



Dealing with the Past Principles

Principle: Victims and survivors should be at the center of all DwP activities and public discourse

Case study



Dealing with the Past Principles

The Dealing with the Past Principles is a civic initiative, promoted by an informal coalition that consists of five organizations and one expert: Humanitarian Law Center Kosovo, Kosova Rehabilitation Centre for Torture Victims, Integra, Youth Initiative for Human Rights, BIRN Kosova, and Nora Ahmetaj. The group has embarked on a joint initiative to chart and endorse a set of principles that will inform and guide political and public actors on how to engage with victims, survivors, painful pasts, and historical narratives. This initiative aims to prevent harmful discourse and actions related to the legacy of the conflict and will serve as a reference document to which anyone violating its principles will be held morally accountable. The aim is, therefore, to apply these principles and respect the values and sentiments they embody to ensure that victims and survivors are not harmed and that our actions in dealing with the past will contribute to the process of healing and reconciliation.¹ Now that the principles have been developed and arranged, as well as properly elaborated, it is crucial to have them presented to the general public and correctly promoted. We believe that one way to get people to understand the importance of such principles is to talk about the harms, the consequences, and the pain and suffering that can be caused in situations where those principles are violated. Therefore, the coalition will publish some case studies compiled by the Humanitarian Law Center Kosovo (HLCK) and we will attempt to bring concrete examples from the past where the principles were appropriately used or even misused. One of these principles is “Victims and survivors should be at the center of all DwP activities and public discourse”.

Victims and survivors should be at the center of all DwP activities and public discourse

All Dealing with the Past initiatives, formal and informal, should not only include victims and survivors but put them at the center of the process. The victims’ and survivors’ contribution and empowerment are crucial in all dealing with the past activities. Without their participation, dealing with the past processes cannot be fully successful.

Introduction

A victim or injured party is “a person whose personal or property rights are violated or endangered by a criminal offense²”, who in terms of the principles we are promoting appears as a direct victim of criminal offenses committed during the armed conflict.

The victim-centered approach is defined as the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner. This approach seeks to minimize re-traumatization associated with the criminal justice process by empowering survivors as engaged participants in the process and providing survivors an opportunity to play a role in seeing the criminals brought to justice. Employing a victim-centered approach to criminal investigations is fundamental to a successful criminal case³.

The Guidance Note of the Secretary-General, entitled “The United Nations Approach to Transitional Justice,” in one of its principles highlights the importance of ensuring that victims are at the center of the design and implementation of transitional justice processes and mechanisms. Placing victims at the center of this work also

¹ [Principi-Eng \(yihr-ks.org\)](http://Principi-Eng(yihr-ks.org))

² Criminal Procedure Code of the Republic of Kosovo, Article 19, Page 6, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>

³ Office for victims of crime – Training and Technical Assistance Center, Office of Justice Programs, <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/>



requires ensuring that victims' rights and views are fully respected and guaranteeing victims' safety and dignity⁴. Lack of development and inclusion programs for the specific needs of victims' families, results in structural violence against victims, survivors, and family members of missing persons, which consequently hinders their reintegration process into society⁵.

All victims must be at the center of all initiatives on dealing with the past. This is because their contribution will help anchor each such initiative and would help get justice, establish, and hear the truth about their suffering, and provide them with compensation in a fair and more efficient way.

The Humanitarian Law Center Kosovo (HLCK), in May 2019 hosted an exhibition entitled "Once upon a time and never again," commemorating 1,133 children killed/missing as a result of the war in Kosovo. For this purpose, HLCK reached out to the parents and relatives of victims and survivors, involving them directly in curating the exhibition. They shared their children's stories with HLCK and also provided their children's personal belongings so that they would be remembered and memories of them would never be erased, but more than that, this exhibition was curated in search of the truth. This exhibition can now also be viewed virtually⁶.

There was an exhibition catalog produced for purposes of documenting the event. It includes information on the children who were killed or forcibly disappeared during the period 1998-2000. There is also a part dedicated to the personal belongings of some of those children,⁷ which were provided by their parents, who wanted those items to remain part of the exhibition and not be given back to them.

In this way, it was ensured that victims and survivors shall be directly involved in initiatives related to their wartime losses and that they receive dignified treatment from both the institutions and the society.

In June 2012, the Government of the Republic of Kosovo, at one of its meetings, decided to establish an Inter-Ministerial Working Group on Dealing with the Past and Reconciliation (IMWG DwPR). This Working Group was established to draft the National Strategy on Dealing with the Past and Reconciliation.

A positive element under the decision to establish this Working Group is the introduction of standards, namely that the Group must meet certain criteria to ensure the process of dealing with the past and reconciliation. The first such criterion listed in the decision is inclusiveness, whereby the perspectives of all relevant stakeholders, including those of members of communities in Kosovo and of conflict victims, should be discussed and considered. According to this requirement, the participation of conflict victims in this Working Group, as well as in the process of Dealing with the Past and Reconciliation, should be ensured.

The course of action was that upon establishment, the Working Group would adopt an Action Plan for Drafting the National Strategy on Transitional Justice in Kosovo and its implementation⁸.

"In 2014, the IMWG DwPR developed and approved a Work Plan for Drafting the National Strategy on Transitional Justice in Kosovo 2015-2017." The Working Group established four sub-groups on the right to know, the right to justice, reparations, and guarantees for non-recurrence. The work plans of these specific sub-groups provided for engaging with stakeholders for consultations and they also established a list of victim

⁴ Guidance Note of the Secretary General: United Nations Approach to Transitional Justice, Page 2

⁵ KRCT, Handbook on Dealing with the Past Principles, Page 7

⁶ Humanitarian Law Center Kosovo, Exhibition "Once upon a time and never again" <https://hlc-kosovo.org/themes/fdh/assets/360/ekspozita.html>

⁷ Humanitarian Law Center Kosovo, "Once upon a time and never again" Exhibition Catalogue <https://www.hlc-kosovo.org/storage/app/media/Katalogu%20digiital/HLC-BOOK-NOV23112020-DIGITAL.pdf>

⁸ Kryeministri.rks-gov.net, Decision No. 03/77 of 4 June 2012, On the establishment of Inter-Ministerial Working Group on Dealing with the Past and Reconciliation, Page 3-8, https://kryeministri.rks-gov.net/wp-content/uploads/docs/Vendimet_e_Mbledhjes_se_77-te_te_Qeverise_se_Republikes_se_Kosoves_2012.pdf



associations and organizations with which to meet and consult, aiming to contribute to the National Strategy on Transitional Justice. These consultations and discussions were intended to ensure that the National Strategy meets the real needs of victims and the society in general, as well as to create opportunities to explore what the State can provide so that it will be acceptable to both the victims and the society⁹.

Unfortunately, the Inter-Ministerial Working Group on Dealing with the Past and Reconciliation ceased to function before starting public consultations.

The Kurti 2 Government has taken several initiatives to establish mechanisms and draft documents related to transitional justice. One such initiative involves the development of the Transitional Justice Strategy. A Working Group has been established to draft this strategy, where in the first meeting in August 2021, it was discussed to merge all initiatives that pertain to dealing with the past and transitional justice.

The Minister of Justice, Albulena Haxhiu, noted the importance of including the victims in drafting such a strategy. She stated that she will be committed “to drafting a comprehensive victim-centered and gender-sensitive strategy.”¹⁰ She also asked, “from the Working Group to ensure that the drafting of the Transitional Justice Strategy will be done in continuous consultation with the citizens affected by the war, in order for this strategy to best reflect the experiences, needs, and rights of the victims¹¹”. The Informal Coalition on Dealing with the Past Principles welcomes the will of Minister Haxhiu to include the community of victims in this initiative, as this is in line with the principle we are elaborating.

The most recent initiative undertaken by state institutions is that of drafting a bill providing for the establishment of the Kosovo War Crimes Research Institute. Although back in 2011, the Government set up a previous version of the War Crimes Research Institute, it was abolished in 2018 under the pretext that it had failed to fulfill its mandate.¹²

For this reason, on May 13, 2020, the Minister of Justice, Albulena Haxhiu, decided to establish a Working Group to prepare an analysis leading up to the establishment of the Kosovo War Crimes Research Institute¹³. In this Working Group established by the Ministry of Justice, in addition to relevant policy officials and political representatives, there were also civil society representatives, local experts, consultants, and citizens who have voluntarily documented war crimes during the last 20 years¹⁴. But as was the case with the initiatives we have mentioned above, this initiative for the establishment of the Institute should have included representatives from the community of victims and people affected by the war, with the main purpose of ensuring that the experiences and demands of victims are reflected in the Work Plan of the Institute.

RECOM is a regional commission for the establishment of facts about war crimes and other serious violations of human rights committed in the former Yugoslavia from January 1, 1991, until December 31, 2001. RECOM is an intergovernmental commission established by the states constituted on the territory of the former Yugoslavia. This extra-judicial body will be tasked with investigating all allegations of war crimes and other serious human rights violations in connection with the war; listing the names of all war victims and victims of

⁹ Dealing with the Past and Reconciliation in Kosovo, A Summary of Institutions and Initiatives, A Working Document, 2017, Page, 46, Prishtinë/Priština, Kosovo

¹⁰ Office of the Prime Minister, 18.08.2021, <https://kryeministri.rks-gov.net/kryeministri-kurti-ne-takimin-e-grupit-punues-strategjia-per-drejtuesine-tranzicionale-duhet-te-bashkoje-te-gjitha-nismat-per-adresim-te-se-kaluares/>

¹¹ Ibid.

¹² Balkan Insight, 20.05.2020, Kosovo Tries Again to Establish War Crimes Research Institute, <https://balkaninsight.com/2020/05/20/kosovo-tries-again-to-establish-war-crimes-research-institute/>

¹³ Facebook Post, Albulena Haxhiu, 13.05.2020, <https://www.facebook.com/hapeporten/posts/3658285577575540>

¹⁴ Indeks Online, 07.06.2021, <https://indeksonline.net/sot-mbahet-takimi-i-pare-i-grupit-punues-i-institutit-per-krimet-e-krvera-gjate-luftes/>



crimes pertaining to the war, and collecting the information about the camps and other centers of forced detention¹⁵.

Over the course of its existence, RECOM engaged in public consultations with various stakeholders who were relevant to its mandate. RECOM held a series of consultation meetings with war victims from all participating countries, including numerous discussions with war victims and survivors in Kosovo.

The first consultations were held on October 4, 2008, with the families of missing persons, the families of victims, victims' associations, as well as other participants and panelists from the Humanitarian Law Center Serbia, Documenta from Croatia, and the Humanitarian Law Center Kosovo. This meeting addressed and discussed the experiences of those present, by providing special attention specifically to the victims and people affected by the war in Kosovo. They shared their experiences and discussed ways how the initiative could help establish this commission, which would seek the truth and provide assistance to survivors and families of war victims in Kosovo¹⁶.

The next consultation event under the initiative for RECOM was attended by 22 participants, mostly representing the non-governmental sector and victims' associations, on May 9, 2009¹⁷.

RECOM also engaged in consultations with women victims of war, who came from Rahovec/Orahovac, Hoçë e Madhe/Velika Hoça, and Krushë e Madhe/Velika Kruša, and who were of different ethnicities, including Albanian, Serb, and Roma women¹⁸. In addition to women victims, the last consultation event which was conducted with the aim of drafting the RECOM Statute, involved victims and about 70 members of victims' families, in order to contribute to the drafting of this Statute¹⁹.

The initiative to establish RECOM exemplifies how victims and survivors of the war in Kosovo should be involved in all initiatives in relation to Dealing with the Past. Therefore, all the initiatives that are already ongoing but also those to be established hereinafter, should provide special opportunities to the victims and survivors of war, so that their experiences may provide a foundation using accurate war narratives.

Recommendations

Primarily, we recommend that the “Dealing with the Past Principles”²⁰ should be respected and adopted by all political and public actors involved in dealing with the past.

In addition to organizing consultations with the victim community on issues related to Dealing with the Past, institutions should ensure that representatives of the victim community are included in working groups tasked with drafting policy documents or legislation.

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¹⁵ Recom.link, RECOM Reconciliation Network, <https://www.recom.link/en/sta-je-rekom/>

¹⁶ RECOM, HLCK, National Consultations with Victims' Associations, Instruments and initiatives to establish and disclose the facts about war crimes committed on the territory of former Yugoslavia, October 4, 2008, <https://www.recom.link/wp-content/uploads/2008/10/kopje-e-shkruar.pdf>

¹⁷ KOMRA, Consultations, Kosovo, NGO's, Victims' Associations-Prishtinë/Priština, Kosovo-May 9, 2009 <https://www.recom.link/en/konsultacije-sa-udruzenjima-zrtava-i-civilnim-drustvom/>

¹⁸ KOMRA, Women Victims of War-Orahovac/Rahovec, Kosovo-December 04, 2010, <https://www.recom.link/en/consultations-with-female-victims-of-war/>

¹⁹ KOMRA, Association of Victims-Prishtinë/Priština, Kosovo-December 17, 2010, <https://www.recom.link/en/consultations-with-victims/>

²⁰ [Principi-Eng \(vihr-ks.org\)](http://Principi-Eng.org)

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