

A FEMINIST APPRAISAL OF THE DAYTON PEACE ACCORDS

Women have struggled to make their experiences and conceptions of the world known and understood in the wider community. Feminisms have played a significant role in deepening our understanding of oppression and disadvantage and have begun to play an important role in formulating responses to them. With respect to the development of international humanitarian law and the international law of human rights, the graphic descriptions given by the media of the violations of the rights of women in Bosnia and Herzegovina have forced the international community to reconsider its definition of war crimes and crimes against humanity.¹ Despite some significant gains there are many situations in which the rights and interests of women continue to be ignored or deliberately overlooked. The General Framework Agreement for Peace in Bosnia and Herzegovina and the Annexes thereto² (hereinafter the "Dayton Peace Accords") provide an example of this.

Although the international community through the Security Council and the General Assembly consistently condemned the rapes and other violations of the human rights of women in Bosnia and Herzegovina,³ little attention was paid to these violations when the

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1 See General Assembly Resolution 51/115 which states:

3. Reaffirms that rape in the conduct of armed conflict constitutes a war crime and that under certain circumstances it constitutes a crime against humanity and an act of genocide as defined in the Convention on the Prevention and Punishment of the Crime of Genocide, and calls upon States to take all measures required for the protection of women and children from such acts and to strengthen mechanisms to investigate and punish all those responsible and bring the perpetrators to justice.

Rape and Abuse of Women in the Areas of Armed Conflict in the Former Yugoslavia A/RES/51/115, 12 December 1996 paras 8, 9.

2 (1996) 35 *ILM* 89.

3 Some of the resolutions on the subject of the rape and abuse of women are set out in General Assembly, *Rape and Abuse of Women in the Areas of Armed Conflict in the Former Yugoslavia*, Report of the Secretary-General A/48/858, 29 January 1994. See also Commission on Human Rights, *Rape and Abuse of Women in the Territory of the Former Yugoslavia*, Report of the Secretary-General E/CN.4/1994/5, 30 June 1993.

responsibilities of the new republic were negotiated. A close examination of the Dayton Peace Accords leaves one with the impression that the responsibility for addressing past violations of human rights is being given to the international community, through both intergovernmental and nongovernment organisations. Although I believe there are sound arguments to be made in favour of placing the conduct of war crimes trials in the hands of the international community, other responsibilities such as the provision of services (medical and psychological), monetary assistance and the creation of mechanisms to record and uncover the truth about past events, should be borne by the government. The rights of women can not be furthered in a country where the government can absolve itself of any obligation to address the aftermath of human rights violations committed on its territory. This is particularly so when the state is comprised of the two Entities responsible for those violations even if the individuals in power were not personally involved in the commission of the violations.

It is increasingly apparent that the situation of victims of rape and sexual abuse are being ignored by the new Republic of Bosnia and Herzegovina. The Special Rapporteur on the Situation of Human Rights in the Territory of the Former Yugoslavia has referred to the situation of victims of rape as one of the "silent emergencies" present in the Republic. In her October 1996 report she indicates that individuals of both sexes who were raped or were the subject of other forms of sexual abuse have not been given adequate support.⁴ There is also a suggestion that rapes have continued to occur after the signing of the Dayton Peace Accords. A recent resolution of the General Assembly recognises the "extraordinary suffering" experienced by the victims of rape and sexual violence as well as the difficulties they are having in obtaining necessary services and assistance with rehabilitation. It calls on all states and relevant intergovernmental and nongovernmental organisations to provide appropriate assistance.⁵

The thesis of this commentary is that the Dayton Peace Accords should have dealt with the process of reintegration of those who had suffered from gross violations of human rights. In particular there should have been an acknowledgment of the need for services and monetary assistance to facilitate the process of recovery. Because of concerns about the impact of war crimes trials on the fragile peace brought about by the Dayton Peace Accords, too little thought was given to other methods by which the new government could have been encouraged to accept responsibility for the well-being of those who had been subjected to gross violations of human rights. The Constitution of the Republic of Bosnia and Herzegovina should have included provisions detailing the obligations of the new government with respect to those resident on its territory who had been the victims of such violations.

4 Rehn, Special Rapporteur of the Commission on Human Rights, *Situation of Human Rights in the Territory of the Former Yugoslavia* E/CN.4/1997/9, 22 October 1996 para 28.

5 GA Res 51/115, *Rape and Abuse of Women in the Areas of Armed Conflict in the Former Yugoslavia* A/RES/51/115, 12 December 1996 paras 8, 9.

Although I do not question the necessity of bringing an end to the conflict, the failure of the Dayton Peace Accords to consider redress for past violations of human rights leaves residents of the new Republic vulnerable to further abuse. It also means that the emotional and physical consequences of past violations can be ignored by the new government. One wonders what impact this will have on the individuals concerned; their sense of belonging to one country will not be fostered in a situation where their needs are not being addressed by their own government. And if there is no collective sense of belonging, then the peace may not be an enduring one.

In the following commentary I provide an overview of the provisions of the Dayton Peace Accords concerned with the promotion and protection of human rights and consider whether these mechanisms are a sufficient response to the violations of women's human rights which occurred in the territories that now comprise the Republic of Bosnia and Herzegovina. I then offer some suggestions as to the obligations that should have been undertaken by the new government.

THE DAYTON ACCORDS

Even a cursory reading of the Dayton Peace Accords leaves little doubt about the mistrust that continued to exist between the Serbians, Croatians and Bosnians at the time the Accord was being drafted.⁶ The negotiators and the parties themselves were under enormous pressure to find a "framework" for peace that in the first instance would allow for the cessation of hostilities and encourage confidence building. The emphasis on confidence building was one of the reasons the participation of the Organisation for Security and Cooperation in Europe (OSCE) was deemed necessary.⁷ Some of those involved in the negotiating process have responded to criticism of the Accords by emphasising the need to build trust and to create an atmosphere of cooperation between the warring factions.⁸

The Dayton Peace Accords consist of a General Framework Agreement and 11 annexes. Almost all of the annexes contain provisions which will have an impact on the promotion and protection of human rights. This commentary will focus on Annexes 4 (the Constitution of the Republic of Bosnia and Herzegovina), 6 (Agreement on Human Rights) and 10 (Agreement on Civilian Implementation).

6 This point has been raised by other commentators on the Accords. See for example Morrison, "The Constitution of Bosnia Herzegovina" (1996) 13 *Const Commentary* 145.

7 For an excellent overview of the Organisation for Security and Cooperation in Europe see Brett, "Human Rights and the OSCE" (1996) 18 *Hum Rts Q* 668.

8 Anonymous, "Human Rights in Peace Negotiations" (1996) 18 *Hum Rts Q* 249. See in particular the conclusion of this article.

The Constitution

Pursuant to Article I para 3 of the Constitution, the Republic of Bosnia and Herzegovina is to consist of two Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska. Those living in Bosnia and Herzegovina are to be citizens of both Bosnia and Herzegovina as well as one of the Entities (Article I para 7). Citizenship of an Entity is to be determined by that Entity but is not to be denied arbitrarily.

Article II governs the protection of human rights and fundamental freedoms. Reading this article, one is struck by the fact that it defines the rights of those within the territory of Bosnia and Herzegovina primarily by reference to regional and international human rights instruments. The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols is to apply directly in Bosnia and is to "have priority over all other law" (Article II para 2). There is a short enumeration of rights in para 3 of Article II; surprisingly it does not refer to the rights of women. Paragraph 4 contains a nondiscrimination clause. Pursuant to para 7 the Republic of Bosnia and Herzegovina is to become a party to a list of fifteen international instruments appended to the Constitution.

There is an underlying tension in this Annex: on the one hand it sets out the structure for a new and hopefully democratic government committed to the promotion and protection of human rights, but on the other hand it emphasises the need for outside surveillance of the parties' compliance with their mandated human rights obligations. This is most evident in para 8 of Article II which is entitled "Cooperation". It binds the authorities to cooperate with and

provide unrestricted access to: any international human rights monitoring mechanisms established for Bosnia and Herzegovina; the supervisory bodies established by any of the international agreements listed in Annex I to [the] Constitution; the International Tribunal for the Former Yugoslavia ... and any other organization authorised by the United Nations Security Council with a mandate concerning human rights or humanitarian law.⁹

Although seemingly intended as a method of ensuring that the Entities and the Republic of Bosnia and Herzegovina work to further the human rights of those resident on their respective territories, it highlights the concerns of the international community as to the

9 Another example of the powers given to the international community is contained in Annex 7 concerning the creation of suitable conditions of return for refugees. Pursuant to Article III para 2 the Parties are to give unrestricted access to UNHCR, ICRC and UNDP and "other relevant international, domestic and nongovernmental organisations" in order to facilitate their work with respect to the provision of reintegration and medical assistance. These organisations are to be allowed to carry out traditional human rights monitoring of basic human rights and humanitarian conditions.

willingness of the parties to comply with the commitments they were undertaking. In addition, it places an onerous responsibility on the international community and may encourage both the national and Entity governments to see themselves as a secondary component in working for the restoration of human rights.

Further evidence of the mistrust and the importance placed on independent contributions to the protection of human rights is contained in Article VI which defines the role, functions and composition of the Constitutional Court. The Court is to be composed of nine members, four selected by the House of Representatives of the Federation, two by the Assembly of the Republika Srpska and three by the President of the European Court of Human Rights after consultation with the Presidency (para 1). The three members selected by the President of the European Court of Human Rights are not to be citizens of Bosnia and Herzegovina nor of a neighbouring state. All members of the court are to be appointed for an initial term of five years and are not eligible for reappointment. The Parliamentary Assembly of the Republic of Bosnia and Herzegovina may change the method of selection for the independent judges after the five year period has elapsed. The jurisdiction of the court is to include issues referred to it by any court in Bosnia and Herzegovina "concerning whether a law, on whose validity its decision depends, is compatible with [the] Constitution [or] the European Convention for Human Rights and Fundamental Freedoms and its Protocols", or with a general rule of public international law (para 3). Although Article X permits the Constitution to be amended it may not be amended so as to eliminate or diminish the rights and freedoms set out in Article II.

The Human Rights Commission

Annex 6, Chapter Two sets out the framework for a Commission on Human Rights.¹⁰ It is to consist of an Ombudsman and a Human Rights Chamber. The work of both involves consideration of violations of the rights set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and discrimination in the enjoyment of the rights set out in a series of international instruments appended to the Annex. Pursuant to Article III para 5 the Commission is empowered to receive assistance from "any governmental, international, or non-governmental organization".

The enmity existing between the parties becomes evident again in the provisions relating to the appointment of the Ombudsman. The first appointee, who is to hold office for a non-

10 Chapter Three of Annex 6 gives sweeping powers to the international community to gain access to the territory of Bosnia and Herzegovina. Pursuant to the terms of Chapter Three the parties invite several of the United Nations human rights bodies and organs as well as regional human rights organisations to monitor closely the situation in Bosnia and Herzegovina (Article XIII para 2). In addition, the parties are to allow full access to nongovernment organisations investigating or monitoring the human rights situation and are not to impede them in their functions (Article XIII para 3). The parties also undertake to cooperate with a range of international organisations and bodies, including the International Tribunal for the Former Yugoslavia (Article XIII para 4).

renewable term of 5 years, is not to be a citizen of Bosnia and Herzegovina or any neighbouring state and the Ombudsman is to appoint his or her own staff (Article IV para 2). The appointment of the Ombudsman is to be made by the “Chairman-in-Office of the Organization for Security and Cooperation in Europe” after consultation with the Parties (Article IV para 2).

Generally allegations of human rights violations received by the Commission are to be forwarded to the Ombudsman unless the applicant specifies otherwise (Article V para 1). The Ombudsman is to investigate any such complaints and may institute investigations of his/her own (Article V para 2). The findings of the Ombudsman are to be made public. Special reports can be made to government organs or officials; there is an obligation on those receiving such reports to reply to them (Article V para 6). When a person or Entity fails to comply with the conclusions and recommendations of the Ombudsman, this is to be brought to the attention of the High Representative (Article V para 7). The Ombudsman has extensive powers of investigation, with the ability to gain access to any government file and to compel government officials to provide relevant information (Article VI para 1).

The Human Rights Chamber is composed of fourteen members, four from the Federation, two from the Republika Srpska with the remaining eight members to be appointed by the Committee of Ministers of the Council of Europe. These members are not to be citizens of Bosnia and Herzegovina nor of neighbouring states. One of this group of eight is to be the President of the Chamber (Article VII para 1). The powers given to the Chamber include the ability to decide upon complaints of human rights violations referred to it by the Ombudsman or on the basis of complaints made directly to it by individuals, nongovernment organisations or groups of individuals (Article VIII para 1).

Complaints being heard in other fora cannot be considered by the Chamber, and priority is to be given to “allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds” (Article VIII para 1). Although empowered to facilitate amicable agreements in resolution, any such agreement must respect the rights and freedoms of the applicant and the text of any agreement must be published and sent to the High Representative, the OSCE and the Secretary-General of the Council of Europe (Article IX). Otherwise formal processes are to occur before a panel composed of seven members, one from the Federation, one from Republika Srpska and four of the non-citizen members of the Chamber (Article X para 2). Save in exceptional circumstances hearings of the chamber are to be held in public. Decisions of the panels are to be reviewed by the full Chamber (Article X). Decisions of the Chamber, whether sitting as a panel or a full bench, are to include the steps required to be taken to remedy the established breaches and are to be forwarded to the High Representative, the Secretary-General of the Council of Europe and the OSCE (Article XI).

The High Representative

As the Accords called for the continued monitoring and close involvement of a significant number of international organisations in respect of humanitarian assistance, the rebuilding of the country's infrastructure and the establishment of government institutions which would uphold human rights, the parties considered it necessary to have the work of those organisations coordinated by a High Representative to be appointed by the Security Council (Annex 10 Article 1). In addition, the High Representative is to oversee the efforts of the Parties in building the structures and institutions of government and endeavours to promote human rights (Articles I and II). The High Representative is to be the "final authority" with respect to the interpretation of the Accords in regard to the civilian implementation of the peace settlement (Article V).¹¹ Although the High Representative is not able to intervene in the affairs of the organisations operating in Bosnia and Herzegovina, such organisations are "requested" to provide information about their activities to the High Representative who is to facilitate the activities of all external and national bodies (Article II para 1(c)). In addition the High Representative is to report on the implementation of the peace agreement to the "United Nations, European Union, United States, Russian Federation, and other interested governments, parties and organizations" (Article II para 1(f)). Further, the High Representative is to provide guidance to and receive reports from the Commissioner of the International Police Task Force established in Annex 11 to the Accords (Article II para 1(g)).

Another important aspect of the work of the High Commissioner is the close working relationship this person is to develop with the International Force of Reconciliation. The High Representative is to attend meetings of the Joint Military Commission and offer "advice ... on matters of a political-military nature" (Article II para 7). Similarly, the Joint Civilian Commission to be established by the High Representative is to include the IFOR commander (Article II, paragraph 2).

Observations

Despite the emphasis given to the promotion of human rights in the Accords, little is said about the situation of those who suffered violations of human rights during the war. Although it would not have been possible to obtain a peace settlement which specified all of the violations nor to name those responsible, it should have been possible to indicate that, whatever the source of their injury, those who did suffer violations of their human rights were to be given priority by the government and that positive measures were to be taken by the government and the Entities to redress those violations. The human rights mechanisms created in the Accords could have been charged with monitoring the situation of those individuals who were victims of past human rights violations. The lack of redress

11 Other annexes to the Accords detail the steps to be taken to demilitarise the Entities and to create a civilian police force. These annexes create additional mechanisms for overseeing their implementation.

given to the victims is in itself a violation of their human rights, as the necessity for full and fair reparations and restitution has been recognised by the United Nations.¹²

The general references in the Accords to the necessity to work toward rehabilitation and reintegration have not proved sufficient to encourage either the national government or the Entities to address the situation of the victims, including the women who were raped and sexually assaulted. As noted earlier, a part of the reason for this may be the emphasis given in the Accords to the work to be carried out by international organisations whether intergovernmental or nongovernmental. It would appear that those who should be responsible are abdicating that responsibility and looking to the international community to carry the burden. Unfortunately the international community does not appear to be speaking in one voice about the priority to be given to those who have experienced gross violations of their human rights. In the following section I consider briefly the difficulties facing the women and children who were raped and sexually assaulted during the war.

PRESENT SITUATION OF VICTIMS OF RAPE

It does not appear that either of the Entities are taking seriously their responsibilities to provide assistance to the women who were raped and sexually abused. Equally troubling is the lack of coverage of this situation being given by the UN High Commissioner for Human Rights field operations in the Former Yugoslavia. None of the four reports available at present from the field offices¹³ discuss the current situation of the women who were raped and sexually abused and who are within the territory of Bosnia and Herzegovina or who might wish to return to that country. Even the Special Rapporteur, who does mention the profound suffering of the victims, does not give significant coverage to the issue. Nor does her report clearly delineate between past and present cases of rape or the context in which they occurred or are occurring.

However the comments she does make are worth quoting:

Another silent emergency, especially in Bosnia and Herzegovina, is the fate suffered by victims of rape, of both sexes and including many children. These persons face problems of various kinds, including traumatic memories of the act itself, and the anguish of the decision whether to keep children conceived through rape or to give them up for adoption. In all of these cases, the victims need protection, psychological care and practical guidance. In the interest of justice and truth, cases of rape should be brought to court. The Special Rapporteur is concerned, however, about the position of witnesses who will testify in domestic

12 See generally Commission on Human Rights, *The Right to Restitution, Compensation and Rehabilitation for the Victims of Gross Violations of Human Rights and Fundamental Freedoms*, Final Report of the Special Rapporteur E/CN.4/Sub.2/1993/8, 2 July 1993.

13 Reports of the field operations are available on the internet at <http://www.unhchr.ch>.

courts, or before the International Criminal Tribunal for the Former Yugoslavia, about violations of humanitarian law committed in Bosnia and Herzegovina and elsewhere in the former Yugoslavia. She believes that all such witnesses, and notably victims of sexual abuse, should receive adequate assistance and protection. Personal details should be treated with the strictest confidentiality and not disclosed unless absolutely necessary for the conduct of criminal proceedings. Governments should give priority to protecting such witnesses at the request of domestic courts and the Tribunal.¹⁴

Later in her report the Special Rapporteur makes clear that she is concerned by the lack of cooperation the Entities are displaying with respect to the “apprehension and transfer to the International Criminal Tribunal at the Hague of all indicted war crime suspects”.¹⁵ She urges the international community to take appropriate action “[i]n the event that local authorities continue to prove unable or unwilling to undertake their obligations in this regard”.¹⁶

This report has been cited by the General Assembly which has also expressed its concern about the “extraordinary suffering of the victims of rape and sexual violence” and the necessity to provide appropriate medical and psychological care to the victims as part of programs of rehabilitation.¹⁷ Paragraph 10 of the General Assembly’s resolution suggests that the Entities are not cooperating as fully as they could with programs of rehabilitation, especially for those who are internally displaced. The General Assembly has demanded that:

the parties cooperate fully with the International Committee of the Red Cross, the United Nations High Commissioner for Human Rights, the Special Rapporteur of the Commission on Human Rights and her staff, as well as other mechanisms of the Commission on Human Rights, the United Nations High Commissioner for Refugees, the monitoring and other missions of the European Union and the Organization for Security and Cooperation in Europe, including by providing full access.¹⁸

Another area of concern is the lack of willingness on the part of the Entities, particularly the Republika Srpska, to fulfil its obligations under Annex 7 to the Dayton Peace Accords with respect to the rights of refugees and displaced persons. Pursuant to the terms of Annex 7 anyone in the police, paramilitary or the military responsible for serious

14 As above, fn4 para 28.

15 At para 35.

16 As above.

17 *Rape and Abuse of Women in the Areas of Armed Conflict in the Former Yugoslavia A/RES/51/115*, 12 December 1996 paras 7, 8.

18 At para 10.

violations of human rights is to be prosecuted and dismissed from the relevant force (Article I para 3(e)). Both the reports of the UN High Commissioner for Human Rights field operations in the Former Yugoslavia and the Special Rapporteur have indicated that the required vetting of the police has not taken place.¹⁹ Further, the reports of the UN High Commissioner indicate police officers are not protecting returnees. In its 3 April 1997 report the Human Rights Field Operation based in Bosnia and Herzegovina stated that the police in some areas had attacked and harassed civilian returnees. There is little doubt that the failure of the two Entities to carry out their obligations as set out in Annex 7 will have a significant impact on the women who were raped and sexually abused. They are unlikely to trust those who in theory are there to protect them and would feel physically insecure if they attempted to return to their homes. Given the participation of the military and the paramilitary forces in the violations of women's human rights, the unwillingness of the Entities, in particular the Republika Sprska, to adhere to the agreed process for vetting demonstrates a fundamental disrespect for the human rights of women.

AN ALTERNATIVE STRATEGY

The theme of the symposium was "Reflections on the Past, Strategies for the Future". When I sat down to write my paper I thought about the situation of the Comfort Women and whether we had learned anything about the experiences of women and their views of the assistance they want and the methods for delivering that assistance. During the International Commission of Jurists mission undertaken with respect to the Comfort Women issue,²⁰ my colleague, Snehal Paranjape, and I interviewed more than 40 women. Consistently in those interviews, the women emphasised that the horrors they experienced did not end when the rapes ended. For them the emotional and psychological pain continued for the remainder of their lives. They described the enormous emotional burden of having to keep secret their experiences, the constant sense of shame and the knowledge that they would be ostracised by their communities if anyone learned of their past. For those whose experiences were known, many felt little choice but to live in isolation. Some had to endure insults and verbal abuse from their husbands and their societies. Fifty years after the events the feelings of torment and of a great sense of loss remained overpowering.

During the interviews the women described the importance of receiving a full and frank apology, the necessity to receive compensation in recognition of the harms they had

19 See January 1997, 3 April 1997 and 29 May 1997 reports of the Human Rights Field Operation in the Former Yugoslavia (HRFOFY) available on the internet, as above, fn13 and Rehn, as above, fn4.

20 The author was a member of an investigative mission sent by the International Commission of Jurists to the Philippines, Japan, the Republic of Korea, and the Democratic People's Republic of Korea to inquire into the situation of the women who had been held by the Japanese armed forces as so-called "Comfort Women". The other member of the mission was Snehal Paranjape, an Indian solicitor. A report of the mission has been published by the International Commission of Jurists, see Dolgopol & Paranjape, *Comfort Women: An Unfinished Ordeal* (ICJ, Geneva 1994).

suffered, the importance of accessing medical services and counselling. It was crucial to the women's sense of empowerment that those working with them understand their situation and have empathy and respect for them. If we had learned from past experiences then the government of Bosnia and Herzegovina and the Entities that make up the Republic would not have been allowed to absolve themselves of responsibility. The structure of the Dayton Peace Accords allows and in fact encourages the Republic to step back from its responsibilities. The government is able to claim that it is the international community which must respond to the women, not it. Although I recognise that in a war-torn country, the monetary and human resources to undertake all the steps needed for the full rehabilitation and reintegration of the women who were raped and sexually abused will not be easy to locate, it should still be possible for the government to devote some resources to this pressing situation as a matter of priority and to work closely with the international community in the setting up of services and other necessary programs. As noted above, this is not occurring.

It is time the international community, whether through the General Assembly, the Commission on Human Rights, the Security Council or the various nongovernment and intergovernmental organisations working in the territory of the Former Yugoslavia, insisted that the government of the Republic become a full partner in efforts to redress the violations of human rights committed against women. Oblique references to the importance of cooperation and the obligation of all states to provide appropriate assistance are not sufficient. The obligations of the Republic have to be clearly enunciated. Not to do so is to condone the present inaction of the government and to make the international community an accomplice to the continuing violations of the rights of women.

In terms of government responsibility, specific ministries should have been named as being responsible for providing reports to the High Representative on progress being made with respect to the reintegration and rehabilitation of those who experienced gross violations of their human rights. In addition, these ministries should have been made responsible for providing a quarterly assessment of the needs of those still traumatised by the war; this would assist in the facilitation of the work of international government and nongovernment organisations and would make the Bosnian government a responsible and direct player in this area. At the moment, judgements about priorities and needs are being made by those who are outsiders to the country and are not part of the population which must work together to build a new country.

In addition to identifying those within the national government who should be responsible for reporting on progress and areas of need, officials of each of the Entities should have been named who would be responsible for carrying out such work within an Entity. Making the Entities and the national government directly responsible would have sent a message to those suffering human rights violations that the government believes their needs to be important. It would also help to build the necessary infrastructure and commitment within the government and the nation. It is important to those who have

suffered gross violations of human rights to know that their societies are aware of the violations perpetrated against them and that they have the support of their societies in their attempt to overcome the physical and psychological affects of those violations. Looking to the future, such support is vitally important as there will come a point when the majority of the international organisations and agencies working within the country at present will leave. If the necessary structures and support mechanisms are not in place when that happens the victims will be left in an untenable situation as they will not be able to call on their compatriots to provide the required assistance, whether material or moral.

In addition, the involvement of the government and the Entities should include an obligation to develop human rights education programs; these are necessary to sensitise the population to the impact of human rights violations on individuals as well as the society as a whole. There can not be rehabilitation in any meaningful sense if the truth of the country's past is not addressed. "Unless a society exposes itself to the truth it can harbour no possibility of reconciliation, reunification and trust. For a peace settlement to be solid and durable it must be based on truth."²¹ It is not clear that the Accords or the negotiations leading to the Accords gave sufficient attention to the importance of putting in place a mechanism which would allow for an in depth discussion of the legacy of the war. A mechanism for encouraging discussion which does not focus on blame and does not allow a discussion to be side-tracked by political expediency is necessary if the society is to be rebuilt and become a nation.

With respect to individual women and children, there is a need for a fund which would provide assistance for efforts at reintegration into the community. The purpose of such a fund would be to cover the cost of women re-establishing themselves in their homes, economic assistance with living expenses, specialist medical services, counselling, psychological and psychiatric treatment, research into issues faced by women attempting to reintegrate into their communities after the infliction of rape and sexual assault, and public education campaigns to highlight the trauma experienced by those who have been raped and sexually assaulted. All work in this area must assist in restoring the women's sense of self worth and dignity.

In addition, a separate fund should be created to offer some form of compensation to the women who were raped and sexually assaulted. There is no mention of compensation for those who experienced human rights violations which infringed their physical safety and affected their psychological well being. In contrast, Annex 4 Article II para 5 allows for

21 Roberto Canas, quoted in Borraine, "Alternatives and Adjuncts to Criminal Prosecutions" speech delivered on 20 July 1996 in Brussels at the conference on Justice in Cataclysm: Criminal Tribunals in the Wake of Mass Violence.

See <http://www.truth.org.za/reading/speech01.htm> as quoted in Byrt, "Reconciliation - The Path to Self-Determination: Comment on Report of the Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families", student essay submitted 20 June 1997 (essay in possession of the author).

the return of refugees and displaced person and states that they are to have restored the property of which they were deprived in the course of hostilities or be compensated for any property that cannot be restored. Annex 4 also contains a provision calling on the Entities to provide financial assistance to displaced persons who wish to return to their homes.

This dichotomy between the approach to violations of physical and mental integrity and violations of the right to property has occurred at the close of previous wars. In respect to the legislation providing for the payment of compensation by Germany put into effect by the Allies at the close of World War II, the report of the Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation for the Victims of Gross Violations of Human Rights and Fundamental Freedoms contains the following statement:

many observers maintained that damage to property and possessions received too favourable consideration in comparison with the less generous treatment of damage to life and health.²²

Creativity and commitment are needed if we are to move forward in the protection of the rights of women and the girl child. As is evident from the Dayton Peace Accords, commitment to the rights and interests of women can not be taken for granted even when there is overwhelming evidence of the violation of women's rights. A part of our strategy for the future must be the continued lobbying of those responsible for the development of international law, whether at the United Nations or in Departments of State or Ministries of Foreign Affairs. It is important that those with the power to affect the outcome of negotiations and to elaborate new ideas for redress be encouraged to think about alternative responses to systematic and gross violations of human rights. Our present approach tends to overlook the real needs of those who have suffered violations of human rights and focuses on what is perceived to be the "political realities". It is not clear that this mind-set has led to durable and workable solutions to situations where mass violations of human rights have taken place. Perhaps it is time to be less pragmatic and to give greater prominence to the many "feminist interventions" which have been and are being made. Progress involves risk taking; it may also involve a redefinition of what constitutes progress.

22 As above, fn12 p45.