and possible misidentifications prior to the use of DNA analysis are significant practical impediments, while the unfortunate lack of political commitment to genuine regional cooperation in this field has become a major obstacle in recent years. Further efforts are required in order to better protect the human rights of the families of missing persons.

Finally, few efforts have been made in the region to address the issue of **vetting public officials either suspected or convicted of involvement in gross human rights violations** during the wars of the 1990s. As a result of the failure to implement effective vetting the perpetrators of war crimes and gross human rights violations continue to be employed in public service positions, including as elected officials. The presence of both suspected and convicted war criminals in state institutions and public offices has a serious impact on victims and survivors and on the success of rule of law reform efforts.

Negative trends undermining efforts to deal with the past - Not only is progress practically blocked in several areas of dealing with the past but there are relentless attempts to undermine the early achievements in this respect. Chapter 3 examines some of the key current challenges and trends that underpin this backsliding. It seeks to show the links between the increasingly negative approach to dealing with the past and the backsliding of democracy, respect for human rights and the rule of law in several countries of the region.

First, there is an alarming trend towards **ethno-nationalist discourse, denial of atrocities and glorification of war criminals** that undercuts efforts to deal with the past. It is highly disturbing that such practices are condoned and actively pursued by politicians at the highest political level and that they have become a strategy for gaining votes and remaining in power. Right wing extreme nationalist groups also contribute to such discourse. These groups are nurtured through regional and international connections and represent a serious risk factor that undermines efforts to prevent the recurrence of violence. Unfinished processes for dealing with the past have been shown to increase radicalisation and right-wing extremism. Certain politicians, religious leaders, public figures and historians also actively contribute to historical revisionism and attempts to re-legitimise and cement the positions of convicted war criminals. The dissemination of divisive ideologies and the denial of wartime atrocities is accelerated by certain traditional media and social media. This negative approach by certain media towards transitional justice is reflective of broader challenges undercutting media freedom and ethical professional journalism in the region.

Against this background, the past is deeply divisive within and between countries in the region. This produces a climate of hate and division, reflected in the well-documented increase in **hate speech, interethnic violence and intolerance**. Hate speech often includes historical references. There are recurrent violent incidents, notably against religious and cultural buildings and against returnees from minority groups. This instils fear and constitutes a major obstacle to peaceful cohabitation and trust. Prompt political responses are required in order to avoid a return to mass violence to the region. This includes zero tolerance of hate crimes and comprehensive strategies to tackle hate speech. Given the volatile context in the region and the trends highlighted above, it has proven necessary to criminalise the denial of genocide and wartime atrocities as a serious form of hate speech.

Civil society and human rights defenders working on dealing with the past face an increasingly difficult environment. They are affected by a more general deterioration that has an impact on the whole of civil society and NGOs. This includes restrictive government measures and hostility,

including online, by some non-state actors and members of the public. Human rights defenders working on dealing with the past also face obstacles specifically linked to the issues they cover and the fact that they challenge the dominant narrative in their community or country. They are subject to smear campaigns, judicial harassment and the failure to prevent attacks against the events they organise. Resources for work on dealing with the past have diminished and many human rights defenders face exhaustion and distress, which can lead to physical and psychological illness.

Almost three decades after the wars, the **intergenerational dimension of dealing with the past** is an area that requires urgent attention. New generations are growing up in divided societies with no meaningful opportunities to interact with members of other groups and are being educated to see the 'other' as a threat. Evidence of radicalisation of youth and several violent incidents involving young people are of great concern. The trend of separation of children according to language and/or ethnic group in education is entrenched in several countries of the region. This has a serious negative impact on social cohesion and reconciliation in multi-ethnic societies. Official remembrance policies are one-sided, focused on celebrating veterans and nationalist narratives and tend to deny the suffering of victims of other ethnic groups. Despite multiple projects seeking to improve history teaching in schools, there is still a failure to encourage critical thinking, historical empathy and multiperspectivity. Official history curricula generally avoid discussing gross human rights violations committed against different groups as well as other sensitive topics.

Another critical factor undermining processes for dealing with the past in the region is **the failure of governments over the past decades to address the root causes of the wars**. The focus on dealing with the crimes that were committed during the wars, while important, resulted in insufficient attention being paid to reforming the institutional structures and societal patterns that enabled these crimes to be committed in the first place. The consequences of this failure to conduct broader past-sensitive reforms continue to undermine democratic progress and peace in the region. Such root causes include unfair power sharing, clientelism and corruption. Ethnic discrimination has in some instances been further entrenched in the constitutions and legislation in the region. The weakness of and lack of public trust in state institutions remains a problem, including a culture of violence within institutions in the security sector. Leaving militarised and violent masculinities unaddressed has not only hampered the handling of conflict related sexual violence but also efforts to improve gender equality and the response to gender-based violence in the region today.

Moving forward - It is becoming increasingly difficult to reverse the negative trends that undermine efforts to deal with the past and to achieve peace and reconciliation in the region. Chapter 4 of the Issue Paper outlines four key priority areas for the way forward. It consistently reiterates that national political leaders and authorities bear the primary responsibility for ensuring respect for human rights obligations in this field and for genuinely working towards peace and social cohesion.

The first area of focus should be to ensure that **victims and survivors are at the centre of all processes of transitional justice**. Given the time that has already passed, there is an urgent need to step up the pace of domestic war crimes prosecutions. The same is the case for truth-seeking, where efforts to resolve cases of missing persons need to be renewed. States in the region should also finally deliver on their international obligations in the field of reparations. This means ensuring access for all victims to non-discriminatory and comprehensive forms of reparations, including symbolic recognition, apologies and psychosocial and other forms of transformative reparations supported by genuine political recognition. There is also a need to make visible certain types of victims who have been less present in transitional justice processes, such as minority groups, women and children. Improved consultations with victims are required. National authorities must urgently recommit and redouble their efforts in these fields.

Second, it is essential to put more emphasis on **prevention and building a future where violence is less likely to reoccur**. Besides the necessary focus on building strong and resilient rule of law institutions, attention should be paid to the intergenerational dimension of transitional justice. Nearly three decades after the end of the wars, areas such as ensuring integrated education, improving history teaching, opening and preserving archives and human rights-based memorialisation have become key areas in the region today. In these fields, the focus should be on laws and strategies that make a meaningful contribution to countering the denial of atrocities and the revisionism of the past. It is also essential to invest in the youth as agents of change by reaching out to them specifically and relying on them extensively in the formulation of policies in these fields.

Third, it is crucially important to **strengthen political and financial support for a strong civil society working on transitional justice**. The work of civil society continues to be central to transitional justice engagement in the region and for finding creative ways to generate environments for non-divisive memorialisation, reconciliation and peace. Among others, strengthening civil society requires ensuring effective consultation with and access to policymakers on relevant laws and policies. Civil society needs sufficient stable and flexible funding to continue its work on dealing with the past in the long term, institutional support from national authorities is

vital in this regard. Activities dedicated to the prevention of violence should be supported. Psychosocial assistance should be made available to activists who experience so-called vicarious trauma (signs of trauma experienced by those caring for traumatised individuals) or face harassment because of their commitment to dealing with the past. Human rights defenders are the best hope for a better future based on human rights and the rule of law.

The backsliding on transitional justice needs to be addressed strategically, notably through regional approaches and increased investment at the local level. The main responsibility rests with the states in the region and their representatives to provide an environment conducive to this important work, free from fear and dangerous propaganda and disinformation about the past. International partners should maintain clear messages about the importance of dealing with the past in their interactions with states in the region and follow-up on the wealth of recommendations previously formulated by international organisations and human rights bodies. Given the interdependency of both past and current challenges, the states in the region should develop transitional justice action plans to be used when evaluating progress at the regional level. Regional coordination, approaches, and strategies should be further encouraged and at the same time there should be a refocusing of action at the local level, at the grass roots and community level, where dealing with the past becomes concrete and solutions for reconciliation and peace need to be found.