Reparations in Dayton’s Bosnia and Herzegovina

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The 1992 to 1995 conflict in Bosnia and Herzegovina saw about 250,000 people killed,1 with torture, rape, expulsions, property destruction and ‘ethnic cleansing’ perpetrated on a massive scale, and which caused the displacement of about two million people. The conflict resulted in financial and human costs that completely devastated the country. Broad segments of society experienced different forms of victimisation. Even for those who managed to resume their lives after the conflict, the lack of formal acknowledgment of the crimes, patchy efforts of accountability and many war-time violations left unaddressed made the process of moving forward all the more difficult.

On 26 February 2007, the International Court of Justice ruled that Serbia was not responsible for genocide in Bosnia and Herzegovina. It did conclude that the 1995 massacres at Srebrenica that resulted in the deliberate killing of 7,000 or more Bosnian Muslims was ‘genocide.’ It also determined that the Serbian Government failed to fulfil its legal duties under the Genocide Convention by not preventing or punishing these events. In its pleadings, the State of Bosnia and Herzegovina had claimed extensive reparations for war-time damages but the Court in its final ruling provided that the declaration of responsibility set out in its judgment was sufficient satisfaction, and ordered Serbia to hand over Bosnian Serb General Ratko Mladic to the International Criminal Tribunal for the Former Yugoslavia.2

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1 The estimate that 250,000 people were killed during the conflict is the most widely cited, although research published in 2005 by Mirsad Tokaca, head of the Sarajevo-based Research and Documentation Centre, puts the number at around 100,000.

Many had hoped that the ruling of the International Court of Justice would go some way to afford a remedy and reparations to the many victims of the conflict. But as one leading advocate put it, shortly after the ruling was announced:

survivors, rushing these days into my office having lost even the ultimate hope that the world will confess the horrible crime committed upon them and clearly name the responsible ones … Already for two days, throughout the scaffold of Bosnia and Herzegovina, the criminals celebrate. The victims have lost, even this time. Only emptiness fills me out; I feel it so painfully.3

The failure of the International Court of Justice to deal effectively with the question of reparations follows directly from its determination that it was not shown that the genocide would have in fact been avoided if Serbia had acted preventively, and its findings were necessarily limited to the case before it. Nonetheless, the decision underscores the failure thus far to adequately and effectively deal with the question of reparations for the victims of the conflict in Bosnia and Herzegovina.

Reparation is not a new issue in Bosnia and Herzegovina. A variety of measures have been put in place though they have largely been piece-meal. At the international level, the rulings of the International Criminal Tribunal for the Former Yugoslavia have been important in acknowledging the crimes and bringing a measure of accountability. Rule 106 of its Rules of Procedure and Evidence provides that judgments establishing guilt are to be binding as to the criminal responsibility of the convicted person for the purpose of an action for compensation, which might be brought by victims in national courts. This provision has not been of particular use to victims in bringing reparations claims. Judge Jorda, then President of the Yugoslav Tribunal, expressed the need to develop appropriate mechanisms for reparations,4 as did the President of the Rwanda Tribunal, but the idea didn’t go far for fear that becoming involved in reparations might well prevent the Tribunals from carrying out their main objective.5

Several foreign courts have considered claims for compensation resulting from the conflict in Bosnia and Herzegovina. In the United States, two default judgments were entered against Radovan Karadzic6 and in 2002, a Georgia court issued a judgment against Nikola Vuckovic and others for torture, cruel, inhuman

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