

Peace and Beyond



From conflict to rule
of law: experience
of transitional justice
in Kosovo

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Establishing the rule of law after conflict is a crucial task for the authorities in any post-conflict country. Very often in the aftermath of the conflict, victims and their families are demanding justice. In some cases, groups of victims openly fuel the creation of an environment for revenge, while perpetrators seek any possibility to avoid processes of accountability. There might be interested groups in favour of amnesty, who sometimes show that they can destabilise a fragile peace process.

In such circumstance, the authorities, in some cases international peacekeepers, must establish a balance between demands for justice, truth seeking, reparation and guarantee of non-repetition, and the need to secure immediate peace and set the path for future reconciliation.

In this essay, I will lay out some of the aspects of transitional justice I think most relevant, including the need for criminal prosecutions, the requirement for

truth-seeking, functioning mechanisms for reparations for victims and institutional reform. I will then consider the situation of conflict surrounding the dissolution of Yugoslavia and the issues that followed, particularly for civilian victims, before turning to how Kosovo has addressed these. Finally, I will make a number of recommendations to support justice and reconciliation in the countries of the former Yugoslavia.

Components of transitional justice

To reduce impunity, fulfil the rights of victims to justice and restore trust of citizens in institutions, whenever possible after conflict *criminal prosecutions* should be undertaken to ensure that as much as possible perpetrators will face trial. This will provide the opportunity to have court-established facts about some mass or individual crimes, which will contribute the creation of an accurate narrative about the past. Criminal prosecutions will enhance the creation of the rule of law and contribute to non-repetition of such crimes in the future.

Unfortunately, there is no case of conflict where all perpetrators have been prosecuted in the courts. This means that there is no detailed established narrative about crimes during conflict. In such cases, most victims remain uncounted and unacknowledged. There is also a risk that some of the events that took place during the conflict can be subject to revisionism, which leads to the creation of false history and can undermine peace. These are the reasons why *truth-seeking mechanisms* are of crucial importance in the transitional justice process. Truth also allows victims to obtain redress and complete the grieving process.

In post-conflict societies, the *right to reparations* is also a central element of the establishment of the rule of law and for instituting a culture respectful of human rights and promoting solidarity between citizens.² Furthermore, it is an extremely important aspect of the delivery of justice to victims, and consequently, an essential transitional justice component, entrenched in international standards of criminal law, by which the state of Kosovo must abide.³ While monetary compensation is the most common form of reparation, different methods can be used,⁴ all executing the important psychological and social functions of the reintegration and rehabilitation of the victimised.

All three above-mentioned mechanisms of transitional justice contribute to non-recurrence, but there is also a set of *institutional reforms* which can further foster non-recurrence. All security institutions, such as the police and army, as well as the judiciary and civil administration, should be part of reforms. These reforms should first involve a vetting process, in order to remove from their official positions all persons who were engaged in abusing human rights during the conflict. Structural reforms, transforming legal frameworks and education of public officials are elements of institutional reform as well, which will ensure accountability, independence and the protection of human rights.

Consequences of the war in the former Yugoslavia

It is estimated that during the dissolution of the former Yugoslavia, from 1992 until 1999, around 130,000 people lost their lives, were killed or went missing during the wars in Slovenia, Croatia, Bosnia and Herzegovina, and Kosovo. More than 10,000 people today are still counted as missing persons in former Yugoslav countries. There are other categories of victims – numbers run into the millions – such as those who experienced sexual violence, those exposed to torture and cruel treatment in detention centres, those who had to flee their homes and lost their property, and those who never returned to their homes. For most of these categories of victims, we will never know the exact number and scale of these crimes.

The International Criminal Tribunal for the former Yugoslavia (ICTY) was a UN court of law that dealt with war crimes that took place during the conflicts in the Balkans in the 1990s. During its mandate, which lasted from 1993 to 2017, it irreversibly changed the landscape of international humanitarian law, provided victims an opportunity to voice the horrors they witnessed and experienced, and showed that those suspected of bearing the greatest responsibility for atrocities committed during armed conflicts can be called to account.⁵ Despite the fact that the ICTY has accused 161 perpetrators of committing war crimes in territories of the former Yugoslavia, and bearing in mind that Bosnia and Herzegovina, Croatia, Serbia and Kosovo have pursued war crime trials for alleged perpetrators, most victims have never seen justice. When it comes to the right of victims to know the truth, many family members of the victims of war have been denied their right to know the truth about the circumstances in which their loved ones were killed or went missing. This right is mentioned in a set of principles for the protection and promotion of human rights through action to combat impunity, of the UN Commission on Human Rights.⁶ Principle 4 articulates that 'Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate.'

2. 'Victims' Right to Reparations in Serbia and the European Court of Human Rights Standards' (2014/2015), pages 3–4.

3. 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (2005).

4. A full spectrum of measures including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

5. www.icty.org

6. <http://undocs.org/E/CN.4/2005/102/Add.1>

There is no accurate register of victims of the wars of the former Yugoslavia. Those registers of victims which do exist, drafted by authorities of those states, are one-sided, showing only victims of particular, majority ethnicities. Until now there has been no serious attempt to set up a truth commission. The only inclusive initiative for establishing a truth-seeking mechanism is through the RECOM Initiative.

The coalition for RECOM defines it as: ‘an official, intergovernmental commission to be jointly established by the successors of the former SFRY [Socialist Federal Republic of Yugoslavia]. As an extra-judicial body, the task of RECOM is to establish the facts about all the war crimes and other serious war-related human rights violations; to list all war-related victims, and to determine the circumstances of their death; to collect data on places of detention, on persons who were unlawfully detained, subjected to torture and inhuman treatment, and to draw up their comprehensive inventory; to collect data on the fate of the missing, as well as to organize public hearings of victims’ testimonies and the testimonies of other persons concerning war-related atrocities. The Regional Commission is to be independent of its founders and funded by donations’.⁷

Despite the RECOM initiative’s efforts to create this register, the countries involved have not done much in the way of reparations for victims. Most victims have remained without any kind of reparation or compensation. Even symbolic reparation, such as letters of apology or memorials, have not acknowledged all victims, so even these symbolic forms of reparation are one-sided in post-Yugoslav societies. This lays the foundations for an exclusionary peace.

When it comes to institutional reforms, seen by transitional justice scholars as likely to reduce the possibility for recurrence of conflict, all countries of the former Yugoslavia that went through conflict in the 1990s have neglected this. No appropriate education programme was designed for public officials, the security and justice sectors, or students. As a consequence of the lack of institutional reform, those sentenced by the ICTY for committing war crimes have been greeted as heroes on their return. This illustrates the attitude of the authorities towards crimes committed in the past and the neglect of the rights of victims. More than that, this attitude of authorities of former Yugoslav countries is hindering the process of sustainable peace and reconciliation. Persons who are convicted for war crimes in ICTY have taken up important public or political positions in their respective countries after serving their sentences, such as general

Vladimir Lazarević, who is employed as a professor at the Serbian Military Academy,⁸ or former Kosovo Liberation Army (KLA) member Lahi Ibrahimaj, who was elected as MP in the Kosovo parliament. With this in mind, it is easy to see why victims’ communities have difficulties in regaining trust in the institutions.

Kosovo case study

A very short summary of the Kosovo war was best explained by SENSE Center for Transitional Justice in its interactive narrative ‘ICTY: The Kosovo Case, 1998–1999’.⁹

‘The political crisis that had been developing in Kosovo from the late 1980s and throughout the 1990s culminated in an armed conflict between the forces of the Federal Republic of Yugoslavia (FRY) and Serbia and the Kosovo Liberation Army, or KLA, from the beginning of 1998. During that conflict there were incidents where excessive and indiscriminate force was used by the Yugoslav Army and Serbian Police units of the Ministry of the Interior, resulting in civilian deaths, population displacement and damage to civilian property. Despite efforts to bring the crisis to an end, which included sending an international verification mission to Kosovo, the conflict continued through to and beyond 24 March 1999, when NATO forces launched an air campaign against targets in the FRY. The bombing campaign ended on 10 June 1999, followed by the withdrawal of FRY and Serbian forces from Kosovo.’

Unfortunately, even after the withdrawal of Serbian forces from Kosovo, crimes were not stopped, with too many people killed or going missing.

Existing post-conflict justice initiatives in Kosovo

When speaking about *right to justice* it is necessary to explain that war crimes in Kosovo were preceded by so-called hybrid panels in Kosovo. Indeed, international prosecutors (UNMIK and EULEX) were in charge of investigating and drafting indictments and representing them in the trials. Also, judging panels were composed by mixed judges, in most of cases by two international (UNMIK and EULEX) judges and one domestic judge. Only from 2017, when a department for war crimes was created within the Special Prosecutor of the Republic of Kosovo (SPRK), did domestic prosecutors have the mandate to investigate, write and represent indictments in the courts.

7. <http://recom.link/about-recom/what-is-recom/>

8. www.balkaninsight.com/en/article/serbian-war-criminal-will-teach-at-military-academy-10-18-2017/1431/5

9. <http://kosovo.sense-agency.com/>

From the end of the war until the present day, the justice system has initiated and filed 48 indictments: 12 of them against Serbs who were suspected of committing war crimes; 19 against Kosovo Albanians who allegedly committed war crimes; two against Kosovo Montenegrin citizens; and one against a Kosovo Roma. In total, 112 people were accused of war crimes, among them 61 Kosovo Albanians, 48 Kosovo Serbs, two Kosovo Montenegrins and one Kosovo Roma. From those 48 court cases for war crimes in Kosovo, only 38 people were sentenced with final verdicts for committing war crimes, 34 of them are Kosovo Albanians and four Kosovo Serbs. Others were acquitted in absence of evidence and 29 indicted persons (27 Serbs and two Albanians) escaped from detention centres and were never arrested again. The Kosovo penal code does not foresee trial in absentia, hence there was no trial for fugitives. Having in mind that during the war (and its aftermath) in Kosovo more than 10,000 people lost their lives (were killed or went missing), then it is obvious that the vast majority of families of victims have not seen justice. They are living with their pain without hope that the perpetrators of crimes will be prosecuted in front of courts.

Reparation

Families of victims cannot be satisfied with the reparations in Kosovo. Except for reparations on the basis of law, reparations on the basis of court decisions have been rare. Due to the small number of trials for war crimes, the victims of war have not had the opportunity to file private claims for compensation for their losses.

There are two laws enabling victims to apply for reparation, which is received in the form of monthly pensions. These laws are the Law on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of the Kosovo Liberation Army, Civilian Victims of War and their Families;¹⁰ and the Law on Missing Persons.

These two laws differentiate between civilian victims whose remains have been found and identified, and missing civilians, when establishing the requirements necessary to receive benefits. The law on reparations defines a *civilian victim* as: 'A person who died, or who was wounded and then died, at the hands of enemy forces, between 27/02/1998 and 20/06/1999, as well as persons who have suffered as a consequence of the war, within three (3) years after the war ended, from explosive devices left over from the war'.

The law on missing persons defines a *missing civilian* as: 'A person whose whereabouts is unknown to his or her family members and who, on the basis of reliable information, was reported missing during the period between 1/01/98 and 31/12/00, as a consequence of the war in Kosovo during 1998–99'. The discrepancy on the time frame for recognition of civilian war victims and missing persons creates confusion and discontent to the families of victims, especially to the families of missing persons, who were abducted after 20 June 1999. This is due to the fact that they are eligible to receive a monthly pension as the family of missing persons, but when the remains of the missing person are identified and handed over to the family for burial, then that person is no longer missing but becomes a 'killed person'.

The Law on Reparations does not recognise as civilian war victims people who were killed after 20 June 1999, so the families of missing persons after this date immediately lose the right to reparation once the remains of their loved ones are identified and handed over to them. So, the Law on Reparation is discriminatory towards families of victims who have been killed or missing after 20 June 1999, most of whom were from the non-Albanian community.

Institutional reforms

At the end of the war, Kosovo found itself without government institutions, as Serbian authorities who had made up much of the civil service and security sector left immediately. The UN resolution no. 1244 gives the mandate to UN Mission to Kosovo (UNMIK) to administrate Kosovo, and this was to create new Kosovo institutions. In this sense, Kosovo did not need to undertake vetting or structural reforms. Under the assistance and support of the international community, Kosovo undertook significant institutional reforms as part of efforts to ensure non-recurrence of conflict. Disarmament, demobilisation and reintegration of the guerrilla forces known as the Kosovo Liberation Army (KLA) was conducted immediately after the war. This process was successfully accomplished within three months. According to the study 'The Kosovo Protection Corps in a Transition':¹¹

'The demobilization of the KLA took place in the summer of 1999, and went smoothly. By March 1999 there were approximately 18,000 KLA combatants and according to a recent German study of the demobilization, the vast majority returned to the roles they had performed in previous civilian life. Between 3,000 and 4,000 have been involved with the Kosovo Protection Corps, the KPC, and some have joined the new Kosovo Police Service.'

10. www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20the%20status%20of%20the%20martyrs%20of%20war.pdf

11. https://www.files.ethz.ch/isn/38771/2003_Jul.pdf

The process of transforming legal frameworks in Kosovo was easier than in other former Yugoslav countries, because Kosovo adopted a new legal framework, beginning with its constitution and moving through to laws and regulations. Again, with the heavy support of the international community, Kosovo adopted a legal framework with the highest international standards of human rights. Because of its unresolved political status, Kosovo was not able to ratify conventions on human rights, but it integrated all provisions of these conventions in its legal framework, in constitutions and laws.

However, it is obvious that the laws have not been fully implemented. As an example, the law on official language stipulates that Albanian and Serbian languages are official and equal in the entire territory of Kosovo. However, it has not been implemented in practice and when authorities are questioned about it, their answer is that there is a lack of budget to fully implement the law.

Some elements of institutional reform have not been implemented, or if they have, then they have not been done so properly. Kosovo authorities have failed to set up a mechanism to prevent those sentenced for war crimes or crimes against humanity taking political or institutional positions after they serve their sentence. As noted earlier in this essay, one has taken up a position as an MP. I believe this is morally unacceptable and that it humiliates victims once again. I suggest authorities need to design mechanisms which prevent not just those who have been sentenced, but even those accused of committing war crimes, to take up this sort of position.

Another element of institutional reform which has not been implemented is in relation to education, and this should be implemented in different layers. There should be training programmes for public officials and employers in public administration on applicable human rights and international human rights standards. The Ministry of Education should design a curriculum for secondary school on the transitional justice mechanism and its importance for the post-conflict society. This is crucial because there is a huge deficit of knowledge among youth in Kosovo on those mechanisms, and their implementation is very often misunderstood, sometimes creating tensions among different ethnic groups. This in turn raises concerns about future peace.

Among all aspects of transitional justice implementation, Kosovo has mostly neglected those mechanisms which fulfil the right to know. For more than 15 years after the end of conflict in Kosovo, authorities have not initiated any serious project or activity to inform its citizens about casualties during the war. This has led to a situation where Kosovo citizens have started creating their own collective narrative about the past, which mostly relies on inaccurate and biased sources of information. As a consequence, most Kosovo Albanians think that the only victims during the war are Kosovo Albanians, killed or abducted by Serb forces. They believe that the number of killed or missing Albanians is much higher than it actually is. They also do not have information about non-Albanian victims, especially Serb victims. In fact, Kosovo Serb victims are not acknowledged at all by the majority of Albanians in Kosovo.

A similar situation exists among Kosovo Serbs and Serbs in general. They do not have accurate information about crimes committed during the war, especially those committed by Serb forces. They believe that the biggest victims in Kosovo are Serbs and that Albanians who were killed or went missing were members of the KLA, so were legitimate targets of Serb forces. In the absence of a serious, unbiased and unified initiative to establish a truth-telling mechanism, the space for manipulation of war casualties was created. Ethnic groups in Kosovo are about to create their own national narratives which are in discrepancy to each other. This is enhancing the division between Albanians and Serbs in Kosovo.

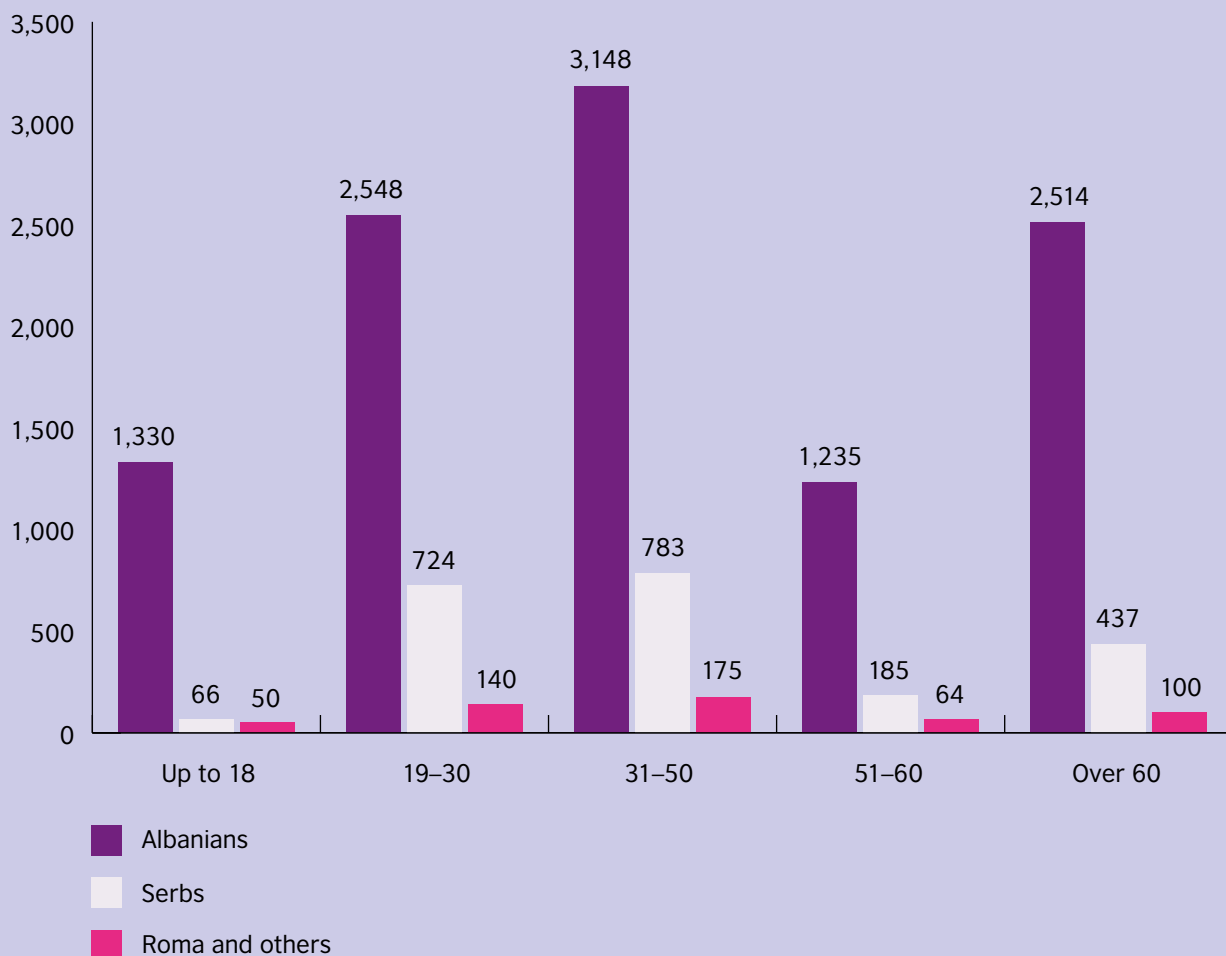
This is one of the reasons why the Humanitarian Law Center (HLC), which is based in Serbia, and the Humanitarian Law Center Kosovo (HLCK) have been implementing a project called the Kosovo Memory Book¹² since 1999. The aim is to document all human losses during the war and in its aftermath in Kosovo. In order to have as accurate as possible information about casualties, HLC and HLCK have created a database where all collected documents are uploaded and analysed. Almost 20 years after the war, this database contains more than 16,000 testimonies of family members of victims, eyewitnesses and survivors of crimes, and has documented 13,535 killed and missing persons, in the period of time from 1 January 1998 until 31 December 2000.

12. www.kosovskaknjigapamcenja.org/?page_id=29&lang=de

Thousands of other types of documents have been uploaded and analysed in the Kosovo Memory Book database. This recording of casualties has been recognised internationally as comprehensive, systemised and extremely accurate.¹³ It can therefore be a very useful tool in providing assistance to victims in the post-conflict context, and in particular the realisation of their right to reparations.

The above graph shows the numbers of killed and missing persons during the war and in its aftermath in Kosovo. Around 75 per cent of all casualties were civilians who did not take an active part in the conflict; 1,446 victims were under the age of 18, and 3,051 other victims were over 60 years old. These statistics help to demonstrate the extent of war crimes committed during the conflict, and that civilians were not protected from indiscriminate attacks.

War victims by age and ethnicity



13. The Human Rights Data Analysis Group (HRDAG) concluded in 2014 that the KMB 'documents all or nearly all the human losses during the conflicts in Kosovo over the period 1998-2000 [...] it is very unlikely that there are more than a few tens of undocumented deaths' – Kruger and Ball (2014) <https://hrdag.org>

Any country which inherits such an extent of crimes from the conflict should take steps to implement transitional justice mechanisms in order to address such gross violations of human rights and to enable victims to fulfil their rights to justice, reparation and the right to know. Unfortunately, as with other former Yugoslav countries, Kosovo has not addressed the needs of war victims in a satisfactory manner.

What is the future of reconciliation in the former Yugoslav countries?

In 2017, the President of Kosovo, Hashim Thaçi, initiated the creation of a national Truth and Reconciliation Commission (TRC). This has not yet been established, but the team that will lay the ground for the Kosovo TRC is now in place and it is expected that the TRC will be created within the next year. It is too early to assess if this initiative will contribute to the development of more accurate narratives about the conflict period and its aftermath, but it is promising to see an inclusive consultation process, in which all stakeholders, including ethnic communities, have been involved.

Bearing in mind the consequences of the Yugoslav wars set out earlier in this chapter, it is of crucial importance that there is enhanced co-operation among countries of the former Yugoslavia, in order to implement more effectively the mechanisms of transitional justice and provide victims and their families with more opportunities to access their rights. This could happen in a number of ways.

Strengthening co-operation between prosecutors' offices would result in more court cases for war crimes. While there is already a degree of co-operation between Serbian, Bosnian and Croatian prosecutor offices, there is none between the offices of Kosovo and Serbia. This has resulted in the provision of more space for impunity in both countries.



Another field where former Yugoslav countries could work together is in relation to reparations. Many victims of war crimes and their perpetrators are now living in different countries, either as victims have moved to another country as refugees, or where perpetrators committed crimes in a neighbouring country. This means that victims can very rarely seek reparation, especially where there was no criminal prosecution of perpetrators. Although some former Yugoslav countries have created legal infrastructure to support families of victims with some kind of reparations, it falls short. As noted previously, there is also a lack – across the former Yugoslavia – of symbolic reparations.

Finally, former Yugoslav countries must co-operate closely to establish the truth about those killed or missing by collecting the facts about war crimes and creating an accurate narrative about war casualties in the wars which followed the dissolution of Yugoslavia.

In the absence of this, each country will have its own official ‘truth’ about the wars, which will not be in line with the ‘truth’ of neighbouring countries. This bodes ill for peace in the future.

To this day, the only serious initiative to prevent this revisionism and to establish the facts about war crimes in the former Yugoslavia is the RECOM initiative, which I mentioned before. I believe this offers a unique opportunity for former Yugoslav countries.

Let us not forget that the first step in moving from conflict to establishing the rule of law is acknowledging and dealing with the past.

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‘Truth-seeking mechanisms are
of crucial importance in transitional
justice process’

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Photography

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