Transitional Justice in Prijedor:
Ideals and Shortcomings of Criminal Prosecutions after the Bosnian War

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In partial fulfillment of the requirements for the degree of Masters of Arts

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Budapest, Hungary

2015

Executive Summary

The municipality of Prijedor experienced massive human rights violations during the Bosnian War. There have been tremendous international and domestic efforts to deliver justice for the crimes that were committed in Prijedor. The International Criminal Tribunal for the former Yugoslavia (ICTY) and the local Bosnian courts have worked to hold individuals accountable and create a historical record of what happened during the conflict. In doing so they have convicted over 40 people for violations of international humanitarian law in Prijedor. However, despite the impressive prosecutorial record of these courts, the city of Prijedor is engulfed in a culture of silence that refuses to recognize the victims of war. As such the city has not experienced reconciliation and the formerly warring sides are still divided.

Prijedor is home to more convicted war criminals than anywhere on earth and after twenty years of adjudication individuals are still being tried. The ICTY has made use of innovative legal doctrines in order to hold more people accountable. Both low and high level perpetrators have been tried and convicted. The ICTY built capacity in Bosnia in order for war crimes cases to be tried locally. From a conviction standpoint, the prosecution of Prijedor war criminals has been hugely successful.

Most transitional justice advocates assert that reconciliation occurs as a result of successful criminal prosecutions. However, despite the overwhelming number of convicted war criminals from Prijedor, reconciliation has not happened. One reason for the failure of courts to contribute towards reconciliation is that victims have experienced much frustration with both the Tribunal and the local courts. One source of frustration arose from the use of plea bargains because a guilty plea often resulted in a low sentence for the defendant. Furthermore, victims were frustrated with the process of testifying. Although The Hague

provided the necessary protective measures for witnesses, those who came to testify were frustrated because they were not able to fully tell their story. Protective measures were lacking in the local court, which prevented victim-witnesses from testifying at all.

A further problem explained in this thesis is the ineffective outreach programs of both the ICTY and the local courts. Outreach is necessary to inform all the ethnic groups about what the courts have proven. However, the ICTY was late to create its Outreach Program, allowing politicians and the media to distort the facts. The local courts had an easier task because they are closer to the affected communities, but their outreach efforts remain underfunded and neglected. With the lack of public knowledge of court decisions regarding war criminals in Prijedor, the political elites have manipulated the truth.

In addition to the shortcomings of the Tribunal and local courts, the current political situation in Prijedor is also a huge obstacle to the process of reconciliation. Today in Prijedor, the Bosnian Serb leadership prohibits non-Serbs from memorializing their victims of war. The Bosnian Serb mayor condemns commemoration marches by non-Serbs. The victims of war are invisible in the city, which refuses to understand and accept the past. Despite all the criminal proceedings against Prijedor war criminals, the municipality remains divided.

Acknowledgements

I am thankful for all the advice and encouragement I received from my supervisor, Dr. Vladimir Petrovic. Even though we lived on different continents for the last year, he provided much guidance and helped broaden my perspective.

I would also like to thank my parents, who are always there to support me through any endeavor I undertake. This thesis would not have been possible without all of their love.

I am grateful to Roel Holman, who always stands by my side and believes in me. His endless support and encouragement helped me tremendously in the writing of this thesis.

Finally, I would like to acknowledge the people of Prijedor. They taught me what it means to believe in something and fight for it in the face of all odds.

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Introduction

At the end of World War II the victorious allied powers established the first International Military Tribunal to try the alleged Nazi war criminals in Nuremberg. The jurisdiction of the Tribunal encompassed war crimes, crimes against peace, crimes against humanity and conspiracy. The allied prosecution team tried 24 and convicted 21 persons, who were responsible for the atrocities committed by the Nazi Regime.[1] The trials gave many answers, but posed new questions as well. The state of Israel held its own trial against Adolf Eichmann, and this trial was meant to be representative of the crimes perpetrated against the entirety of the Jewish people.[2] Philosopher, Hannah Arendt traveled to Israel to cover the trial. She wrestled with the issue of judicial ability to try crimes of such a massive and atrocious scale. She posed the question of how a legal trial could serve justice after the commission of such extraordinary crimes.[3] In her famous report on the banality of evil, she concluded that they certainly could not. Thus, the end of the Second World War introduced the practice of holding war criminals accountable both at the international and national levels. After a period of silence in international criminal justice during the Cold War, the questions posed by Arendt are as relevant now as when she posed them.

Although the world community said "never again" after the atrocities committed during the Holocaust, the world has in fact seen such massive and grotesque killings occur multiple times over. These brutalities have happened across the globe and even once again on the European continent. War erupted in Southeastern Europe, as the republics that made up the Socialist Federal Republic of Yugoslavia began vying for independence. No longer one

[1] United States Holocaust Memorial Museum. "International Military Tribunal at Nuremberg" Holocaust Encyclopedia http://www.ushmm.org/wlc/en/article.php?ModuleId=10007069 accessed on 09 September 2015
[2] H. Arendt "Eichmann in Jerusalem: A Report on the Banality of Evil", New York: Penguin Books, 1977. Epilogue p. 254
[3] H. Arendt, p. 255-56
[4] For Arendt, p. 255-56der, Marshall Tito held the diverse ethnic landscape of Yugoslavia together by promoting

country held together by the "Brotherhood and Unity" concept,[4] neighbors turned against neighbors as they fought for the interests of their own ethnic group.[5] Bosnia experienced intense fighting and the worst human rights violations. It has now been established that out of over 130,000 people who lost lives in the Yugoslav wars, almost 100,000 perished in Bosnia and Herzegovina.[6] Additionally, millions were displaced. Detainment camps were established, where beatings, torture, rape and killings became the norm. The expediency and the scope of these crimes were astounding. Consider the Bosnian municipality of Prijedor, with a strategic local and a mixed population of Muslims, Serbs and Croats, which made it an early site of struggle in the war that erupted in Bosnia and Herzegovina.[7] Bosnian Serbs targeted Muslims and Croats in Prijedor in order to create an ethnically homogenous Greater Serbian territory. Over three thousand non-Serbs from Prijedor were killed or disappeared,[8] and 55,000 were forcibly displaced during the Bosnian war.[9]

Much of this violence occurred in the first months of war, as by late summer 1992 much of this territory was already "cleansed." Overly confident, the Bosnian Serb leadership allowed journalists access into two camps near Prijedor: Omarska and Trnopolje. The reporters filmed emaciated men trapped behind barbed wire.[10] With the help of British journalists, the world's attention was once more drawn to a bloody and inhumane war being

[4] Former Yugoslav leader, Marshall Tito held the diverse ethnic landscape of Yugoslavia together by promoting a policy of "brotherhood and unity," which maintained a Yugoslav identity over a Catholic, Orthodox or Muslim affiliation.
[5] J. Lampe, "Yugoslavia as History: Twice There was a Country" Second edition *Cambridge University Press* 2000 p. 365-366
[6] UN ICTY, "The Conflicts" accessed: http://www.icty.org/en/about/what-former-yugoslavia/conflicts
[7] Report of the Commission of Experts Established Pursuant to United Nations Security Council Resolution 780 (1992), May 27, 1994 (S/1994/674), English
[8] "A Global Call for Victims' Rights to be Upheld in Prijedor, Bosnia and Herzegovina" ICTJ 10 August 2013 retrieved: https://www.ictj.org/news/global-call-victims%E2%80%99-rights-be-upheld-prijedor-bosnia-and-herzegovina-0
[9] D. Dzidic, "Coming home to face the past" *Balkan Insight* 07 February 2013 retrieved: http://www.balkaninsight.com/en/article/coming-home-to-face-the-past/1449/5
[10] D. Campbell, "Atrocity, memory, photography: imaging the concentration camps of Bosnia – the case of ITN versus *Living Marxism,* Part 1." *Journal of Human Rights,* Vol. 1, No. 1. March 2002 p. 2-5

waged in Europe.[11] Their reports were published on August 6th, 1992 and became proof that ethnic cleansing was underway in Bosnia. (*See TIME magazine article picture of Trnopolje camp in Appendix 1*) In response to the visual evidence published of the camps and the testimony of refugees from the region, the United Nations established an expert committee to investigate the events transpiring in Bosnia and other ex-Yugoslav republics.[12] Their findings prompted the United Nations to create the International Tribunal for the Former Yugoslavia (ICTY), in an effort to try those most responsible for the crimes committed during the war.[13] The Tribunal established itself as a mechanism to hold individuals accountable, to deter crimes, and bring justice to victims. [14]

The ICTY was the first international tribunal established since the world said "never again" after the atrocities of the Nazi regime. Twenty-two years have passed since the establishment of the Tribunal. So far, the Tribunal has sentenced 80 individuals for crimes related to the war in the former Yugoslavia and over 15 of those individuals were related to the atrocities that occurred in Prijedor.[15] The ICTY additionally helped develop capacity in Bosnia and with local help established the War Crimes Chamber in the Court of Bosnia and Herzegovina, which has tried another 25 people for crimes in the Prijedor.[16] Looking at the numbers, one would conclude that a strong sense of justice has been served for the atrocities that were perpetrated in this city, creating a setting for reconciliation and responding to demands for the necessity of transitional justice. However, with the prosecution of such egregious crimes, it must be questioned whether criminal trials can adequately address the different aspects necessary for rendering justice and promoting reconciliation.

[11] Penny Marshall and Ian Williams recorded footage from inside the Trnopolje and Omarska detention camps for British ITN News on August 6, 1992.
[12] UN S/Res/780 06 October 1992 paragraph 2
[13] Michael P. Scharf "Balkan Justice: The Story Behind the First International War Crimes Trial Since Nuremberg" Carolina Academic Press 1997 p. 35
[14] 'About' UN ICTY accessed: http://www.icty.org/sections/AbouttheICTY 27 March 2015
[15] 'In Numbers' UN ICTY accessed: http://www.icty.org/sid/10586 09 September 2015
[16] BiH War Crimes Case Map, *OSCE Mission to Bosnia and Herzegovina* http://www.warcrimesmap.oscebih.org/ 25 March 2015

Reconciliation is a difficult term to define and even harder to measure. Arendt stated that reconciliation requires individuals "to come to terms with reality as such and to affirm one's belonging to this reality as one who acts in it."[17] Janine N. Clark expands on this concept by explaining that there is thin and thick notions of reconciliation. Thin reconciliation is merely co-existence, whereas thick reconciliation is the reestablishment of trust and empathy between previously warring parties.[18] Although criminal trials claim to promote reconciliation through ending impunity and establishing a historical record of the facts, there are in fact many tensions that arise in the implementation of these objectives. As Leebaw argues, criminal trials dig into the violent past and have the potential to re-open old wounds, create political instability and obstruct the process of moving forward.[19] Clark also opines that tensions exist when criminal trials try to promote accountability, truth and reconciliation. She claims that international tribunals aim to deliver justice to victims, but this becomes complicated because courts and survivors of conflicts have different interpretations of justice. Hence, the legalistic approach to justice, which involves holding an individual accountable for his/her actions, may fall short of the justice victims want to *feel* in order for them to move forward with their lives.[20] Finally, Clark demonstrates that the tension between truth and reconciliation occurs because a court merely establishes the legal facts, but reconciliation depends on individuals from all sides accepting and believing the past and ending denial.[21] The need for local communities to accept the truth is often out of the reach of the tribunals, and therefore the truth they do establish is insufficient for reconciliation. These

[17] H. Arendt, *Denktagebuch*, eds. Ursula Ludz and Ingeborg Nordmann, 2 vols. (München: Piper Verlag), 2003 p. 331 as seen on R. Berkowitz "The Power of non-Reconciliation" November 2011 http://www.hannaharendt.net/index.php/han/article/view/11/8)
[18] J.N. Clark, "International Trials and Reconciliation: Assessing the Impact of the Internatonal Criminal Tribunal for the Former Yugoslavia." *Routledge.* New York, 2014. 41-42
[19] B.A. Leebaw, "The Irreconcilable Goals of Transitional Justice" *HRQ* vol. 30 No. 1 February 2008 p. 96
[20] J.N. Clark, "International Trials and Reconiciliation" p. 54
[21] ibid, 55

tensions between the goals of international criminal justice may hinder the effects trials have on local populations trying to recover from violent conflicts.

Research Question and Methodology

This thesis is an exploration of the question: do war crimes trials complete what they set out to accomplish, namely the ending of impunity, the establishment of a historical record and contributing towards reconciliation, or do they complicate the process of dealing with the past and leave ethnic groups divided? While examining these questions, I assess the ICTY and the local Bosnian courts in their efforts in relation to Prijedor. I put these questions into the framework of transitional justice (TJ) by examining two pillars of the post-conflict justice scheme, namely accountability and truth telling, and I explain how the implementation of these goals affected the people of Prijedor, how they responded to the practice of the courts, and if these criminal prosecutions have helped to reconcile their war torn community.

The municipality of Prijedor is home to the largest number of convicted war criminals on earth[22]. The fact that both the ICTY and the local Bosnian Courts have adjudicated many cases for crimes committed in Prijedor makes the city an excellent candidate for a case study testing the hypothesis that criminal prosecutions are actually in conflict with reconciliation because of the tension that exists between the aims of tribunals. And although there have been significant efforts to hold people accountable both by the international community and at home, can these trials actually help the victims come to terms with the reality that they are faced with now? Prijedor is an important city to study because if reconciliation cannot occur in a city with so many individuals prosecuted for war crimes, then it is unlikely that war crimes trials can bring about reconciliation anywhere on earth. With the recent creation of the International Criminal Court and the increased popularity surrounding criminal prosecutions

[22] "The Letter to Send to the Mayor of Prijedor Marko Pavic." *Stop Genocide Denial* 14 May 2012 accessed: http://stopgenocidedenial.org/2012/05/14/the-letter-to-send-to-the-mayor-of-prijedor-marko-pavic/ 26 Nov 2015

for suspected war criminals, the study of Prijedor is necessary in order to realize what do war crimes trials offer people who are desperate for justice.

My methodology for the thesis involves primary sources and secondary sources. The primary sources are the documents compiled by the United Nations Committee of Experts for the former Yugoslavia, which provided detailed accounts on the alleged commission of human rights violations that occurred during the war. The judgments and evidence rendered by the ICTY and the Bosnian Courts also provided rich primary evidence into the processing of war crimes trials and evidence used. I also visited Sarajevo, Banja Luka and Prijedor and conducted interviews with war survivors and representatives of local NGOs. For secondary sources, my research includes scholarly articles and OSCE and Human Rights Watch reports, which analyze the effects of war crimes trials at the international and national levels and how these trials have affected the local communities and what the victims' responses are to such trials.

Limitations of the study

The study is limited in several regards. One such limitation is that I focused my research on the non-Serb victims of war even though there were human rights abuses perpetrated from all sides. Since Prijedor is now part of the Bosnian Serb controlled entity of Republika Srpska, I wanted to examine how the situation is for non-Serbs living in this entity after the war in terms of reconciliation. Additionally, my lack of Bosnian/Croat/Serb language skills meant I could only rely on court documents released from local courts in English. Finally, the work of the ICTY and Bosnian courts is still in progress, there are still cases being heard in both jurisdictions, especially within the Court of Bosnia and Herzegovina (BiH), which will complete its work in 2023. In that respect, some of the findings described in this thesis could be interim and some of the victims' dissatisfaction

could be resolved over time. Nevertheless, despite these shortcomings, there was still ample evidence to assess my research questions.

The thesis begins by examining the history of war in Bosnia and the specific human rights violations that occurred in Prijedor. The following chapter will introduce the framework of transitional justice will be explained through which the effectiveness (or lack thereof) of the local and international judicial efforts for creating accountability and establishing the truth will be analyzed. Through this framework, I will examine the extent to which both accountability and truth-telling have been addressed at both the international and national level, where the tensions exist in this process, and how the rendering of truth and justice is perceived by the victims. Finally, I will conclude with an analysis of the ICTY as compared to the domestic courts to assess if either can be deemed to have contributed to the reconciliation process in Prijedor.

1. War in Prijedor

"Ethnic cleansing does not appear to be the consequence of the war, but rather its goal. This goal, to a large extent, has already been achieved through killings, beatings, rape, destruction of houses and threats…"[23]

The break-up of Yugoslavia began in 1991 and the fighting lasted in the Balkan region for a decade. War broke out first in Slovenia and then Croatia as both nations fought for independence. Slovenia had a mostly homogenous ethnic population fighting only lasted ten days, but war persisted in the more ethnically diverse Croatia. Bosnia had an even more mixed ethnic population and after onslaught of violence in Croatia, war in Bosnia seemed probable. According to the 1991, Bosnia's population consisted of 44% Bosniaks, 31%

[23]UN General Assembly Resolution A/47/635 S/24766 06 Nov 1992 para 4

Bosnian Serbs and 17% Bosnian Croats.[24] Such ethnic diversity in Bosnia and Herzegovina, with each group having its own interests to maintain, made it a fertile ground for violence to erupt. (*See appendix 2 for a map of the breakup of Yugoslavia.)*

As war loomed, the threat of violence made neighbor turn against neighbor. Intense fighting erupted early in Northwestern Bosnia in the Krajina region. This area was strategically important to the Bosnian Serbs due to its geographical and demographic makeup. Human rights violations took place on all sides, but in the Bosnian Krajina it was non-Serbs who suffered the gravest atrocities. The municipality of Prijedor lies in the Bosnian Krajina and its non-Serb population was targeted "ethnically cleansed" from the city. The Bosnian Serbs carried this out in the form of deportations, executions, looting, raping and detainment in camps. It was later determined by the United Nations that it was a systematic effort on behalf of the Bosnian Serbs to cleanse this territory of the non-Serb element. The very term, 'ethnic cleansing' was coined in connection to crimes committed on this region, inspected by United Nations Commission of Experts in 1993 and defined as, "[r]endering an area wholly homogenous by using force or intimidation to remove persons of given groups from an area." [25]

1.1 Political tensions and preparation for ethnic cleansing

By 1991 the political parties in Bosnia, which were divided along ethnic lines, began to have opposing views about Bosnian independence.[26] The Bosniak Party of Democratic Action (SDA) and Croatian Democratic Unity Party (HDZ) both supported a Bosnia independent from Yugoslavia, but the Serb Democratic Party (SDS) wanted to keep Bosnia

[24] "The National Composition of Yugoslavia's Population, 1991" *Yugoslav Survey* 1 (1992) retrieved from: J. Lampe, "Yugoslavia as a History: Twice there was a country." 2nd ed. *Cambridge University Press* 2000 p. 337
[25] Report of the Commission of Experts Established Pursuant to United Nations Security Council Resolution 780 (1992), May 27, 1994 (S/1994/674), Para 130
[26] *Brdjanin Case* IT-99-36 (judgment), 01 September 2004 para 61

within Yugoslavia to have all Serbs in one state.[27] SDS leader, Radovan Karadzic, went so far to make the threat that if the Muslims declared independence they would disappear from Bosnia.[28]

In spite of this threat, in October 1991 the HDZ and SDA voted without the SDS leadership and passed a "Declaration of Sovereignty," moving them one step closer to independence.[29] A few days later, the SDS set up a separate Serbian Assembly in BiH and elected Momcilo Krajisnik as the President. They asked the Bosnian Serbs whether they supported independence, but the majority wished to remain part of Yugoslavia.[30] Despite this indication, the SDA and HDZ still moved forward with independence and they held a referendum for independence. Most Bosnian Serbs boycotted the referendum, but a majority of voters voted in favor of independence. By April 6, 1992, the European Community recognized an independent Bosnia.[31] This increased tensions in Bosnia and war was on the horizon.[32]

1.2 Bosnian Krajina: A hotspot for ethnic cleansing

With the threat of independence from Serbia looming large, Bosnian Serbs began orchestrating a plan to keep all Bosnian Serbs together in an ethnically homogenous area. One region that became essential for the Bosnian Serbs to maintain was the Bosnian Krajina. The Krajina region borders Croatia and brought many Croatian Serb refugees into the Bosnian Krajina, causing a housing crisis.[33] The displaced population reinforced the threat to Bosnian Serbs about what may happen to them if war began in Bosnia.[34] It became crucial to Bosnian Serb leadership to have a region designated for Serbs only within Bosnia and

[27] R. J. Donia "Radovan Karadzic: Architect of the Bosnian Genocide" *Cambridge University Press* 2014 p 46-47
[28] *Brdjanin Case* IT-99-36 (judgment), 01 September 2004 para 60
[29] *Brdjanin Case* IT-99-36 (judgment), 01 September 2004 para 60
[30] Ibid, para 62
[31] Ibid, para. 63
[32] Ibid, para. 64
[33] *Brdjanin Case* IT-99-36 (judgment), 01 September 2004 para 58
[34] ibid, para 60

Herzegovina. The Krajina region became crucial in the implementation of an effective and far-reaching policy that would drive out the non-Serbs and create a Greater Serbia for Serbs to live.

Norman Cigar argues that the policy of ethnic cleansing in Bosnia followed a deliberate strategy that was carried out through a top-down approach.[35] Even before the declared independence, the SDS began coordinating with military forces and Bosnian Serb representatives to connect Serbian dominated zones in BiH together for the creation of a Serbian state.[36] The "Strategic Plan" that they created aimed to remove the non-Serb element from their desired Serbian state. The Strategic Plan was coordinated from the top tiers of Bosnian Serb authorities and passed down to local leaders to implement in their region.[37] The Plan was broken in to two parts, depending on the demographic composition of the municipality in question. Strategic Plan A was implemented in the case of a Bosnian Serb majority, and it Plan B was used in the case that Serbs were a minority.[38]

To accomplish the plan, Bosnian Serb leadership knew that "force and fear" would have to be used.[39] One such method was a propaganda war that sought to incite people to turn against their non-Serb neighbors.[40] Television stations were intercepted and directed from Belgrade rather than Sarajevo. The news being spread was that Muslims were preparing for war against the Serbs.[41] SDS leaders gave speeches on television claiming that Muslims were Islamic fundamentalists and Croats were Ustasha.[42] By late spring 1992, television reports

[35] N. Cigar, "Genocide in Bosnia: The policy of ethnic cleansing." Texas A&M University Press 01 June 2000 p. 47
[36] *Brdjanin Case* IT-99-36 (judgment), 01 September 2004 para. 65
[37] Ibid, para 209
[38] Ibid, para 180
[39] Ibid, para 66
[40] Ibid, para 80
[41] Ibid, para 81
[42] Ibid. Ustasha was the label for Croat fascists in during World War II.

mirrored the SDS vision for the Krajina, as they reported that non-Serbs should leave the territory.[43]

Another step in accomplishing the Strategic Plan, was the removal of non-Serbs from the public sector. Muslims and Croats in Krajina were dismissed from their jobs. Those who were allowed to keep their jobs had to swear their loyalty to the Bosnian Serb authorities. Refusal to sign such a promise would also result in dismissal from one's livelihood.[44] By the end of 1992, almost all non-Serbs had lost their jobs in the Krajina.[45]

1.3 Blitzkrieg and human rights violations

Prijedor lies in Northwestern Bosnia and is part of the Bosnian Krajina. Prijedor is one of the largest municipalities in the Krajina.[46] There were a high percentage of both Serbs and Muslims living in Prijedor, although neither was in the majority.[47] However, since Muslims had a slight plurality, the city would follow variant B of the "Strategic Plan."[48] (*See Appendix 3 for a map of the demographic makeup of BiH by municipality in 1991)* One step of the plan was to create Crisis Staffs that would operate at the municipal and regional levels and would be in charge of implementing the ethnic cleansing of the non-Serb populations.[49] The Serbian Assembly created the Territorial Defense (TO), which was the army of the Bosnian Serb state and tasked with gaining control of and cleansing the territories that the leadership desired. The forces were told to prepare for an imminent war.[50]

[43] Ibid, para 82
[44] Ibid, para 84-85
[45] Ibid, para 86
[46] R. Donia "Bosnian Krajina in the History of Bosnia and Herzegovina" *Statement of the Expert Witness Presented to the International Criminal Tribunal for the Former Yugoslavia under rule 94bis.* p. 1
[47] ibid, p. 2-8, However this was a contentious issue at the time, as Bosnian Serb leadership, SDS, believed that Serbs were declaring themselves as "others" on the census and so the actual percentage of Bosnian Serbs was skewed. Further, SDS leadership wanted to include in the population count for Prijedor the Serbs who lived in neighboring municipalities, and in this case they could have represented a the majority in Prijedor.
[48] According to the 1991 census, the population in Prijedor consisted of 112,543 residents: 43.9% identified as Muslim, 42.3% as Bosnian Serb, 5.7% as Yugoslavs and 5.6% as Bosnian Croat. The variant B plan was to be implemented when Serbs were in the minority of a municipality. *Brdnanin Case* IT-99-36 (Judgment) para 69-71
[49] *Brdjanin Case* IT-99-36 (judgment), 01 September 2004 para 7
[50] Ibid, para 73

In Prijedor, after the effective takeover of municipality offices, the JNA arrived and was able to arm the local Serb forces.[51] The results of the takeover meant loss of power of the non-Serbs in the region, they lost their jobs and Serbs filled their posts, their weapons were rounded up, the media criticized the Muslim leaders, and propagated that Muslims were preparing a genocide against Serbs.[52] These drastic measures that weakened the position of non-Serbs in Prijedor led up to the attack on several communities in the municipality. The execution of plan B was in effect, and the secure takeover of Prijedor by expelling the non-Serbs was underway.

Once offices were filled with Bosnian Serb individuals and forces were armed, the next step in the implementation of ethnic cleansing was the systematic attacks on the city and surrounding villages. Serbian military, paramilitary and police forces attacked three settlements in the Prijedor region between May 23 and 30th 1992. The first was the village of Hambarine, then the town of Kozarac and finally the city of Prijedor. Bosnian Serb forces shelled the villages with artillery fire, and forced the non-Serbs out of their homes.[53] In Kozarac, Serb forces killed 800 out of the 4,000 citizens of the village[54]. Prominent Muslim leaders were put on lists and singled out, separated from other civilians, arrested and reserved for elimination.[55] Many of the men from Kozarac and the surrounding areas were held in detention camps.

The three camps in the municipality of Prijedor were Omarska, Keraterm and Trnopolje. In the camp of Omarska the majority of prisoners were men, but 30 to 40 women were also detained in the camp. From May to August 1992, at least 3,000 individuals were

[51] UN Security Council, *Commission of Experts p. 38-39, 42-43;* Serbian Newspaper Kozarski Vjesnik on 9 April 1993, As Retrieved in: UN Security Council, *Commission of Experts* S/1994/674 p. 39
[52] Report of the Commission of Experts Established Pursuant to United Nations Security Council Resolution 780 (1992), May 27, 1994 (S/1994/674), p. 39
[53] ibid
[54] *Tadić Case* IT-94-1 (Judgment) 7 May 1997, para 565
[55] N. Cigar, "Genocide in Bosnia" p. 57-59

detained in Omarska.[56] Daily life in the camp was brutal, food and water was scarce and often spoiled or undrinkable, interrogations, beatings and torture were commonplace and men and women were raped.[57] People who were not put in camps were forced to hang white-sheets out of their windows to indicate that they were Muslims and wear white-arm bands when they left their homes.[58] Over 40,000 non-Serbs fled the municipality, and in total 94% of the non-Serbs were removed.[59] The Bosnian Serbs successfully created a homogenous Serb territory through implementing the Strategic Plan B.[60] By 1995, fewer than one thousand of the previous 50,000 Muslims remained in Prijedor.[61] Currently, less than half of the Muslim population that was present in 1991 has returned to live in Prijedor.[62] *(See Appendix 4 for the demographic makeup of municipalities in 1998)*

The world became aware of the atrocities occurring in Prijedor when reporters gained access to Omarska and Trnopolje and published the stories and images they captured. It was Republika Srpska President, Radovan Karadzic who granted access to Western journalists while he was in London for a peace conference. On live broadcast, Karadzic said if those alleging the existence of camps insisted on visiting them then they would not be denied access.[63] Although efforts were made to quickly conceal the conditions of the camps, the reporters still captured footage that was reminiscent of Nazi concentration camp conditions.[64]

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[56] *Kvocka et al. Case* IT-98/30/1 (Judgment Summary) p. 2-3
[57] ibid, p. 2-3
[58] E. Hodzic "White Armband Day" *Stop Genocide Denial* 17 May 2013 Retrieved from: http://stopgenocidedenial.org/2013/05/17/victims-rights-to-remembrance-and-dignity/ 22 March 2015
[59] P. McCarthy, *Empty Villages and Crowded Grave Yards: Preserving Memory in "Ethnically Cleansed" Prijedor* Balkan Witness: St. Louis, July 2007. http://balkanwitness.glypx.com/prijedor.htm 27 March 2015
[60] Ibid
[61] A. Neier, "War Crimes: Brutality, Genocide, Terror, and the Struggle for Justice." *Random House* 1998 p 138-139
[62] S. Latal, "Attack on Bosnian Muslims Raises Tensions in Prijedor." *BIRN Sarajevo* 13 August 2015 accessed: http://www.balkaninsight.com/en/article/new-incident-brings-ethnic-tensions-in-bosnia-to-boil-08-13-2015
[63] A. Neier,"War Crimes." page 135
[64] "ITN, Penny Marshall and The Observer, Ed Vulliamy in Omarska and Trnopolje" *ICTY (Youtube)* 08 Aug 2012 https://www.youtube.com/watch?v=w6-ZDvwPxk8
Penny Marshall and Ed Vulliamy reported from Trnopolje and Omarska in August 1992. They questioned camp officials who tried to refuse them entrance into the camps. When they were able to gain entrance and film and

The reports were timely because Human Rights Watch had been reporting on the atrocities taking place in the region and the visual evidence necessitated the creation of an investigative commission, whose findings contributed to the eventual establishment of a war crimes tribunal.[65]

1.4 The Creation of the ICTY

Such horrifying scenes once again occurring in Europe instigated the world community to take action and it contributed to the formation of a United Nations Commission of Experts to investigate the violations of international humanitarian law that were being carried out in the former Yugoslavia. The Commission of Experts investigated war crimes in Prijedor along with other locations in the ex-Yugoslavia. Due to their findings of mass human rights abuses the United Nations Security Council determined that an international criminal tribunal for the former Yugoslavia was necessary in order to deter more war crimes and to bring individual perpetrators to justice.[66]

In over twenty years of its operation, the ICTY has claimed to have "irreversibly changed the landscape of international humanitarian law"[67]. Their website lists achievements of the Tribunal, which include ending impunity for war criminals, bringing justice to victims, allowing victims to be heard, creating a judicial truth of the facts of the conflict, inspiring the creation of other international courts, and strengthening the domestic courts in the former Yugoslavia.[68] Laying claim to such a multitude of achievements paints the picture that the ICTY has succeeded in rendering justice for war criminals and helped victims recover from the atrocities committed against them.

interview the prisoners, the prisoners were very reluctant to speak for fear of retaliation. However, the reporters were able to capture the fear and harsh conditions that persisted in the camps.

[65] A Neier, "War crimes" 134-137

[66] M. Scharf "Balkan Justice: The Story Behind the First International War Crimes Trial Since Nuremberg" Carolina Academic Press 1997 p. 36

[67] "About the ICTY". *UN ICTY.* accessed: http://www.icty.org/sections/AbouttheICTY 27 March 2015

[68] "Achievements," *UN ICTY.* accessed: http://www.icty.org/sid/324 27 March 2015

Even though there have been more war criminal trials dealing with individuals from Prijedor than anywhere else in the world, there are barriers that exist in the city which prevent both victims and non-victims from dealing with the past. The division of the country during the Dayton Peace Agreements allocated forty-nine percent of the Bosnian territory to be part of the Serbian Republic of Bosnia and Herzegovina, which took the name Republika Srpska.[69] The municipality of Prijedor lies within this Serb-run entity. Despite the efforts of the international tribunal and the local Bosnian courts to hold individuals accountable, establish the truth, and contribute towards reconciliation, the political leaders in Prijedor and Republika Srpska maintain a culture of denial that remains present despite international and national efforts to administer justice.

2. The Transitional Justice Framework

The Second Chapter of this thesis will elaborate on the paradigm of Transitional Justice (TJ). Different mechanisms of transitional justice are often used after a repressive government has been replaced, usually after a violent conflict, in order to establish democracy and the rule of law.[70] This mechanism for bringing about a transition is relevant for Bosnia and Herzegovina after the war, because it was a newly formed country trying to operate after mass violence. The following chapter will examine two aspects of TJ and how they relate to reconciling a community and what problems may arise when carrying out this theory in a court of law. Subsequently, in chapters 3 and 4, these two pillars of TJ will be used to analyze to what extent justice has occurred in relation to Prijedor through the efforts

[69] "Bosnia and Herzegovina" *European Forum for Democracy and Solidarity* accessed: http://www.europeanforum.net/country/bosnia_herzegovina 17 July 2015

[70] A. Danner and J. Martinez, "Guilty Associations: Joint Criminal Enterprise, Command Responsibility and the Development of International Criminal Law" *California Law Review Vol. 93 1 Article 2,* 2005 p. 93

of the ICTY and the domestic court, what tensions arise in the administration of justice, and how the victims perceive the work of the courts.

2.1 Definitions of Transitional Justice and Reconciliation

As evidenced in the previous chapter outlining the history of the war in Prijedor, the conflict caused human rights violations on a massive scale. After such a conflict, it is critical to deal with the past so that such violence and abuse is not reoccurring. The concept of TJ seeks to reconcile a war-torn community by both judicial and non-judicial mechanisms in order to create a lasting peace and establish the rule of law.[71] The United Nations claims that transitional justice is "the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation."[72]

Ruth Teitel, a leading scholar on TJ, explains the concept as, "the view of justice associated with periods of political change, as reflected in the phenomenology of primarily legal responses that deal with the wrongdoing of repressive predecessor regimes."[73] Thus, the legal responses to a previously rogue regime is the impetus to create a new identity for a state by punishing the crimes of the former government. Teitel argues that there have been three phases of TJ, the first beginning after World War II with the Military Tribunals, which popularized international law and cooperation amongst states.[74] The second phase was initiated at the end of the Cold War with the fall of communism and the emergence of new democracies, and the third phase involves post-conflict societies implementing the rule of law.[75]

[71] "Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice" United Nations. March 2010 p. 3
[72] UN S/2004/616 *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies.* para 8
[73] R.G. Teitel, "Transitional Justice." *Oxford University Press,* New York, 2000. P. 225
[74] R.G. Teitel, "Transitional Justice Genealogy." *16. Harvard Human Rights Journal 69.* 2003 p. 70
[75] ibid, 70-71

Over time TJ has grown in popularity and in scholarship because it is believed to be a mechanism that through accountability and truth-telling can help people come to terms with past atrocities. However, as Chrisje Brants opines, although legal institutions can deliver justice and create a record of the past, those who lived through it may not agree with the truth established or the justice rendered.[76] Nevertheless, the judicial institutions set up to deal with past crimes still claim to hold perpetrators accountable and deliver justice to victims and positively contribute to the process of reconciliation.

In order to achieve reconciliation, all sides of a conflict must be able to work together to move on to a more peaceful future. Reconciliation requires the groups to move past their differences and accept one another.[77] On a deeper level, Hamber stated that reconciliation is a complex process that is not about creating harmony through forgiveness, but rather one that involves determining accountability for past crimes.[78] The International Institute for Democracy and Electoral Assistance further elaborates on this point and claims that that reconciliation is necessary after a conflict in order to consolidate peace and prevent future violence. It also helps survivors heal and rebuild communities.[79]

The UN has established several different mechanisms for achieving the goals set by transitional justice. These include criminal prosecutions, truth-telling bodies, reparations, institutional reforms, and national consultations.[80] Because the focus of this thesis is on the ICTY and Bosnian courts, it will only examine TJ in light of the criminal prosecutions that involved individuals from Prijedor, and the role these courts have played in the TJ process. Two important aspects of TJ can occur through criminal prosecutions: accountability and

[76] C. Brants, in "Transitional Justice: Images and Memories." *Ashgate, Utrecht University*2013 P. 2-3
[77] E. Staub, "Reconciliation after genocide, mass killing, or intractable conflict: Understanding the roots of violence, psychological recovery, and steps toward a general theory." Political Psychology 27: 2006 p. 868
[78] B. Hamber, Forgiveness and reconciliation: Paradise lost or pragmatism? Peace and Conflict: Journal of Peace Psychology 2007 13: 122-123
[79] D. Bloomfield, T. Barnes, L. Huyse "Reconciliation after Violent Conflict: A Handbook." *International Institute for Democracy and Electoral Assistance.* 2003. P. 19
[80] UN S/2004/616 *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies.* para 8

truth telling. This thesis analyzes the effects both the international and domestic war crimes trials have had on fulfilling these two mechanisms of TJ and what complications arise when trying to fulfill these objectives through criminal prosecutions.

2.2 The Importance of Accountability

Traditionally, the focus of TJ has been primarily on ending impunity and holding individuals accountable for their crimes. Criminal prosecutions took a prominent role in the process of TJ, because it was believed that holding individuals accountable was the most important aspect of post-war reconciliation and reinstating human rights standards.[81] Accountability has been held in such high regard because it is believed that "there can be no lasting peace without some kind of accounting and that truth and justice are complementary approaches to dealing with the past."[82] The importance of accountability after mass human rights abuses outdates the concept of contemporary TJ, as is evidenced in the International Military Tribunals following World War II. This was the first time in history that it was international tribunal worked to hold individuals accountable for their crimes during war under international law.[83]

Holding high-ranking individuals accountable for their crimes during a conflict essentially means an end to impunity.[84] Ending impunity is believed to be necessary after mass atrocity because when individuals are held accountable for their wrongdoings in a court of law it then sends the message to others that crimes committed during war will not be tolerated. The goal is also to prevent future violence by not allowing those who committed crimes in the past to walk free. Further, ending impunity offers a remedy to the victims of the

[81] C. Bell "Transitional Justice, Interdisciplinary and the State of the 'Field' or 'Non-Field.'" *International Journal of Transitional Justice* vol. 3 2009 p. 9
[82] R. Nagy "Transitional Justice as Global Project: Critical reflections" *Third World Quarterly,* Vol. 29, No. 2, 2008 p. 276
[83] "Criminal Justice." *International Center for Transitional Justice (ICTJ) https://www.ictj.org/our-work/transitional-justice-issues/criminal-justice*
[84] M. Cherif Bassiouni, "Searching for Peace and Achieving Justice: The Need for Accountability." *Law and Contemporary Problems Vol. 59, no. 4*. 1996 P. 19

crimes, as they see that someone is held responsible for their suffering.[85] Mark Ellis asserts that, "[T]here can be no lasting peace without justice, and justice cannot exist without accountability."[86] Ellis believes that by ending impunity, the facilitation of reconciliation can occur because the criminals are removed from society, which prevents future crimes, and allows victims to see their perpetrators brought to justice.[87]

A further contribution of accountability towards reconciliation in post-conflict societies is that it focuses on individual guilt and tries to eliminate collective guilt. As Mirjan Damaska describes, this is a development in criminal law that allows for the rendering of punishment for an individual based solely on their actions alone.[88] Antonio Cassese a former ICTY judge explained the importance of individual accountability:

> Trials establish individual responsibility over collective assignation of guilt, i.e., they establish that not all Germans were responsible for the Holocaust, nor all Turks for the Armenian genocide, nor all Serbs, Muslims, Croats or Hutus but individual perpetrators... victims are prepared to be reconciled with their erstwhile tormentors, because they know that the latter have now paid for their crimes; a fully reliable record is established of atrocities so that future generations can remember and be made fully cognizant of what happened.[89]

Ideally, by holding individuals accountable it is possible to avoid blaming an entire group of people for the crimes that a few individuals committed. This process can help facilitate reconciliation because it aims to prevent future violence that is spurred by blaming an entire group for the human rights abuses committed by a select few.[90] A criminal trial creates an appropriate forum for alleviating collective guilt because it is an individual whose

[85] K. Hooper, "The Ending of Impunity and the Fight for Justice: A Chasm Too Great to be Crossed?" *Flinders Journal of Law Reform vol. 9.* 2006 p. 181-182
[86] M. Ellis, "Combating Impunity and Enforcing Accountability as a Way to Promote Peace and Stability – The Role of International War Crimes Tribunals." *Journal of National Security Law & Policy Vol. 2:111* 2006. P. 113
[87] ibid
[88] M. Damaska "The Shadow Side of Command Responsibility." *The American Journal of Comparative Law Vol. 49* 2001 p. 470-471
[89] A. Cassese, "Reflections on International Criminal Justice." *61 Mod. Law Review 1, 6* 1998. As seen in: A. Danner and J. Martinez, "Guilty Associations: Joint Criminal Enterprise, Command Responsibility and the Development of International Criminal Law" *California Law Review Vol. 93 1 Article 2,* 2005 p. 93
[90] A. Neier, "War Crimes: Brutality, Genocide, Terror, and the Struggle for Justice." p. 212-213

guilt or innocence is being examined and not the entire ethnic group. Therefore the responsibility rests on one person.[91] Ideally, this can contribute towards reconciliation because the group of victims will see their individual perpetrators held accountable and know that they should not blame every member of accused's ethnic group.

In addition to individualizing guilt, criminal prosecutions punish a perpetrator, which can help victims move forward from the past. As Martha Minow argues, the desire for revenge keeps victims in perpetual states of disillusionment. However, with a criminal trial, where the accused is tried, convicted and sentenced, then the victim no longer needs to seek revenge because the court has delivered punishment for the crime.[92] In this way, the victim no longer desires to become an avenger, which once again can break the cycle of violence. In their idealized form, criminal trials will satisfy victims and help contribute towards reconciliation because they combat impunity for crimes, which reduces the desire for revenge.

2.2.1 Accountability and its discontents

As evidenced from the above claims, many scholars believe that the TJ mechanism of accountability can help to reconcile war-torn communities. However, there are in fact tensions that exist between administering justice and achieving reconciliation. Weinstein and Stover assert that retributive justice is a far too simplistic mechanism to successfully facilitate the complex process of reconciliation. They claim that there is not a direct connection with criminal trials and reconciliation, and in fact, holding individuals accountable often further divides multi-ethnic communities because the trials create mistrust and fear between the

[91] M. Damaska, "What is the Point of International Criminal Justice?" *Chicago Kent Law Review* The Henry Morris Lecture 2008 p. 361
[92] M. Minow, "Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence." *Beacon Press, Boston.* 1998 p. 13-14

opposing groups.[93] For victims, reconciliation is about more than just holding some criminals accountable. They would prefer to find the bodies of their missing loved ones, regain their former property, and see *all* war criminals punished.[94]

Victims' desire to have all war criminals held accountable in order for reconciliation to occur is understandable but impossible to achieve, as even the greatest proponents of transitional justice admit. An aforementioned claim that proponents of accountability purport is that ending impunity promotes reconciliation through individualizing guilt rather than perpetuating collective guilt for war crimes. However, not every alleged war criminal will face justice, leaving many free. As such, they can remain visible members of their communities, which can be distressing for victims. When the courts administer justice, they must focus their efforts on those who they can find legally responsible for the crimes committed, which will invariably mean that some will escape justice.[95] Even though legal systems aim to hold individuals responsible rather than entire ethnic groups, this process will never satisfy the needs of the victims because it is impossible to try everyone and discontent will exist.

As described above, although the TJ paradigm promotes reconciliation through accountability, it is actually very difficult to achieve both reconciliation and rendering justice because there are conflicting interests between the two goals. There is a second component of TJ that is also achievable through criminal trials, namely truth-telling. Truth telling occurs on several levels during a prosecution, and it aims to create an accurate history of what occurred during the conflict. Ideally, this historical record can contribute towards reconciliation because it should be an undisputed set of facts of the human rights abuses that occurred. In this way, both sides can understand and accept what happened, which is necessary in order to

[93] E. Stover and H. Weinstein, eds. "My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity." *Cambridge University Press* 2004 p. 14, 323
[94] E. Stover and H. Weinstein "My Neighbor, My Enemy" p 323
[95] B.A. Leebaw, "The Irreconcilable Goals of Transitional Justice" p. 110

move forward to a brighter future. But as with accountability, promoting reconciliation through judicial truth-telling is not as promising in theory as it is in practice.

2.3 The emphasis on truth-telling

The second important aspect of TJ that this thesis will examine is the need for truth-telling mechanisms to implement reconciliation and heal a community. The International Center for Transitional Justice (ICTJ) claims that truth-seeking plays a powerful role in recording and remembering the past, and it helps local communities understand past abuses.[96] Scharf and Williams define the truth as, "an accurate understanding and recording of the causes of a conflict, as well as which parties are responsible for which actions, and which parties…may be characterized as the victims or the aggressors."[97] Although there are several different mechanisms available to achieve truth-telling, most notably, truth commissions, my research focuses on judicial truth telling.

Through criminal prosecutions, a court hears the facts surrounding the alleged atrocities that occurred during war. The judges hear from witnesses, victims and defendants, and with this outpouring of information they can determine much of what occurred during a conflict. Damaska explains that truth-telling is not only a byproduct of international justice, but it is even one of its goals. The practice of creating a historical record of what occurred is necessary for several reasons. Firstly, Damaska claims that it prevents the perpetrators and their sympathizers from manipulating and denying the atrocities that they committed. Secondly, Damaska claims that truth-telling sets the record straight and is a step towards reconciliation because it recognizes the importance of human remembrance.[98]

Madeleine Albright reflected these views during the U.N. Security Council meeting that established the ICTY. She declared, "The only victor that will prevail in this endeavor

[96] "Truth and Memory" Transitional Justice Issues: https://www.ictj.org/our-work/transitional-justice-issues/truth-and-memory accessed 08 September 2015
[97] P. Williams and M. Scharf, "Peace with Justice? War Crimes and Accountability in the former Yugoslavia." *Rowman and Littlefield Publishers* 2002 p. 12
[98] Damaska "What is the Point of International Criminal Justice?" 48 p. 329-332

will be the truth."[99] The first prosecutor of the ICTY, Richard Goldstone echoed this belief as well, claiming that an accurate record portraying the facts of the conflict would aid in reconciliation by preventing collective guilt.[100] There is wide agreement that establishing a truthful record of past atrocities makes it harder to refute the facts of what happened, making the evidence secured at trials immune from manipulation through propaganda and biased interpretations.[101]

Truth-telling has additional benefits for the victims of human rights atrocities. International tribunals have extended participatory rights to victims, allowing them to come and testify in the Chamber.[102] The ICTY claims one of its achievements is the number of victims who have testified in front of the Tribunal. In fact, over 4,500 individuals have testified at the ICTY. They claim these testimonies to be crucial to the truth-telling process.[103] Such participation increases the amount of information that the judges hear and provides additional perspectives on the events that took place. In this way, evidence may come to light that otherwise may have remained hidden. Victims are also given a forum to express their feelings and tell their experience of suffering. Such a release can help heal the wounds of victims.[104]

Finally, truth-telling during criminal prosecutions can help victims gain the closure they need to move on from past trauma. Many times after extensive violence, victims do not know what happened to their loved ones. With the goal of the trials to record the truth, it happens that victims learn the fate of the missing.[105] Such visions of the power of truth-

[99] R. Teitel, "Globalizing Transitional Justice. Bringing the Messiah through the Law." *Oxford University Press* 2014 p. 85
[100] M. Scharf and P. Williams, "Peace with Justice?" p. 20-21
[101] See more in Williams and Scharf, "Peace with Justice?" p. 20-22
[102] Van den Wyngaert: Victims before International Criminal Courts: Some Views and Concerns of an ICC Trial Judge. *44 Case Western Reserve Journal of International Law* 2011. P. 475-492
[103] "Infographic: ICTY Facts and Figures" *United Nations International Criminal Tribunal for the former Yugoslavia. http://www.icty.org/en/content/infographic-icty-facts-figures*
[104] Van den Wyngaert, "Victims before International Criminal Courts" p 480
[105] In Dan Saxon's article, "Exporting Justice: Perceptions of the ICTY among Serb, Croatian, and Muslim Communities in the former Yugoslavia," he explains an incident during the sentencing trial of Dragan Nikolic,

telling ideally contributes toward reconciliation because it discourages each ethnic group from disseminating their own stories, and instead propagates a common narrative based on the facts determined in the judicial setting.

2.3.1 Tensions arising from judicial truth-telling

However, there has been significant scholarship declaring that criminal trials are not the most adequate forum for producing a historical account of conflicts. There are two schools of thought on this subject. The first is liberal legalism and one supporter of this theory is Arendt. When reporting on the *Eichmann* trial, she claimed that the purpose of justice is "that the accused be prosecuted, defended and judged."[106] She argues that all other questions pertaining to the how and why the atrocities happened should not be part of the trial.[107] The second school of thought is the law-and-society theorists, who believe even if a court attempts to create a historical record it will ultimately fail. Once again, there is tension between the administering justice and the ability to create a factual record of history. That is because a court must prove stringent legal truths, whereas the entire truth is far too broad to be discerned by a court of law.[108] These two viewpoints highlight the dissatisfaction some theorists have with truth-telling being a goal of international justice.

Further criticism exists in relation to a tribunal's ability to be the proper forum for truth-telling. An additional complication that arises with truth-telling contributing towards reconciliation is the use of plea bargains. Guilty pleas can contribute to a truthful record because the accused is admitting their responsibility, creating an undisputable record of their actions. However, the tension occurs because plea bargains result in lower sentences and such

in which a mother who was a witness for the prosecution asked the defendant if he knew the whereabouts of her two sons who were prisoners in a Bosnian Serb run detention camp. Nikolic answered that both of her sons were killed by Bosnian Serb forces, giving her the answer to her question after 11 years of uncertainty.

[106] H. Arendt, "Eichmann in Jerusalem: A Report on the Banality of Evil." *The Viking Press. New York* 1963 p. 5

[107] ibid

[108] R.A. Wilson, "Writing History in International Criminal Trials" *Cambridge University Press* 2011 p.2-5

lenient punishments for war criminals is a source of anger and frustration for victims. Such victim frustration greatly hinders the prospect of moving forward from the past.[109]

Another complication with truth-telling in a tribunal is that the truth that is handed down by the judges is legalistic, and more geared for lawyers than the affected communities.[110] Therefore, if the verdicts reach the people they may not be easily understood, diminishing the positive value of truth-telling delivered by the court. Such an undecipherable legalistic truth is also prone to misinterpretation and potential manipulation by the ethnic groups who are opposed to the tribunal. Such an example can be demonstrated with some Bosnian Serbs from Prijedor, who are unwilling to accept the historical record established by the tribunal.[111] If community members do not understand the legalistic truth established by the tribunal, or if certain ethnic groups deny such truth, then truth-telling will not be able to contribute towards reconciliation.

With these two components of TJ explained, both their ideals and contentions, the remainder of the thesis will examine to what extent the ICTY and Bosnian War Crimes Chamber have fulfilled these objectives and what tensions exist in the implementation of administering justice for war crimes. In addition to analyzing their progress, I will go further to examine the effects of such prosecutions on the local population of Prijedor, to determine whether reconciliation has occurred through the process of criminal prosecutions.

[109] Leebaw, "The Irreconcilable Goals of Transitional Justice" p. 110
[110] A. Forges and T. Longman, "Legal responses to genocide in Rwanda." in: Stover and Weinstein, eds ch. 2 p. 49, 56
[111] M. Biro et al., "Attitudes toward justice and social reconstruction in Bosnia and Herzegovina and Croatia." Ch. 9 Stover and Weinstein, p. 195

3. Justice at the ICTY: Accountability, Truth and Reconciliation

On 22 February 1993 the United Nations Security Council adopted Resolution 808, deciding in principle to set up an international tribunal to try the crimes committed in the Former Yugoslavia. This would be the first war crimes tribunal since the Nuremberg International Military Tribunal.[112] The ICTY website declares that it is "bringing war criminals to justice" and "bringing justice to victims."[113] In addition to administering justice, the ICTY also professed the lofty goal of advancing peace.[114] Even though the ICTY did not explicitly proclaim that it contributes towards reconciliation, it can be inferred that it is a purpose of the Tribunal because reconciliation can be developed through a lasting peace and the rendering of justice.[115]

This chapter of the thesis examines whether the ICTY has had the ability to bring justice to the victims and to what extent, if any, this internationally administered justice and peace aided in reconciling the community of Prijedor. I analyze the ICTY in light of the tensions that exist between the two pillars of TJ and reconciliation that were discussed in the previous chapter.

3.1 Mechanisms for Accountability

The ICTY's mandate as stated in the Article 1 of the statute is to investigate and prosecute those responsible for severe violations of international humanitarian law that occurred in the territory of the former Yugoslavia after January 1991.[116] Prosecutable crimes are listed in Articles 2 through 5; they include Grave Breaches of the Geneva Convention of

[112] M. Scharf "Balkan Justice: The story behind the first international war crimes trial since Nuremberg." Durham, North Carolina 1997. P 54-55
[113] United Nations: International Criminal Tribunal for the former Yugoslavia, homepage http://icty.org/ accessed: 13 August 2015
[114] United Nations: International Criminal Tribunal for the former Yugoslavia, "About the ICTY" http://icty.org/sections/AbouttheICTY accessed: 13 August 2015
[115] J. Meernik & J.R. Guerrero "Can international criminal justice advance ethnic reconciliation? The ICTY and ethnic relations in Bosnia and Herzegovina" *Southeastern Europe and Black Sea Studies* 14:3, 383-407, 20 June 2014
[116] ICTY Statute Pursuant to Security Council Resolution 827 25 May 1993 Article 1

12 August 1949, which encompasses willful killing, torture or inhumane treatment that is not warranted by military need.[117] Article 3 provides the power to prosecute violations of laws and customs of war, including attacks on undefended population centers and the taking of public or private property.[118] Article 4 gives the court jurisdiction to adjudicate crimes of genocide, which is defined as an intentional attempt "to destroy, in whole or in part a national, ethnic, racial or religious group."[119] Finally, Article 5 gives the court jurisdiction to prosecute crimes against humanity, which could have occurred either during international or internal conflict, and include "murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial and religious grounds and other inhuman acts."[120]

Further, the Tribunal is innovative in the fact that it blocked amnesties for high-level officials. As seen in Article 7 of the statute grants the ICTY the power to investigate and prosecute people who "planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime…(and) shall be individually responsible for the crime."[121] Those who held official government positions are not immune from being prosecuted for individual criminal responsibility and neither are superiors whose subordinates committed acts in violation of articles 2 through 5. Those acting on orders from the government are also not relieved of criminal responsibly.[122] This provision allows for the indictment and trial of all persons allegedly involved in the violation of human rights during the conflict. Thus, the U.N. Security Council granted the Tribunal the power to hold all individuals accountable regardless of their political position during the war.

[117] ICTY Statute article 2 (Sep 2009)
[118] ICTY Statute article 3 (Sep 2009)
[119] ICTY Statute article 4(2) (Sep 2009)
[120] ICTY Statute article 5(a-f) (Sep 2009)
[121] ICTY Statute article 7(1) (Sep 2009)
[122] ICTY Statute article 7 (2-4) (Sep 2009)

Although not explicitly recognized in the Statute of the Tribunal, in the development of the ICTY trials, the creative doctrine of the Joint Criminal Enterprise (JCE).[123] The Appeals Chamber has held that this doctrine exists under customary international law, and can be read into Article 7 of the ICTY Statute.[124] The JCE doctrine contains three separate modes of liability, but for each mode the prosecution must prove that all participants shared an *actus rea*[125], namely: (1) "[a] plurality of persons;" (2) "[t]he existence of a common plan, design or purpose which amounts to or involves the commission of a crime provided for in the [ICTY] Statute;" and (3) "[p]articpation of the accused in the common design."[126] The first category of JCE (JCE 1) requires that all participants share the intention to commit the crime. JCE II dictates that awareness of ill-treatment is adequate instead of intention to commit a crime. Finally, the broadest mode of responsibility in JCE is JCE III, which mandates that foreseeability of a crime is enough for conviction.[127] This doctrine helped the Chamber make convictions even if the defendant could not be directly linked to the commission of a crime.[128] With these mandates, the ICTY sets the groundwork for ending impunity for both high and low level individuals for crimes committed in Prijedor.

3.1.1 Tadic: Justice for a low-level perpetrator

The ICTY began operating in 1993 the war was still being fought. It took a year and a half for the Security Council to agree on a prosecutor. It was not until the summer of 1994 South African Richard Goldstone was appointed. After a year of inertia of the Tribunal and the continuation of violence in the Balkans, Prosecutor Goldstone's focused his prosecutorial

[123] C. Gibson "Testing the Legitimacy of the JCE Doctrine." *Duke Journal of Comparative and International Law* 2008 p. 521
[124] *Milutinovic*, Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanic's Motion Challenging Jurisdiction – Joint Criminal Enterprise 23 May 2003, para 18-19
[125] Cryer et al., "Introduction to International Criminal Law and Procedure". 3rd edn, 2014, chap 15 General Principles of Liability p. 357-359
[126] IT-94-1-, *Tadic Case* (Judgment) 15 July 1999 para. 227
[127] R. Cryer, "Introduction to International Criminal Law and Procedure." p 360
[128] C. Gibson, "Testing the Legitimacy of the JCE doctrine." p. 523

strategy on indicting the "small fish" and working up the chain of command to higher officials.[129] In this way, evidence in these trials could be accumulated while trying low-level perpetrators in order to indict high-level officials.

Initially focusing early prosecutions on lower-level officials was also necessary because the Balkan states were not cooperating in extraditing indicted individuals. Even after the war stopped, extradition remained an issue, as evidenced by the fact that until 2005 the Republika Srpska had not extradited even one indicted suspect.[130] Serbia also struggled with the issue of cooperation with the Tribunal even well after Milosevic was out of office. It took Serbia until 2004 to finally increase cooperation with the Tribunal and begin seriously extraditing people to The Hague.[131] Due to the delayed support of the Balkan states, it meant that in the early days of the Tribunal it focused its efforts on low-level perpetrators.[132] One final reason for the indictment strategy laid down by Goldstone was that the NATO troops on the ground after the Dayton Peace Agreement did not have an explicit mandate to arrest indicted war criminals.[133] It was not until 1997, with the election of Milorad Dodik as Prime Minister in the Republika Srpska, that NATO Stabilization Force (SFOR) troops began to arrest suspects because Dodik did not resist their operations.[134]

Already by November 1994 the Tribunal had indicted over fifty individuals, but cooperation from Serbia and Serb controlled Bosnia was unlikely. In light of the

[129] P. Hazan "Justice in a Time of War: The True Story Behind the International Criminal Tribunal for the former Yugoslavia." *Texas A&M University Press* 2004 p. 56-59
[130] J. Kim "Balkan Cooperation on War Crimes Issues" *CRS Report for Congress* 14 January 2008 CRS-4
[131] J. Kim, "Balkan Cooperation". Additionally, see speech by Serbian Prime Minister Kostunica to Serbian Assembly on March 2 2004, in which he promises increased cooperation with ICTY to provide legal documents to The Hague in efforts to speed up the trials. Accessed: http://www.slobodan-milosevic.org/news/rts030204.htm
[132] D. Orentlicher, "That Someone Guilty be Punished: The Impact of the ICTY in Bosnia" *Open Society Justice Initiative New York* 2010. P. 24-25
[133] According to J. Hooper, the NATO Implementation Force (IFOR) was not given the mandate to arrest suspects because the U.S. did not want to put them in harms way for fear that Congress would not support the peace agreement if American troops were being killed in the process of carrying out the plan. However, the Bosnian delegation was promised that IFOR would not seek out indicted suspects, but it also would not tolerate their presence in Bosnia. Nevertheless, it is reported that IFOR troops encountered indicted suspects at check points and let them walk free. "Dayton's Mandate for Apprehending War Criminals," PBS Frontline, http://www.pbs.org/wgbh/pages/frontline/shows/karadzic/trial/hooper.html Accessed: 13 September 2015
[134] Ibid

prosecutorial policy of Goldstone's bottom-up approach, one of the indicted was within the reach of the Tribunal. Dusko Tadic was found in Germany, a country that promised cooperation with the Tribunal.[135] In addition to Germany's cooperation, the news reports published in August 1992 of the Trnopolje and Omarska camps, and the information in the U.N. Commission of Experts reports provided much evidence to proceed with a case against Tadic. This led to the first case of the ICTY against Dusko Tadic, a man charged with crimes in the municipality of Prijedor.

The indictment was issued against Tadic on February 13, 1994.[136] The *Tadic* case is an example of a low-level player in the war, as he was a local SDS leader in the village of Kozarac and he was present at the camps.[137] The ICTY indicted him for crimes related to the collection and mistreatment of Bosnian Muslims in and around the Omarska camp. He was charged with rape as a crime against humanity, willful killing as a Grave Breach of the Geneva Conventions, murder as a crime against humanity, cruel treatment as violation of the laws or customs of war, inhumane acts as a crime against humanity. Overall, in the initial indictment he was charged with over 30 counts of individual criminal responsibility.[138]

The *Tadic* trial lasted for two years before a judgment was rendered.[139] Tadic was found guilty of six counts of crimes against humanity and five counts of violations of the laws and customs of war for his role in the killings, beatings and forcible transfer of Bosnian Muslims, as well as the attack on the town of Kozarac.[140] Witnesses testimony and evidence linked Tadic to one of the most gruesome incidents he was charged with, the beating and

[135] C. Joyner, "Strengthening Enforcement of Humanitarian Law: Reflections on the International Criminal Tribunal for the Former Yugoslavia" *Duke Journal of Comparative and International Law* Vol. 6:79 1995 p. 80
[136] *Tadic Case* (Indictment) ICTY-94-1 (13 February 1995)
[137] *Tadic Case* (Judgment) ICTY-94-1 (07 May 1997) para. 188-189
[138] ibid para 4.1 – 11.55
[139] *Tadic Case* (Indictment) ICTY-94-1 (13 February 1995), *Tadic Case* (Judgment) ICTY-94-1 (07 May 1997)
[140] *Tadic Case* (Judgment) ICTY-94-1 (07 May 1997)

sexual mutilation of Fikret Harambasic, including many other cases of brutal abuse that took place in Omarska.[141]

On the other hand, he was initially not found guilty of nine counts of Grave Breaches of the Geneva Conventions. The Tribunal ruled that the war in Bosnia and Herzegovina was of internal rather than international character, thus rendering Article 2 of the ICTY Statute not applicable.[142] However, upon appeal, this ruling was overturned. The Appeals Chamber ruled that there was in fact a demonstrable link between the Army of the Serbian Republic of Bosnia (VRS) and the Federal Republic of Yugoslavia (FRY), thus making the conflict international in nature.[143] Due to this determination, upon appeal Tadic was found guilty of Grave Breaches of the 1949 Geneva Conventions. He was subsequently convicted of eleven more counts and sentenced to a total of 25 years in prison.[144]

Such an appellate ruling allowed the Tribunal to extend impunity for violations of the Geneva Conventions, which require an international armed conflict. Thus expanding the reach of the Tribunal. But, on the other hand, such a ruling was detrimental for reconciling the Serbs and Bosniaks because the ruling indicated that Serbs were the aggressors in the war. Research has shown that the ethnic group who is considered to be the aggressors usually has a negative opinion of the Tribunal.[145] The Tribunal's identification of Serbs as the aggressor is in direct conflict of their own image of themselves. Serb's perspective of their role in the war can be seen in the monuments in Prijedor, which honor those who lost their lives to 'Muslim extremists in the war of defense and liberation.'[146] With a ruling in

[141] *Tadic Case* (Judgement) IT-94-1 (07 May 1997) para. 206-207
[142] *Tadic Case* (Judgment) IT-94-1 (07 May 1997) Para. 693
[143] *Tadic Case* (Appeal) IT-94-1 (15 July 1999) para 71-73
[144] *Tadic Case* (Appeal) IT-94-1 (15 July 1999) para 71
[145] See: S. Kutnjak and J. Hagan "Images of International Criminal Justice in the Former Yugoslavia." Ch. 10 "Transitional Justice: Images and Memories" eds. C. Brandts, A. Hol, and D. Siegel. *Ashgate* 2013
[146] H. Subasic, "The culture of denial in Prijedor." *TransConflict* 29 Jan 2013 http://www.transconflict.com/2013/01/the-culture-of-denial-in-prijedor-291/

contradiction with Serb self-identity created mistrust and negative views of the ICTY.[147] As such, if one ethnic group disagrees with and disregards the ruling of Tribunal because it is out of line with their own self-perception, then it cannot be an effective mechanism to bring the sides together in recovery.

Although Tadic played a small role in the political scene in Prijedor, he had an influential impact in the torture and killings that occurred in the detention camps. The Chamber found as mitigating evidence that he was influenced by the propaganda of higher-level Serbian officials, such as the views of the Crisis Staffs that called for a maximum percentage of 2% non-Serbs in the territory of the Bosnian Krajina, and the proclamations that Muslims were planning a genocide against Serbs.[148] Nonetheless, he was a deadly force in the Omarska, Trnopolje and Keraterm camps and the ICTY held him accountable.[149]

In addition to Tadic there were 30 low-level perpetrators indicted by the Tribunal for their crimes in relation to Prijedor,[150] nine of whom were tried and sentenced. With time, the focus of the ICTY transitioned from low-level camp guards[151] to regional officials[152] and

[147] S. Kutnjak and J. Hagan "Images of International Criminal Justice in the Former Yugoslavia" p. 184-185
[148] *Tadic Case* (Sentencing Judgment) IT-94-1 para. 38
[149] P. Akhvan, "Justice in the Hague, Peace in the Former Yugoslavia?" *Human Rights Quarterly Vol. 20* 1998 p. 788-789
[150] Not all of these individuals were tried, as the Tribunal dropped some of the indictments in order to have higher-level officials appear before the Court. Nevertheless, between February 1995 and July 1995, the ICTY compiled enough evidence to indict low-level individuals for their alleged participation as camp commanders, deputies of camps, and shift leaders. See: ICTY's "Bridging the Gap" p. 35-37 for a detailed list of all indictments issued at this time.
[151] In addition to Tadic, the other men who were convicted by the Tribunal for crimes in Keraterm, Omarska and Trnopolje were: *Sikirica et al*. (Dusko Sikirica, Damir Dosen, and Dragan Kolundzija). These men were shift leaders and commanders at Keraterm. They were indicted in 1995 and were convicted of persecution as a crime against humanity. The third ICTY case dealing with the Prijedor camps involved *Kvocka et al*. (Miroslav Kvocka, Dragoljub Prcac, Mlado Radic, Zoran Zigic and Milojica Kos) All of these men held positions in the police force in Prijedor, except for Zigic who was a taxi driver and reserve police officer. They were all involved in mistreatment of detainees in Keraterm, Trnopolje and Omarska. The Tribunal convicted them of persecution as a crime against humanity, and sentenced them to 5-25 years in prison. *Mejakic et al.* (Zeljko Mejakic, Momcilo Gruban, Dusan Fustar, and Dusko Knezevic) were indicted and transferred to the ICTY for their involvement as shift leaders and guards at Omarska and Keraterm, but they were transferred and sentenced by the Court of BiH. The final low-level individual tried by the ICTY was *Banovic,* who plead guilty to persecutions as a crime against humanity and sentenced to eight years of imprisonment.
[152] The first regional official indicted and tried by the Tribunal was Milomir Stakic, who was head of the municipality as President of Prijedor from April to September 1992. The Tribunal rendered a verdict in July 2003 and found him guilty of extermination, murder and persecution as crimes against humanity. He was sentenced to 40 years in prison. Two years after Stakic's indictment, the Tribunal indicted Radoslav Brdanin for

eventually they could begin trying high-level political leaders.[153] The next section will examine the case of one such political leader of Republika Srpska.

3.1.2 Krajisnik: A high-level official is held responsible

Although NATO troops were initially reluctant to arrest indicted suspects, letting many walk free in their presence, they eventually changed their policy and overall they successfully arrested 39 alleged war criminals that later stood trial in The Hague.[154] Although the SFOR arrests were not always successful, Simo Drljaca, the former police chief of Prijedor, resisted arrest and SFOR shot and killed him.[155] One man who SFOR successfully captured was Momcilo Krajisnik in 2000.[156] Krajisnik was co-founder of the SDS and speaker of the Bosnian Serb Parliament, making him an official at the Republic level. The ICTY charged him with the participation in a joint criminal enterprise (JCE) along with other high officials, including General Ratko Mladic, Radovan Kardzic, Slobodan Milosevic and Biljana Plavsic.[157]

Krajisnik was the first Bosnian Serb official to be convicted of a leadership-level JCE before the ICTY.[158] The purpose of the enterprise was to permanently remove Bosnian Muslims and Bosnian Croats from large sections of Bosnia and Herzegovina through murder,

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his role leading the crisis staff of the ARK. He was convicted of persecutions as a crime against humanity, willfull killing as a grave breach of the Geneva Conventions, Torture as a grave breach, wanton destruction of cities and towns as a violation of the laws and customs of war, and destruction of religious property as a violation of the laws and customs of war. He was found not guilty of genocide. The Tribunal sentenced him to thirty years of imprisonment. Momir Talic was also indicted and tried by the ICTY for his role in the ARK crisis staff, but he died while on trial.

[153] The highest level officials that the Tribunal indicted were Radovan Karadzic, Slobodan Milosevic, Ratko Mladic, Biljana Plavsic and Momcilo Krajisnik. The Tribunal indicted Karadzic and Mladic in 1995, but they escaped justice for over ten years. Karadzic's trial began in 2009 and Mladic's began in 2012. The ICTY indicted Milosevic in 1999 but he remained immune from prosecution until 2002. Plavsic and Krajisnik, who were high level officials in the newly declared Republika Srpska were indicted in 2000. Plavsic reached a plea agreement in 2002.

[154] "Peace support operations in Bosnia and Herzegovina" North Atlantic Treaty Organization 07 September 2015 http://www.nato.int/cps/en/natolive/topics_52122.htm accessed: 12 September 2015

[155] The Economist, "Progress at last?" 17 Jul 1997 Sarajevo. Accessed: http://www.economist.com/node/151682

[156] *Krajisnik Case* IT-00-39 (Judgment) 27 Sep. 2006 para 10

[157] *Krajisnik* IT-00-39 (Indictment) 21 March 2000 para 15-18

[158] G. Bigi, "Joint Criminal Enterprise in the Jurisprudence of the International Criminal Tribunal for the Former Yugoslavia and the Prosecution of Senior Political and Military Leaders: The *Krajisnik* Case." *Max Planck UNYB 14* (2010) p. 66

deportation, persecution, extermination, and other inhumane acts.[159] Prijedor was one of the municipalities where these plans were implemented.[160] The prosecution argued that the three conditions for the JCE were met, namely there was a plurality of persons, including both high-level officials and also military forces working in concert.[161] Even though the prosecution did not name every member of the JCE because it would have been too complex, it was determined that all members shared a common objective.[162] In order to emphasize this point, the prosecution argued that:

> It is the common objective that begins to transform a plurality of persons into a group enterprise, as this plurality has in common the particular objective. It is evident, however, that a common objective alone is not always sufficient to determine a group, as different and independent groups may happen to share identical objectives. Rather, it is the interaction or cooperation among persons – their joint action – in addition to their common objective, that makes those persons a group. The persons in a criminal enterprise must be shown to act together, or in concert with each other, in the implementation of a common objective, if they are to share responsibility for the crimes committed through the JCE.[163]

And finally, the third qualification of the JCE was fulfilled, as Krajisnik made personal contributions to fulfill its objective.[164] Krajisnik's guilt was based on the fact that due to his powerful position in the government, not only was he aware of and in support of the numerous operations of the enterprise, but he was actually one of the compelling forces behind the implementation of the objective of the JCE.[165] Additionally, the ICTY accused the defendant of superior responsibility by failing to investigate or punish the commission of

[159] *Krajisnik Case* IT-00-39 (Judgment) 17-19
[160] *Krajisnik Case* IT-00-39 (Judgment) 469-499
[161] *Krajisnik Case* IT-00-39 (Judgment) 1079-1088
[162] *Krajisnik Case* IT-00-39 (Judgment) 1089-1119
[163] *Krajisnik Case* IT-00-39 (Judgment) 884
[164] *Krajisnik Case* IT-00-39 (Judgment) 1120
[165] *Krajisnik Case* IT-00-39 (Judgment) para 1086

crimes committed by his subordinates, and further, he was blamed with spreading propaganda against Bosnian Muslims and Croats.[166]

There were over thirty municipalities listed on the indictment for which Krajisnik was tried for carrying out the plan of ethnically cleansing the non-Serbs.[167] Prijedor was one of the municipalities and the prosecution presented evidence in the trial to prove that the following events fell under the responsibility of Krajisnik's enterprise: the arming the local populations, the creation and organization of the Prijedor Crisis Staff, the rise of paramilitary organizations in Prijedor, the attacks of Prijedor and surrounding villages, the detainment of non-Serbs in the Omarska, Keraterm and Trnopolje camps and the brutal conditions that took place there, the destruction of cultural property in the municipality, and the mass migration of Muslims and Croats from Prijedor.[168]

Through his participation in the enterprise the Trial Chamber found Krajisnik guilty of eight counts, including persecution, extermination, murder, deportation and forced transfer all as crimes against humanity.[169] The Tribunal sentenced Krajisnik to 20 years in prison, of which six years were already served for the time he spent on trial.[170] He served two-thirds of his sentence, as he was released from prison in 2013 and returned to Bosnia and Herzegovina.[171] To the dismay of the survivors of ethnic cleansing, the Tribunal did not find Krajisnik guilty of genocide because the prosecutor failed to prove that the *mens rea* of the crime.[172]

As evidenced by the abovementioned prosecutions, the ICTY was able to make headway in holding perpetrators accountable for their actions in and around Prijedor. Not

[166] *Krajisnik Case* IT-00-39 (Judgment) para 7-9
[167] *Krajisnik Case* IT-00-39 (Judgment) p. 6
[168] *Krajisnik Case* IT-00-39 (Judgment) para 469-489
[169] *Krajisnik Case* IT-00-39 (Judgment) para 1126
[170] *Krajisnik Case* IT-00-39 (Appeal) 17 March 2009 para 819
[171] E. Tomas. "War Criminal Krajisnik receives 'hero's welcome home.' BBC 31 August 2013 http://www.bbc.com/news/world-europe-23910285 accessed 13 September 2015
[172] D. Orentlicher, "That Someone Guilty" p. 66; she explains that Krajisnik being acquitted of genocide charges was a huge disappointment for victims, especially since the prosecution succeeded in proving the *actus rea* but the intention could not be proven.

only were they able to try the lower level criminals, but after several years of operation the Tribunal had gathered enough information and cooperation from politicians to try regional and republic level officials as well.[173] Holding accountable the more influential decision makers not only removed them from power in Bosnia, but it also proved that no one is out of reach of the Tribunal. Doctrines such as the JCE made it easier to convict perpetrators of crimes even if they were directing operations from above rather than on the ground. This doctrine allowed the Tribunal to hold more people accountable for their actions during the war. However, survivors' still expressed disappointment despite the work the Tribunal did to end impunity. Survivors place more value on seeing their direct perpetrators brought to justice rather than powerful politicians because these are the ones who they witnessed committing crimes and causing their suffering. These are also the people who they will still encounter on a daily basis in their community.[174] Secondly, as of now, no one who has been tried by the ICTY has been convicted of genocide for his or her crimes committed in Prijedor.[175] The absence of a genocide conviction gives off the impression that the crimes committed in Prijedor are not as grave as victims believe them to be.

Although the ICTY made great strides with apprehending and trying criminals from Prijedor, they were not able to try every alleged war criminal from Prijedor. Nevertheless, Orentlicher argues that because the largest number of indicted war criminals came from Prijedor, it positively correlates to the fact that Prijedor had the highest number of returnees after the war.[176] Such a return indicates that people felt safe to return home because the ICTY was removing suspects from the streets. One promising example of such a return is the rebuilding of Kozarac. Bosnian Serb forces destroyed the predominately Muslim village,

173 "Bridging the Gap Between the ICTY and Communities in Bosnia and Herzegovina" ch. 3 Indictments and Plea Agreements. Conference Proceedings, Prijedor 25 June 2005 p. 35
174 D. Orentlicher, "That Someone Guilty be Punished" p 15
175 Currently, Radovan Karadzic is on trial for genocide for crimes in Prijedor and across Bosnia and Herzegovina. Karadzic's trial is expected to conclude in December of 2015. Thus, there could be a genocide charge handed down by the Tribunal in relation to Prijedor.
176 D. Orentlicher, "That Someone Guilty" p. 83

which once was home to 25,000 people, but as early as 1999, with the help of an investment from the EU, the village underwent a reconstruction. Muslims who had fled during the war began returning to Kozarac and began to restart their lives.[177] The return of refugees is a positive contribution for reconciliation because without the survivors coming home there is no community to reconcile. Nonetheless, despite the high rate of returns, victims of war in Prijedor still are not satisfied with the work the ICTY has done to hold people accountable. One explanation for this is the ICTY's lack of a comprehensive and effective Outreach program, which will be further discussed at the end of this chapter.

3.2. Truth Telling at the ICTY

In addition to the Tribunal's ability to curb impunity by prosecuting war criminals, the ICTY has also helped contribute a factual record of what happened in Prijedor during the war. Many scholars believe that the Tribunal's efforts to establish the truth have the ability to help towards reconciliation. Scharf and Williams believe that through truth telling the facts will be established and be irrefutable.[178] Meernik and Guerrero further assert that one of the ICTY's tools for facilitate reconciliation are the judgments capability to create legal and historical truths. It is through these truths, they argue, that individual guilt is determined and collective guilt, which leads to revenge, will be eliminated. [179] Further, Staub adds that through these mechanisms, the truth is revealed which allows victims to understand what exactly occurred and who was responsible.[180]

[177] P. Hockenos, "Bosnian Ghost Town Comes to Life." *Institute for War and Peace Reporting (IWPR)* 19 May 2000. Accessed: https://iwpr.net/global-voices/bosnian-ghost-town-comes-life
[178] M. Scharf and P.R. Williams. "The functions of justice and anti-justice in the peace-building process." Case Western Reserve Journal of International Law 35161–90. 2003.
[179] J. Meernik & J.R. Guerrero "Can international criminal justice advance ethnic reconciliation? The ICTY and ethnic relations in Bosnia and Herzegovina" *Southeastern Europe and Black Sea Studies* 14:3, 389, 2014
[180] E. Staub, "Reconciliation after genocide, mass killing, or intractable conflict:
Understanding the roots of violence, psychological recovery, and steps toward a general theory." Political Psychology 27: 2006. 867–94.

In the next sections this thesis will examine two essential mechanisms the ICTY has employed in their quest to determine a historical record of what happened during the conflict: guilty pleas and the use of testimonies of victim-witnesses.

3.2.1 Guilty Pleas as ineffective truth-telling mechanisms

Guilty pleas were not explicitly included as a practice in the ICTY's statute.[181] It was in 1996 that a guilty plea was first employed in the *Erdemovic* case. Following this case, the Tribunal adopted Rule 62*bis*, which allows a defendant to plead guilty.[182] The Tribunal declared that a guilty plea "is always important for the purpose of establishing the truth in relation to that crime."[183] Further, the Tribunal has asserted that guilty pleas "contributes to the establishment of the truth and facilitates peace and reconciliation."[184] A guilty plea also saves victims and witnesses a trip to The Hague to testify and become potentially re-traumatized by reliving their experience.[185] In addition to guilty pleas contributing towards reconciliation, the Tribunal also appreciates the amount of time saved when a defendant pleads guilty.[186] However, the Tribunal has asserted that even though guilty pleas may save time and resources, this factor should not be the only motivation for promoting plea agreements.[187]

Two defendants responsible for crimes committed in relation to Prijedor who plead

[181] However, the acceptance of guilty pleas can be read into Rule 20(3) of the Tribunal's Statute, as it states: "The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment and instruct the accused to enter a plea. The Trial Chamber shall then set the date for the trial."
[182] ICTY Rules of Procedure and Evidence, Rule 62*bis* "Guilty Pleas" (Adopted 12 Nov 1997) pg. 53
[183] *Todorovic Case* IT-95-9/1 (Judgment) para 81
[184] *Mrdja Case* IT-02-59 (Judgment) 31 March 2004 para. 76.
[185] *Todorivic Case,* IT-95-9/1, para 80
[186] J. Clark, "Plea Bargaining at the ICTY: Guilty Pleas and Reconciliation" *The European Journal of International Law. Vol. 20 no. 2.* 2009. P. 418
[187] *Momir Nikolic Case* IT-02-60/1-S, (Sentencing Judgment) 2 December 2003, para 67, as seen in Clark "Plea bargaining" p. 422

guilty in front of the ICTY are Biljana Plavsic and Darko Mrdja.[188] Plavsic was co-president of the Republika Srpska, and Darko Mrdja, who was a member of the Serbian police force in Prijedor. Plavsic was the first high-ranking official to plead guilty to offences before the ICTY. She was charged with participation in the joint criminal enterprise along with Momcilo Krajisnik et al.[189] She not only pleaded guilty to persecution as a crime against humanity, but she also expressed remorse for her actions.[190] Plavsic asserted that recognizing and admitting wrongdoing could assist the process of reconciliation. She stated:

> To achieve any reconciliation or lasting peace in BH, serious violations of humanitarian law during the war must be acknowledged by those who bear responsibility—regardless of their ethnic group. This acknowledgement is an essential first step.[191]

Plavsic's plea garnered praise from U.S. Ambassador to the U.N., Madeleine Albright and Holocaust survivor Elie Wiesel, as they saw it as an advancement for reconciliation.[192] The Trial Chamber lauded the statement as an, "unprecedented contribution to the establishment of truth and a significant effort toward the advancement of reconciliation."[193] Because Plavsic recognized the historical factors that played a role in her actions, Clark claims that this is a step forward in creating an accurate historical record of why these atrocities occurred in Bosnia during the war.[194] As such, the Trial Chamber found Plavsic's guilty plea and expressed remorse as mitigating factors and sentenced her to eleven years in

[188] In total, six convicted criminals from Prijedor have pleaded guilty before the ICTY. In addition to Plavsic and Mrdja, Predrag Banovic, Dragan Kolundzija, Dusko Sikirica, and Damir Dosen all pleaded guilty. "Bridging the Gap" p. v.
[189] *Plavsic Case* IT-00-39 (Indictment) para 6
[190] *Plavsic*, Case No. IT-00-39, (Sentencing Judgment), 74 (27 Feb 2003), quoting Plavsic Written Statement, as seen in D. Orentlicher "That Someone Guilty be Punished." P. 60
[191] Ibid, para 74
[192] Wiesel testified that: "whereas others similarly accused deny the truth about their crimes and thereby assist those who want to falsify history, Mrs. Plavsic, who once moved in the highest circles of power, has made an example by freely and wholly admitting her role in the crime." *Plavsic* (Sentencing Judgment), para 69
[193] *Plavsic Case* IT-00-39 (Sentencing Judgment) para. 67, as seen in D. Orentlicher "That Someone Guilty be Punished." P. 60
[194] J. Clark "Plea bargaining at the ICTY." P. 425

prison.[195]

Although there was much praise for Plavsic's admittance of wrongdoing, the victims of the crimes that she helped orchestrate expressed dissatisfaction. They could not comprehend how she could receive a sentence of only eleven years for all the suffering she helped to inflict.[196] Bosnian Director of the Balkan Investigative Reporting Network, Nerma Jelacic, asserted that due to the low prison sentence rendered to Plavsic, her confession lost its meaning for the victims and thus diminished its capability of promoting reconciliation.[197] Further, Plavsic only pleaded guilty to persecution on racial, cultural or religious grounds, meaning the gravest charge of genocide was dropped, which increased the frustration of victims.[198] Thus, even though the confession of Plavsic contributed towards establishing a truthful record of what occurred in Prijedor and other parts of Bosnia, the usefulness of such a confession towards reconciling non-Serbs with Bosnian Serbs was undermined by the low sentence the Tribunal gave to the defendant. Furthermore, Plavsic refused to participate in additional Tribunal proceedings, failing to give evidence or testify in other cases.[199] Adding further insult to victims' injury, Plavsic later retracted her guilty plea in an interview with Sweden's *Vi* magazine. She claimed that she lied when she plead guilty and she only admitted wrongdoing because she could not prove her innocence and she wanted the other charges dropped[200]. As such, her confession did very little to aid reconciliation because her remorse was not genuine.

Darko Mrdja's guilty plea also stirred up anger among victims of the war in Prijedor. Mrdja admitted guilt to one of the most infamous executions that occurred in the municipality

[195] Ibid, Plavsic sentencing judgment para 61-74
[196] D. Orentlicher, "That Someone Guilty be Punished." P. 61
[197] ibid, p 62 Orentlicher interview with Jelacic 2006
[198] ibid
[199] N. A. Combs, "International Decisions: Prosecutor vs. Plavsic." *The American Journal of International Law vol. 97* 2003 935
[200] D. Uggelberg Goldberg, "Plavsic retracts war-crimes confession." Bosnian Institute 04 Feb 2009 accessed: bosnia.org.uk/news/news_body.cfm?newsid=2544

of Prijedor, a massacre of over 200 non-Serb men who were transported from Prijedor to Koricanske Stijene.[201] In his admission of guilt, he declared that the attack was part of a systematic and widespread campaign against the non-Serb population of Prijedor.[202] This statement would help in the prosecution of other individuals who partook in the massacre. However, even though his confession explained his motivation to commit such heinous acts of violence,[203] he did not disclose the location of the mass grave. Surviving family members believed that this was the most valuable piece of information in order to have closure and heal from the death of their loved ones.[204]

As demonstrated with the *Plavsic* case, pleading guilty often results in a reduced sentence length because the guilty plea is viewed as cooperation with the Tribunal and can thus be a mitigating factor when determining sentence length, and some of the charges are dropped in exchange as part of the plea bargain.[205] Two other convicted war criminals from Prijedor pleaded guilty before the ICTY and received sentences as low as three and five years. [206] Orentlicher found that victims in Prijedor were intensely dissatisfied by these short prison terms for individuals who committed and helped orchestrate atrocities in Prijedor. Victims did not find the admittance of guilt or the expression of remorse to be helpful in their healing process.[207]

In conclusion, guilty pleas can be helpful for the Trial Chamber because the defendant

[201] "View from the Hague: Massacre at Mount Vlasic" *Balkan* May 5, 2004 p. 6 accessed: http://www.icty.org/x/file/Outreach/view_from_hague/balkan_040505_en.pdf
[202] ibid
[203] In his statement of guilt, Mrdja explained that: "Your Honours, I hope you will believe me. I did not commit this because I wanted to commit this or I enjoyed this. I did not hate these people. I did it because I was ordered to do so." *Mrdja Case* IT-02-59 Case Information Sheet *'Vlasic Mountain'*
[204] ibid, 64. Orentlicher adds that it was not until a couple of years later that the Bosnian Courts were able to interview defendants and uncover this information.
[205] ICTY Rules of Procedure and Evidence, Rule 101 "Penalties" B (ii) IT/32/Rev. 50
[206] Ibid, 56 Dragan Kolundzija was a shift commander at Keraterm and was convicted of crimes against humanity for persecutions on political, racial or religious grounds. After a guilty plea, he was convicted to only 3 years of imprisonment and was released early after 3 weeks. Damir Dosen was indicted with Kolundzija and he also plead guilty to one count in the indictment. He was sentenced to five years in prsion. He was released after two years.
[207] Ibid, 41

is admitting responsibility for their actions. As such, it contributes towards establishing a historical record of the past. As in the case of Plavsic and Mrdja, they both identified reasons for why they committed such crimes. Not only does this give more background for the historical account created by the Tribunal, but it can also help survivors heal by understanding the opposing sides' viewpoint, creating a more comprehensive understanding of the past.[208] While guilty pleas can be beneficial for the truth-telling process, they become counterproductive towards reconciliation when the defendant is given a reduced sentence due to their confession. It sends the message to victims that the gravity of the crimes they suffered is not as serious as they had believed, and they are left with a feeling of injustice.[209] Also, if some of the charges are dropped in a plea agreement then the entire truth is not revealed the guilty pleas do a disservice to truth-telling. This can be illustrated by the case of Plavsic, who was not convicted of the gravest charge of genocide and also Mrdja who was not obliged to give information pertaining to the whereabouts of the victims' remains. Therefore, guilty pleas can help to establish some of the truth, but not all of it, and it would be beneficial for the ICTY and other international courts to have an agreed upon set of criteria so that the accused gives a full disclosure of information in exchange for a bargain. Such an agreement would help contribute to a greater revelation of the truth and may create greater victim satisfaction with the use of guilty pleas.

3.2.2 The Accommodation of victim-witnesses

Theoretically, a defendant admitting guilt can contribute a more honest historical account of past events. In addition to guilty pleas for revealing the truth, victims and witnesses can come to The Hague to testify about their experiences. Testifying in front of an international court gives victim-witnesses the possibility to speak out about the trauma they

[208] J. Clark, "Plea bargaining at the ICTY" p. 429
[209] ibid, p. 431

endured.[210] Many scholars have argued that speaking out about traumatic experiences can help to relieve the psychological weight of silence.[211] Orentlicher found that victims who traveled to The Hague to testify expressed a desire to have their personal story told and remembered throughout history.[212] Stover added to this point by explaining that many who came to testify felt they had a moral duty because they survived the atrocities; they feel the need to speak out for those who did not.[213]

Muharem Murselovic, a survivor of the Omarska camp, bore witness in several ICTY trials. He explained his reason for testifying as a duty to those who died during the war, "I am obliged to witness, to testify on behalf of hundreds of my friends who have been murdered in Prijedor whose guilt was the same as mine. I survived that hell and I never regretted for the fact that I witnessed."[214] In order for these victim-witnesses to be able to safely come forward and share their story with the Tribunal, protective measures had to be introduced.

To help victim-witnesses cope with the demands of the trial, the ICTY created the Victims and Witness Protection Unit (VWU). The Victims and Witness Unit was established through Rule 34 in the Rules of Procedure and Evidence. The aim of this institution is to assist victims and witnesses who come to The Hague to give evidence to the Tribunal. The staff of the unit informs investigators about the psychological needs of the victims before they meet for interviews. Further, due to the nature of the crimes committed against victims,

[210] C. Van den Wyngaert, "Victims before International Criminal Courts," *44 Case Res. J. Int'l L*. 475. 2011. p 7
[211] For an overview of notable authors who have argued this point see: N. Henry, "Witness to Rape: The Limits and Potential of International War Crimes Trials for Victims of Wartime Sexual Violence" *The International Journal of Transitional Justice* 3(1) 2009. P 115
[212] D. Orentlicher, "That someone guilty" p. 41
[213] E. Stover, "The Witnesses: War Crimes and the Promise of Justice in The Hague", Univ. of Pennsylvania Press, 2005 p. 126
[214] D. Orentlicher, "That Someone Guilty" p. 18

the unit is staffed with psychologists that can help authorities determine protective measures for the victims. Lastly, the unit provides follow-up support once the witnesses return home.[215]

There are several protection mechanisms employed by the ICTY to ensure that a victim-witness is safe from intimidation and retaliation. Protection for victims of human rights atrocities is necessary so that they are not subjected to further danger and threats during the proceedings.[216] One such form of protection is the non-disclosure of a witness's identity, which can remain hidden from the defense until 30 days before the trial.[217] Secondly, the Tribunal hides the identity of the victim-witnesses from the public by redacting names from documents, assigning pseudonyms, and distorting the image and voice of witnesses.[218] A final way to protect victim-witnesses was introduced during the Tadic trial. It allowed for anonymity of those testifying, but five requirements must be met for this to be necessary, because such protection may result in unjust treatment of the defendant's fair trial rights.[219]

In addition to all these protective measures, the ICTY took special care to protect victims of rape and sexual assault. Rule 96 of the Rules of Procedure and Evidence, state that the testimony of a victim who has been raped or sexually assaulted does not need to be corroborated. It also stipulates that consent cannot be used as a defense if the victim has been

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[215] The Rules of Procedure and Evidence of the Tribunal ,*Commentary by UN bodies, Tribunal's First Annual Report*. Retrieved from: *The Law of the International Criminal Tribunal for the Former Yugoslavia.* M. Cherif Bassiouni & P. Manikas Transnational Publishers, INC. New York 1996 p. 600-601

[216] C. Safferling, "The Role of the Victim in the Criminal Process: A Paradigm Shift in National German and International Law" *International Criminal Law Review* 11 2011. P. 189-190

[217] C. McLaughlin, "Victim and Witness Measures of the International Criminal Court: A Comparative Analysis." *The Law and Practice of International Courts and Tribunals 6* 2007, p. 190-192

[218] Ibid, 197 additionally: Y.M.O. Featherstone, "Constitutional and Institutional Developments: The International Criminal Tribunal for the former Yugoslavia: Recent Developments in Witness Protection." *Leiden Journal of International Law,* 10. P. 180-181 The author explains that the Tribunal Courtroom built a gallery in order to hide the victim, and installed blinds that can be opened or closed to protect their identity and avoid confrontation with the accused if they are unwilling or unable to encounter them. In order to do this, the witness can testify through a remotely located one-way camera. As such, the accused can still see the witness, but the witness is protected from viewing the accused.

[219] These five requirements were developed during the Tadic case to protect two individuals who were testifying against the sexual mutilation that Tadic was accused of. The five requirements are that there must be a legitimate fear for the witness's safety, that the witness's testimony must be significant to the prosecution's case, that there is no prima facie evidence that the witness is unreliable, that the Court determines the witness protection program to be ineffective and that these protective steps are entirely necessary. *Tadic Case* IT-94-1, Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses (ICTY Trial Chamber 10 August 1995)

threatened to (a) "fear, violence, duress, detention or psychological oppression, or" (b) "reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear."[220] If the defense wants to argue that the individual was consenting, then this must be done in camera, and the rules forbid the admittance of prior sexual conduct of the witness.[221]

In spite of the VWU and the safety measures it provided victim-witnesses, there is still dissatisfaction among victim witnesses who have come to The Hague to testify. Stover determined that many of the witnesses he interviewed experienced powerlessness rather than empowerment during and after a testimony.[222] Unlike the ICC, which allows victims to participate in the pre-trial and trial stage,[223] the ICTY does not allow victims such an active role, and ICTY victims reportedly feel disillusioned with the legal process, since they have very little control over the outcome.[224]

Furthermore, because of the way a criminal trial is carried out, the therapeutic effects that a victim may experience from telling their story are diminished. In a criminal trial, certain legal facts must be proven; the judges and prosecutor are concerned with extracting those statements from the witnesses, rather than the whole story.[225] This means that the victim-witnesses cannot express their story in the way that they experienced it, and Mertus argues that because of this the therapeutic effect of story telling is impossible.[226] From the perspective of the court, however, this is a necessary limitation of truth-telling in a judicial

[220] ICTY Rules of Procedure and Evidence, Rule 96 "Evidence in the Cases of Sexual Assault" adopted 11 Feb 1994 http://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032Rev50_en.pdf
[221] ibid
[222] Stover, "The Witnesses" p. 132
[223] C. Van den Wyngaert, "Victims before International Criminal Courts," 44 Case Res. J. Int'l L. 475. 2011. As the author explains, the ICC was novel in creating a victim participatory and reparations scheme, and because of these enhanced roles for the victims, it is considered more friendly towards victim-witnesses than the ICTY.
[224] N. Henry, "Witness to Rape." p. 115
[225] J. Mertus, "Shouting from the Bottom of the Well: The Impact of International Trials for Wartime Rape on Women's Agency." *International Feminist Journal of Politics* 6(1) 2004. 110-128
[226] ibid, 115

setting. Time constraints do not allow every witness to convey all of their experiences.[227] Additionally, a court is limited to experiences that are legally relevant to the case.[228] As such, a court is not the best setting to establish a full historical, but rather an overview of legally relevant historical facts.

In conclusion, the ICTY created a framework for protecting victim-witnesses who come to The Hague to testify. While victims might be dissatisfied with the extent to which they can detail their story, this is a necessary outcome of the role that the Tribunal plays, which is limited to establishing facts that are legally relevant to the charges of the accused on trial. In a way, the expectations of victims cannot reasonably be met in this setting. Although their voices can be used to support the historical account that the Tribunal creates, their experience in the courtroom does not necessarily help them move on from the tragedy they endured.

3.3 The weakness of Outreach: too little too late?

As demonstrated above, the Tribunal has succeeded in ending what was fifty years of impunity after the Nuremberg and Tokyo Tribunals.[229] It also prevented war criminals from remaining in positions of power in former Yugoslav republics,[230] and it created an impressive legal record of the facts.[231] However, it has been argued by many scholars that the Tribunal's verdicts have been limited in reaching the victims due to the failure of reaching out to affected communities early on. Very few victims ever make it to the Hague to testify, so the information they receive is not directly from the inside of the Trial Chamber, but rather from the local media. Without the Tribunal overseeing the dispersal of information through an

[227] M. Dembour & E. Haslam, explain the Tribunal's common practice of interrupting victim-witnesses during testimonies. They opine that the main interest of the prosecutors and judges is to have a speedy trial, rather than to allow the victim to tell his/her story. In: "Silencing Hearings? Victim-Witnesses at War Crimes Trials" EJIL Vol. 15 No. 1 p. 158
[228] ibid, 156
[229] K. Askin, "Reflections on Some of the Most Significant Achievements of the ICTY" *New England Law Review 37:4 (2003)* p. 904
[230] ibid
[231] D. Orentlicher, "That Someone Guilty" p. 41Orentlicher claims that some Bosniaks are satisfied that the ICTY has created a historical record that makes it harder to deny what happened in Prijedor.

effective outreach program, it has allowed misinformation to prevail, which keeps ethnic groups divided.[232] Clark has argued that local efforts need to be made to educate communities about what is being disseminated from The Hague. Without Outreach efforts educating the people, Clark explains that the judicial truths coming from the ICTY are generally unreachable because they are written in a language that is incomprehensible to much of the local populations.[233]

Former ICTY Prosecutor Graham Blewitt also emphasized the need for effective outreach of the ICTY,

> It is important that the elaborate factual discussions and findings in ICTY judgments be properly received in the republics of the former Yugoslavia, so that their reconciliatory potential is appropriately made use of in those war-torn societies, especially for the benefit of their emerging generations of citizens. [234]

The statements from the former ICTY prosecutor indicates that despite all the work the Tribunal did to end impunity, it is not enough to help the local communities unless the work of the Tribunal reaches them. Cibelli and Guberek found that in 2000 that the majority of humanitarian NGOs in the Republika Srpska lacked accurate information about the work the ICTY carried out. Furthermore, they almost all agreed that the information they heard through the media was biased.[235] Such misunderstanding can be explained by the fact that it was not until 1999 that the Tribunal established the Outreach Program.[236] Although the

[232] D. Orentlicher, "That Someone Guilty" p. 102 She explains that the lack of information from the Hague reaching Bosnian communities, nationalistic leaders were able to purport their own version of facts. Such leaders had control over the media and were thereby able to manipulate the views of citizens.
[233] J. Clark, "The limits of retributive justice: Findings of an empirical study in Bosnia and Hercegovina." Journal of International Criminal Justice 2009 7: 463–87.
[234] Blewitt, ' The International Criminal Tribunal for the Former Yugoslavia and Rwanda ' in M. Lattimer and P. Sands (eds), Justice for Crimes Against Humanity (2006), at 151.
[235] K. Cibelli & T. Guberek, "Justice Unknown, Justice Unsatisfied? Bosnian NGOs Speak about the International Criminal Tribunal for the Former Yugoslavia." *EPIIC.* Tufts University 2000. P. 15
[236] It was Judge Gabrielle Kirk McDonald who realized the necessity for the Tribunal to reach out to the effected communities, so that they could begin to understand the extent of the work that the Tribunal was doing in their name. As quoted in J. Clark, "International War Crimes Tribunals and the Challenge of Outreach." *International Criminal Law Review 9 (2009)* p. 101

Outreach Program has been severely underfunded and understaffed,[237] they have been able to bring students to the Tribunal, dispense Tribunal publications, host presentations and conferences on the work of the Tribunal.[238] A notable initiative of the Outreach Program was the "Bridging the Gap" conference that was held in Prijedor in 2005.[239]

The ICTY's "Bridging the Gap" series brought ICTY officials to local communities that were most devastated by the war. In the Prijedor conference, both Serbs and non-Serbs attended four separate sessions to hear about the work completed by the ICTY.[240] The purpose of the conference was to educate the community about the work of the Tribunal.[241] Such education can dispel myths and misinformation that had been perpetrated by the media and political elites that manipulated society's perception of the Tribunal. Even as the Tribunal was busy building cases and prosecuting alleged war criminals from Prijedor, a culture of denial and lack of recognition of war crimes still existed in the city.[242] Even at the conference, Bosnian Serb mayor of Prijedor, Marko Pavic, downplayed the need for such a forum and admitted that he resisted holding the conference because he believed Prijedor should move on from its dark past to a brighter future without analyzing what happened during the war. He concluded his remarks by emphasizing that no one in Prijedor has been found guilty of genocide, so there was a limit to all the misfortune that the city experienced.[243] Such a statement from the Pavic illustrates how politicians who wish to

[237] ibid, 105 Clark explains that the program relied only on donations for funding and was staffed with only two people in the Hague, and the regional offices that were established in Zagreb, Sarajevo and Belgrade were each staffed with only two people as well.
[238] Ibid, 101
[239] "Bridging the Gap Between the ICTY and Communities in Bosnia and Herzegovina" Conference Proceedings, Prijedor 25 June 2005 The ICTY also sent representatives to Srebrenica, Foca, Brcko and Sarajevo to hold similar informational conferences.
[240] ibid, 1
[241] J.N. Clark explains that the "Bridging the Gap" series aimed to make the workings of the Tribunal more accessible to the people affected by the crimes that it prosecutes. At the conference, ICTY officials explained the procedural aspects of the Tribunal, details of cases heard before the Court, how guilty pleas work, and it allowed for questions from the audience. In: "International War Crimes Tribunals and the Challenge of Outreach." *International Criminal Law Review 9 (2009)* p. 104-105
[242] D. Orentlicher described that in Prijedor even if Bosnian Serbs recognize that ethnic cleansing took place, it will not be admitted publicly. "That Someone Guilty be Punished," p. 93
[243] "Bridging the Gap" p. 4-5

ignore the past can manipulate the work of the Tribunal by only recognizing partial truths about what the ICTY has established.[244]

Even with an effort such a "Bridging the Gap," the culture of denial still exists in Prijedor. The culture of denial refuses to publicly recognize the suffering of non-Serb victims. According to Haris Subasic, such a denial is evident in the prohibition of building monuments to non-Serbs who died in Prijedor. However, there are 60 monuments dedicated to the Serbian soldiers who died fighting in the "defensive-liberation war."[245] Politicians from Republika Srpska have obstructed proposed laws that would criminalize genocide denial, and also failed to pass laws that would allow for the building of monuments for non-Serb victims of war.[246] The city sold the iron mine and former camp of Omarska to Arcelor Mittal and the company has refused to allow a memorial to be built on site because of political reasons.[247] According to Subasic, there has never been a public apology from the mayor nor any city officials and such individuals refuse to participate in events that aim to promote reconciliation.[248] Pavic has gone so far to call victims' marches "just a gay pride march."[249] Thus, the political will for honestly dealing with the past is still missing in Prijedor and the Outreach Program is not strong enough to counter the spreading of misinformation and intolerance in Prijedor.

[244] By Pavic stating that no one was convicted of genocide, it downplays all of the convictions that the ICTY rendered in relation to perpetrators from Prijedor. He is correct that no one was ever convicted of genocide, but people were convicted of murder, torture and persecution, and these are also grave crimes that must be dealt with.
[245] H. Subasic, "The Culture of Denial in Prijedor." TransConflict. 29 Jan 2013 http://www.transconflict.com/2013/01/the-culture-of-denial-in-prijedor-291/ Subasic explains that there are ten monuments to non-Serbs who died, but none are allowed to be in the urban center. According to victims, authorities prohibit building memorials. Even at Omarska, Keraterm and Trnopolje the non-Serb victims cannot construct a monument to their fallen, but at Trnopolje there is a memorial for the Serb soldiers who were killed. Pavic claimed that a memorial at Omarska would hurt inter-ethnic relations.
[246] ibid
[247] "Working Group: Four Faces of Omarska" http://radnagrupa.org/en/statement.php 27 March 2015
[248] H. Subasic, "The Culture of Denial in Prijedor."
[249] Al Jazeera, *Bosnians mark a painful chapter with White Armband Day.* 30 May 2014 http://america.aljazeera.com/articles/2014/5/30/for-bosnians-whitearmbanddaymarkspainfulchapter.html 27 March 2014

The Tribunal's effort to help educate the people of Prijedor about their findings came too late. And as Clark asserted, even with proper outreach, problems are likely to remain in place because the ethnic groups hand pick what they want to believe from the Tribunal. That allows them to deny parts of what the Tribunal asserts and rely instead on their own narratives of the past.[250] Selecting partial legalistic truths furthers divisions along ethnic lines in Prijedor. Therefore, Clark argues that the ICTY cannot be the sole actor in establishing the truth to reconcile the communities, claiming that local actors must also play a part. [251] But when political officials are unwilling to play a part in reconciliation, the city is left in a culture of denial. Thus, no matter how much work the Tribunal does to hold individuals accountable, it will not help to reconcile the people of Prijedor if one group does not recognize and accept all of the information.

4. Justice at the Domestic Level

The temporary nature of the ICTY's mandate dictated that The Hague could not prosecute all alleged war criminals. When determining an end date for the Tribunal, it became necessary to create a transfer strategy so that the domestic courts could prosecute war criminals at home. United Nations Resolution 1503 called on the states of the former Yugoslavia to improve their national courts in order to implement the completion strategy of the ICTY. In terms of Bosnia, Resolution 1503 stated:

> Noting that an essential prerequisite to achieving the objectives of the ICTY Completion Strategy is the expeditious establishment under the auspices of the High Representative and early functioning of a special chamber within the State Court of

[250] J.N. Clark, "Transitional justice, truth and reconciliation: An under-explored relationship." International Criminal Law Review 2011. 11: 241–61.
[251] J. N.Clark, "From negative to positive peace: The case of Bosnia and Hercegovina. Journal of Human Rights, 2009 8: 372

> Bosnia and Herzegovina (the "War Crimes Chamber") and the subsequent referral by the ICTY of cases of lower- or intermediate-rank accused to the Chamber[.][252]

The Tribunal's desire to hand over the power to prosecute to the local Bosnian court was a marked change from its initial policy of that mandated the primacy of international prosecutions over domestic procedures.[253] Such a policy was logical at the time because when the war ended the Bosnian judicial system lacked the capacity to administer local justice.[254] With the passing of time, the ICTY realized the need of having a national partner so they began to build judicial capacity in Bosnia and Herzegovina.[255]

4.1 The Establishment of the WCC

Pursuant to UN Resolution 1503 the War Crimes Chamber (WCC) in the Criminal Division of the Court of Bosnia and Herzegovina and it began operating in 2005.[256] With the help of international funds and the presence of international judges, the WCC helps to promote reconciliation in Bosnia by holding alleged war criminals accountable at home.[257] In addition to helping reduce the caseload at the ICTY through the transfer of suspects, the WCC can investigate and prosecute its own cases. The ICTY can also refer cases to the Court of BiH pursuant to Rule 11bis of the ICTY's Rules of Procedure and Evidence.[258] This rule stipulates that ICTY cases middle and lower-level accused do not necessarily need to be tried by the Tribunal and can be transferred to national jurisdictions.[259]

[252] United Nations Security Council Resolution No. 1503 28 August 2003 UN: New York. Retreived: http://www.un.org/press/en/2003/sc7858.doc.htm
[253] S. Williams, "Hybrid and Internationalized Tribunals: Selected Jurisdictional Issues." *Hart Publishing* Oxford and Portland, Oregon 2012 p. 44-45
[254] D. Orentlicher, "That Someone Guilty." P. 45
[255] UN Resolution 1503
[256] War Crimes Chamber in Bosnia and Herzegovina. Track Impunity Always [TRIAL] 13 January 2015 http://www.trial-ch.org/en/resources/tribunals/hybrid-tribunals/war-crimes-chamber-in-bosnia-herzegovina.html retrieved: 24 March 2015
[257] ibid
[258] There were four cases pertaining to Prijedor that were handed down to the domestic court in Bosnia. The accused were as follows: Zeljko Mejakic, Momcilo Gruban, Dusan Fustar, and Dusko Knezevic. Found in: "Bridging the Gap" p. 50
[259] S. Williams, "Hybrid and Internationalized Tribunals." p. 38-39

The nature of the Bosnian Court is hybrid, meaning that it applies domestic law but originally it staffed both national and international judges.[260] However, compared to other hybrid courts[261] it is unique because after five years the international judges stepped down, leaving only national judges.[262] Scholars in the field of TJ have promoted the promise that hybrid courts hold for further combatting impunity and local capacity building. Dickinson argues that local hybrid courts operating at the same time as international tribunals can help local populations accept the legitimacy of the trials because the domestic trials will fit within their understanding of law.[263] With the local population understanding the legal decisions adjudicated by the domestic court then there may be more perceived legitimacy of the trials and less mistrust on judicial decisions.[264] Similarly, Mani argues that local trials contribute towards reconciliation more than international trials because they are held close to home, making it easier for the local communities to follow the happening.[265] She states, "National trials…may have beneficial ripple effects throughout society. They may help to reinforce the rule of law, build public confidence, and strengthen the government's credibility."[266] However, in relation to the Bosnian Court, Clark has found that these views are too idealistic and the local court in fact shares many of the same problems as the ICTY in terms of promoting reconciliation through retributive justice. She explains that the local populations also perceive the domestic court as biased, and victims are also often unsatisfied with the verdicts.[267] Nevertheless, it is still an achievement that the local court could reform itself and build capacity to the extent that it could process war crimes cases.

[260] D. Orentlicher, "That Someone Guilty" p. 116
[261] For example, the Special Court of Sierra Leone, the Extraordinary Chambers in Cambodia and the Specials Panels in Timor-Leste.
[262] J.N. Clark, "The State Court of Bosnia and Hercegovina: a path to reconciliation?" *Contemporary Justice Review* Vol. 13, No. 4, 2010 p. 373
[263] L. A. Dickinson, "The Promise of Hybrid Courts." 97 Am. J. Int'l L. 295, 2003 p. 11
[264] ibid
[265] R. Mani, "Beyond Retribution: Seeking justice in the shadows of war." Cambridge: Polity Press 2007 p. 99
[266] Ibid
[267] J.N. Clark, "The State Court of Bosnia and Hercegovina: a path to reconciliation?" *Contemporary Justice Review* Vol. 13, No. 4, 2010 p. 372

4.1.1 Harmonizing the Judiciary

"[T]he first step in facing the past is the prosecution and sanctioning of persons responsible of crimes against humanity and values protected by international humanitarian law."[268]

Although there are many potential war criminals that are still awaiting justice, the implementation of war crimes prosecutions has seen some successes. From 2004 to 2013, 235 war criminals were convicted and sentenced to an overall total of 2,262 years.[269] However, these achievements are relative considering that there are still an estimated 1,315 war crimes cases that have yet to be processed.[270] To deal with this backlog of cases, a National War Crimes Strategy was created in 2008, which sought to harmonize the courts of Bosnia and create more efficient practices for prosecuting these cases.[271]

While creating the National War Crimes Strategy, the Ministry of Bosnia and Herzegovina investigated the handling of war crimes cases in each of the country's courts. It was necessary to harmonize the court practices in Bosnia due to the complex nature of the judicial system in the country. This complexity came out of the 1995 Dayton Peace Agreement, which split the country into two entities, the first being the Federation of Bosnia and Herzegovina, which is further divided into ten Cantons. The second entity is the Republika Srpska. [272]

A multi-layered judicial system has been established following the division of the country; in the Federation there is the Supreme Court of Bosnia, Cantonal Courts, and municipality courts. The Republika Srpska also has a Supreme Court, but rather than

[268] National War Crimes Strategy Council of Ministry of BiH December 2008 Retreived: http://www.geneva-academy.ch/RULAC/pdf_state/War-Crimes-Strategy-f-18-12-08.pdf 24 March 2015 p. 1-17
[269] War Crimes Processing Project, OSCE *Mission to Bosnia and Herzegovina.* Sarajevo http://www.oscebih.org/documents/osce_bih_doc_2013032512531594eng.pdf 25 March 2015
[270] ibid
[271] National War Crimes Strategy Council of Ministry of BiH December 2008 Retreived: http://www.geneva-academy.ch/RULAC/pdf_state/War-Crimes-Strategy-f-18-12-08.pdf 24 March 2015 p. 1-17
[272] The General Framework Agreement for Peace in Bosnia and Herzegovina. Annex II. Dayton, 1995 http://www.ohr.int/dpa/default.asp?content_id=370 25 March 2015

Cantonal Courts it has District Courts and Basic Courts.[273] Those creating the National Strategy for War Crimes Prosecution found that there was no uniform procedure for processing war crimes cases in each of these jurisdictions, so they worked to balance the practices of the courts in order to better guarantee legal certainty in the country.

The next problem the National Strategy sought to resolve was the backlog of cases that had piled up in the courts. To solve the confusion that had arisen over how to distribute cases, a policy was created to manage cases based on the severity of the charges. As such, the most serious cases should be allocated to the State Court of BiH and the less serious cases should be transferred to the district and cantonal courts.[274] However, there have been concerns over the plan to transfer cases to the entity for fear that the trials will not be conducted efficiently or impartially.[275]

Similar to the ICTY statute, the Penal Code of Bosnia and Herzegovina extends the jurisdiction of the State Court to investigate and prosecute crimes against humanity, genocide and war crimes.[276] Pursuant to international law, the Bosnian criminal code maintains that these crimes are not subject to the statute of limitations as it imposes on other crimes.[277] Due to the thousands of potential war crimes cases that the WCC could prosecute, the unlimited statute of limitations means that war crimes trials can continue to be carried out.

This chapter of the thesis will examine accountability and truth-telling at the local level in order to determine whether the ICTY or the domestic court has been more successful in satisfying victims and promoting reconciliation in light of the main criticisms of the ICTY, which are its remote location, unpopular use of guilty pleas, victim dissatisfaction with testifying and its ineffective outreach.

[273] Ibid
[274] National War Crimes Strategy *Council of Ministry of BiH* December 2008 Retreived: http://www.geneva-academy.ch/RULAC/pdf_state/War-Crimes-Strategy-f-18-12-08.pdf 24 March 2015, p. 11-14
[275] "Delivering Justice" OSCE, p. 79
[276] Chapter XVII, Criminal Code of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina No. 3/03 retrieved: http://www.iccnow.org/documents/criminal-code-of-bih.pdf 24 March 2015
[277] Ibid, Article 19

4.2 Accountability at the State and District levels

Since Prijedor is a part of the Republika Srpska it means that the lesser serious cases will be handled in the district court in Banja Luka. The Banja Luka court contains a War Crimes Department, but it is lacking in legal staff, as it only possesses one prosecutor and one legal advisor.[278] From 2005, the Banja Luka District Court has prosecuted 27 cases dealing with war criminals from Prijedor, resulting in 13 convictions and 14 cases ended in acquittal.[279] The State Court of Bosnia and Herzegovina has additionally prosecuted 18 individuals for crimes related to Prijedor, convicting 14 and acquitting 3 persons.[280] Although it is promising that there has been implementation of war crimes prosecutions at the domestic level, because of the multitude of atrocities that were committed by potentially hundreds of individuals, many victims may never see their offenders held accountable. [281] Clark argues that the national court will be challenged to end impunity for all alleged war criminals.[282] Her argument is based on the timeline outlined by the National Strategy. It stipulated that December 2015 is the deadline for the processing of the most serious war crimes cases, with all other cases being resolved by 2023. However, it does not appear that it will be possible.[283] And by 2023, many victims and accused will be too old or dead and will not be able to participate in the trials. The slow rate of prosecutions in Bosnia deters reconciliation because individuals are not seeing that the court is eradicating impunity.

[278] National War Crimes Strategy *Council of Ministry of BiH* December 2008 Retreived: http://www.geneva-academy.ch/RULAC/pdf_state/War-Crimes-Strategy-f-18-12-08.pdf 24 March 2015 p. 1-17
[279] BiH War Crimes Case Map, *OSCE Mission to Bosnia and Herzegovina* http://www.warcrimesmap.oscebih.org/ 25 March 2015
[280] ibid
[281] As of December 2008 the Prosecutor's Office in the Republika Srpska had 1758 suspects/accused in outstanding cases and 563 of those were cases under investigation. At that time only 24 cases had reached a conviction. Obtained from the National War Crimes Strategy Ministry of BiH December 2008 http://www.geneva-academy.ch/RULAC/pdf_state/War-Crimes-Strategy-f-18-12-08.pdf p. 7-11
[282] Clark, "State Court of Bosnia and Herzegovina," She emphasizes this point with an interview with Sabahudin Garibovic who is president of the victim's association in Prijedor. He wondered why there were three Keraterm camp guards prosecuted by the ICTY but the other 11 have not yet been indicted by the State Court of Bosnia.
[283] M. Tausan, "Huge War Crimes Case Backlog overwhelms Bosnia" BIRN. Sarajevo 23 October 2015 accessed: http://www.balkaninsight.com/en/article/huge-war-crimes-case-backlog-overwhelms-bosnia-10-22-2015

In spite of the magnitude of cases that still need to be tried, the State and entity courts have had some success in holding individuals accountable. The remainder of this chapter will analyze the progress made by both the State Court of BiH and the Banja Luka district court.

4.2.1 The Court of BiH: The Case of Mejakic, et al.

The *Mejakic et al*. case is an example of a case that was transferred from the ICTY to the State Court of Bosnia and Herzegovina. *Mejakic* was first indicted by the ICTY in July of 1995 and included twelve other individuals.[284] By 2002 the indictment had been modified and he was indicted only with Dusan Fustar, Momcilo Gruban and Dusko Knezevic for alleged crimes related to the Keraterm and Omarska detention camps.[285] All of the accused voluntarily surrendered and were transferred to The Hague in 2002.[286] The men were charged with crimes against humanity, murder and inhumane acts and cruel treatment.[287] The were charged with being members of a JCE to "abuse and persecute non-Serbs detained in the Keraterm prison camp."[288] However, in 2006 the Tribunal determined that the level of responsibility of these individuals was not high enough for them to need to be tried by the ICTY.[289] None of the men held official leadership positions in the camp so they were considered to be lower to mid-level perpetrators and the case was transferred to the State Court of Bosnia and Herzegovina based on the territoriality and nationality principle, pursuant to Rule 11 *bis(A).*[290]

[284] *Mejakic et al*. (IT-02-65) Decision on Prosecutor's Referral of case pursuant to Rule 11 bis 20 July 2005. accessed: http://www.icty.org/x/cases/mejakic/tdec/en/050720.htm
[285] Ibid, para 10-12
[286] ibid, para 13
[287] *Mejakic et al.* IT-02-65 (Indictment) 18 July 2001 para 29-32
[288] "Time for the Truth: Review of the Work of the War Crimes Chamber of the Court of Bosnia and Herzegovina 2005-2010." *Balkan Investigative Reporting Network* Sarajevo, 2010 p. 27
[289] *Mejakic et al*. (IT-02-65) Decision on Prosecutor's Referral of case pursuant to Rule 11 bis 20 July 2005para 27
[290] Rule 11 *bis (A)* declares: "(A) After an indictment has been confirmed and prior to the commencement of trial, irrespective of whether or not the accused is in the custody of the Tribunal, the President may appoint a bench of three Permanent Judges selected from the Trial Chambers (hereinafter referred to as the "Referral Bench"), which solely and exclusively shall determine whether the case should be referred to the authorities of a State :

Although the men were tried together for the vast majority of the trial, eventually Fustar pleaded guilty. After a year and a half of the trial, including five months of presenting evidence, Fustar expressed remorse,[291] stating:

> My conscience drives me to express my deepest condolences to all those detained in Keraterm, those who were hurt, who survived any type of mental or physical maltreatment as well as to their families for all their suffering.[292]

The Court of BiH found that Fustar had acted with "discriminatory intent" towards non-Serbs, but that he was not directly involved in the mistreatment that took place in the camp.[293] For such responsibility, he was sentenced to nine years of imprisonment.[294]

Fustar's guilty plea on 17 April 2008 separated his case from Mejakic, Gruban and Knezevic, who did not plead guilty. Their trial continued and on 30 May 2008 the Court of BiH found them guilty on the basis of individual criminal responsibility for crimes against humanity, which involved persecution, torture, sexual violence, murder, imprisonment and other inhumane acts. They were sentenced to prison for 21, 11, and 21years respectively for their actions inside Omarska and Keraterm.[295]

With the ICTY is slowly closing its doors and focusing its final cases on high-level defendants, the increased capabilities of the State Court has made it possible to hold lower-level camp officials accountable as well. Even though the indictment outlining the charges was handed down from the ICTY, the State WCC has been able to carry out a trial that led to the conviction of four men, which was upheld on appeal.[296] However, the late acceptance of

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(i) in whose territory the crime was committed; or
(ii) in which the accused was arrested; or
(iii) having jurisdiction and being willing and adequately prepared to accept such a case" (Rules of Procedure and Evidence of the ICTY amended 30 September 2002)

[291] A. Alic, "Detention Camp Indictees Deny Responsibility" BIRN BiH Sarajevo 07 May 2008. Accessed: http://www.justice-report.com/en/articles/analysis-detention-camp-indictees-deny-responsibility

[292] "Time for the Truth: Review of the Work of the War Crimes Chamber of the Court of Bosnia and Herzegovina 2005-2010." *Balkan Investigative Reporting Network* Sarajevo, 2010 p. 27

[293] "Time for the Truth" ibid, p 28

[294] A. Alic. "Detention Camp Indictees Deny Responsibility"

[295] "Time for the Truth", p. 80-82, although Momcilo's sentence was converted to seven years after appeal.

[296] According to Justice Report's: Mejakic et al: "Distorted Truth"by Aida Alic for BIRN BiH, Upon appeal, the defense attorneys for the convicted claimed that the trial was not "fair and righteous" and that "the Court rushed

Fustar's plea bargain must be questioned. With 16 months of the trial already underway and ample amounts of evidence presented, the plea bargain did not expedite the trial. Further, he was held accountable to a lesser degree compared to his co-defendants.[297] The Court's decision caused outrage amongst victims from Prijedor, which will be further discussed in a later section. Although they were able to complete the trial of Mejakic, Gruban and Knezevic and hand down long-term sentences, the acceptance of Fustar's guilty plea hindered the Court's ability to satisfy the needs of the victims.

The Court of Bosnia and Herzegovina has tried fourteen other individuals for crimes related to Prijedor. Twelve of the individuals tried were alleged to have been part of the Mt. Vlasic massacre, which Mrdja confessed guilt to at the ICTY. In addition to Mt. Vlasic and Mejakic et al., there was only one other case heard at the Court of BiH pertaining to crimes in Prijedor.[298] However, there are two ongoing cases being tried by the State Court, involving fourteen individuals for crimes committed in Prijedor.[299] Although the Court has convicted nine persons related to the massacre at Mt. Vlasic, the lack of diversity in the cases tried at the State Court raises questions about the initial amount of evidence they had to try numerous alleged war criminals. However this seems to be changing, as the two cases currently on trial involve fourteen people and numerous crimes that allegedly occurred in Prijedor during the military takeover. As such it seems that the capacity of the Court is increasing to be able to prosecute a wider number of incidents that occurred. The rest of the cases related to Prijedor have been tried at the entity level in the Banja Luka court.

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into discovering its own truth, without confronting the statements given by various witnesses, who had opposite views of the same events" However, the State Court upheld all convictions and kept Knezevic and Mejakic's sentences in place, but lowered Gruban's to seven years.

[297] Mejacik, Gruban and Knezevic's verdict was handed down just one month later and they were convicted of more charges and sentenced to longer imprisonment.

[298] The case of Soldat et al. involved the abduction and execution of eleven Muslim men in a Mosque that was later set on fire. The Court found Soldat, Duric and Babic guilty of crimes against humanity and sentenced them to 21 years of long-term imprisonment. Court of BiH: "Trial verdict in the Case of Soldat et al. confirmed" http://www.sudbih.gov.ba/index.php?id=3805&jezik=e

[299] Cases found on: Justice Report, "City: Prijedor" accessed: http://www.justice-report.com/en/cities/prijedor-news-analysis-and-opinion/#o29

4.2.2 Prosecutions at the entity level

As previously explained, the National Strategy stipulates that the less serious cases will be heard at the entity and cantonal level, rather than in the State Court. In the case of Prijedor, war crimes cases are heard by the Banja Luka district court. Since 2005, nine cases have been completed by the district court, involving twenty-seven individuals.[300] All of the individuals who have been convicted were found guilty of war crimes against civilian populations in the form of murder.[301] However, fourteen of those charged were acquitted of the charges, which is over fifty percent of all individuals tried have been acquitted. According to Human Rights Watch (HRW), the majority of these acquittals happened because the prosecutor did not effectively investigate the case and failed to collect the proper evidence.[302]

Such a high number of acquittals is not surprising considering the obstacles that stand in the way of war crimes prosecutions in the Bosnian Serb entity. The Banja Luka court lacks essential components to help ensure successful prosecutions. There are no expert war crimes investigators nor is there an organized independent department specifically for processing war crimes cases.[303] Additionally, there is a lack of cooperation between prosecution and Republika Srpska police, which the HRW claims is related to the fact that police officers may be implicated in the perpetration of crimes.[304] There is also a lack of political will in the entity for successful war crimes prosecutions, as Bosnian Serbs represent the majority in

[300] OSCE's BiH War Crimes Case Map, accessed: http://www.warcrimesmap.oscebih.org/
[301] ibid, So far it has only been Serbs tried and convicted by the Banja Luka district court, with the exception of Semir Alukic and Fikret Hirkic who were Muslims found guilty of killing and attempting to kill Serbs.
[302] This fact was determined by human rights groups from the region who monitored the trial of Jakovljevic et al. A trial which consisted of eleven men who were members of the Republika Srpska police force, who were charged with imprisoning a Catholic priest and his family and murdering them in September of 1995. "A Chance for Justice?: War Crimes Prosecutions in Bosnia's Serb Republic" Human Rights Watch vol. 18 No. 3(D) Accessed: http://www.hrw.org/reports/2006/bosnia0306/4.htm
[303] United Nations Interregional Crime and Justice Research "Transitional Justice in Post-Yugoslav Countries: Report for 2006" created by Center for Dealing with the Past, Humanitarian Law Center, and Research and Documentation Center of Sarajevo. Accessed: http://wcjp.unicri.it/proceedings/docs/DOCUMENTA-HLC-RCS_Trans%20justice%20in%20ex%20Yu%20countries_2006_eng.PDF
[304] "A Chance for Justice?: War Crimes Prosecutions in Bosnia's Serb Republic" Human Rights Watch vol. 18 No. 3(D) Accessed: http://www.hrw.org/reports/2006/bosnia0306/4.htm p. 20

Republika Srpska and many do not want to see members of their own ethnic group prosecuted.[305] These factors initially hindered prosecutions of criminals from Prijedor; however the district court has made progress in the last ten years. Currently, there are three ongoing cases being heard at the district court, involving six individuals who allegedly committed war crimes in Prijedor.[306]

Considering the lack of resources that the court possesses and the opposition that stands in the way of prosecutions, overall they are still able to hold individuals accountable and continue to do so in spite of the large amount of time that has passed since the commission of the crimes. The more time that passes the harder it is to apprehend suspects and find witnesses who are still alive. Despite the obstacles, the fact that Banja Luka is continuing to fight impunity is an example of a local initiative that is working to correct past wrongs. Thirteen individuals have been sentenced to an average of nine and a half years for the crimes they committed during the war.[307]According to Hodzic, the people of Prijedor trust Prosecutor Branko Mitrovic who handles war crimes cases in the Banja Luka court.[308] Even though he is the only prosecutor dealing with all the war crimes cases within the jurisdiction of the Banja Luka district court, if the victims in Prijedor are satisfied with him then it provides hope that the outcome of the trials will be more acceptable to the people who are waiting to see justice delivered.

4.3 Truth-Telling at home

The previous chapter detailed two mechanisms the ICTY uses to promote truth-telling in the Tribunal. The next section analyzes how these same mechanisms are used in the Bosnian Court and at the Banja Luka District Court in order to assess whether the ICTY or

[305] ibid, p. 21
[306] Justice Report, city: Prijedor. Accessed: http://www.justice-report.com/en/cities/prijedor-news-analysis-and-opinion/#o29
[307] BiH War Crimes Case Map, *OSCE Mission to Bosnia and Herzegovina* http://www.warcrimesmap.oscebih.org/ 25 March 2015
[308] R. Hodzic, "Living the Legacy of Mass Atrocities" 8 J. Int'l Crim. Just. 113 2010 p 122-123

local courts are more effective. The section begins with a discussion of guilty pleas at the domestic level and victims' perceptions of them. Secondly, the protective measures for victim-witness at the local level is assessed, and finally, the outreach efforts of the local court is explained in comparison to the ICTY.

4.3.1 Guilty Pleas, still a source of frustration

Similar to the ICTY, the Bosnian court has accepted the common law practice of plea bargains. Article 231 of the Criminal Procedures Code for BiH stipulates that the defense and the prosecution may negotiate the conditions of a professing guilt, which may lead to a lighter sentence for the accused.[309] If such a guilty plea is accepted, then the court shall notify the injured parties on the decision of the granting a plea bargain.[310]

The arguments in favor of the use of guilty pleas in the domestic courts mirror the benefits the ICTY reported them to have. Additionally, Clark states that plea bargains are a positive development in the processing of war crimes cases before the Court of BiH.[311] Ortega confirms this point and explains that plea bargains are beneficial at the local level because they can expedite a trial and prevent the re-traumatization of victims who would otherwise have to testify to prove the guilt of the defendant.[312] Further, Ortega argues that guilty pleas can be restorative for victims because they can hear an accused confess his/her guilt rather than listening to the facts argued in court.[313]

However, in practice guilty pleas at the Court of BiH do not necessarily work in such positive ways and victims have the same frustration with the local court using guilty pleas as they do with the ICTY. One cause of frustration is that Article 231 does not indicate when

[309] Criminal Procedure Code of Bosnia and Herzegovina, *Council of Europe* December 2006 Article 231(1-7) http://www.coe.int/t/dlapil/codexter/Source/country_profiles/legislation/CT%20Legislation%20-%20BiH%20Criminal%20Procedure%20Code.pdf
[310] CPC BiH Article 231 (7)
[311] J.N. Clark, "State Court of BiH" p. 377
[312] O. Martin-Ortega, "Prosecuting War Crimes at Home: Lessons from the War Crimes Chamber in the State Court of Bosnia and Herzegovina." International Criminal Law Review 12 (2012) p. 616
[313] ibid, p. 616

such an agreement should be reached.[314]Without such a stipulation, there have been cases where the court accepts a plea agreement just weeks before the end of the trial, which does not expedite the trial. It also does not prevent victim-witnesses from potential re-traumatization caused by testifying.[315] The Court of BiH has accepted four plea bargains from four individuals for crimes committed in Prijedor.[316]

The case of Dusan Fustar was already discussed in the accountability section of this chapter. Such a guilty plea caused outrage among victims from Prijedor. Fustar received a low sentence after his guilty plea and the court did not explain to the victims why such a sentence was proscribed,[317] Even though Article 231 (7) states that the court must inform the injured parties on the negotiation of guilt, the Court has said they are not required to do so.[318] Without a justification for such a sentence the victims are left in the dark without understanding the decision-making process of the court. Survivors of the Keraterm camp expressed dissatisfaction after the guilty plea was accepted in Fustar's case. They were outraged that the court did not inform them ahead of time that Fustar was pleading guilty.[319] Fifty individuals from Prijedor came to Sarajevo to protest the low sentence granted to Fustar after his plea bargain. They believed the sentence was disproportionate to the gravity of crimes the defendant committed.[320]

The Bosnian court's acceptance of late plea bargains does not help contribute to a truthful record of atrocities during the war because the facts have already been determined during the course of the trial and other previous trials.[321] Fustar admitted regret to having

[314] Ibid, p. 616
[315] Ibid, p. 616
[316] The trials of Goran Duric, Ljubisa Cetic, Damir Ivankovic, and Dusan Fustar ended in a plea agreement.
[317] "Bosnian Serb Sentenced for War Crimes" BIRN 22 April 2008 http://www.balkaninsight.com/en/article/bosnian-serb-sentenced-for-war-crimes
[318] A. Alic, "Justice and the Admission of Guilt" Justice Report 08 July 2008 http://www.justice-report.com/en/articles/justice-and-the-admission-of-guilt
[319] J.N. Clark, "The State Court of BiH" p. 387
[320] M. Husejnovic, "Victims dissatisfied with Bosnian Courts decision" 30 May 2008 BIRN https://listserv.buffalo.edu/cgi-bin/wa?A2=ind0805&L=justwatch-l&F=&S=&P=340635
[321] A. Alic, "Justice and the admission of guilt"

been present at Keraterm, but he added no new information that confirmed his responsibility or the responsibility of others at the camp.[322] Over twenty years have passed since the first war crimes trial; the fundamental facts of the war have already been established by the ICTY; an accused's admittance that he was present at a site of atrocity does nothing to further the establishment of a historical record nor to relieve victims suffering. Although guilty pleas are promoted as tactics to help victims heal, in fact they often cause more outrage and frustration.

4.3.2 Threatened and invisible victims

Unlike the ICTY, which has a plethora of measures in place to protect victim-witnesses when they testify at The Hague, the local courts in Bosnia are lacking consistent and coherent protective and psychological services for victim-witnesses. The insufficiency of such services diminishes the likelihood that victims will step up to testify in court as witnesses. Without such testimonies, proving guilt beyond a reasonable doubt becomes more burdensome. The next section will examine the availability of witness protection at both the state court and within the entity.

HRW claimed that improvements to witness protection inside the courtroom have occurred since the commencement of the State Department for War Crimes, but problems still exist outside the courtroom.[323] For example, Bosnian authorities have failed to provide follow-up for witnesses after they have testified, leading some to redact their statements.[324]

Follow-up is necessary because testifying may put the victim-witness at risk. There have been reports of victim-witnesses being threatened and intimidated when it becomes known that they participating in the trial.[325] When witnesses report such threats, the

[322] ibid
[323] "Justice for Atrocity Crimes: Lessons for International Support for Trials before the State Court of Bosnia and Herzegovina." *Human Rights Watch* March 2012 p. 29-31
[324] ibid, p. 30
[325] "Witness Protection and Support in BiH Domestic War Crimes Trials: Obstacles and Recommendations a year after the adoption of the National Strategy for War Crimes Processing. A Report on the Capacity Building and Legacy Implementation Project." OSCE BiH 2010 p. 10-13

judiciaries of both the state and entity level often fail to effectively investigate the claim.[326] Without proper investigation into who is threatening witnesses, the practice of such intimidation will persist and the potential for witness testimony will be reduced because witnesses will be too frightened to appear before the court. In September of 2015 in the *Vlasenko et al*.[327] case being heard before the Banja Luka district court, the witness for the prosecution failed to arrive at court to testify, had disconnected their phone number and could not be found at their address.[328]

Such intimidation would not be possible if the identity of witnesses was not disclosed or if a general atmosphere would be created in which coming forward with a testimony would be encouraged and threatening a witness made a punishable crime. The National Strategy for War Crimes Prosecution established the protective measures that should be carried out, but these measures are not uniformly and consistently applied throughout the country's judiciaries.[329] The Organization for Security and Co-operation in Europe (OSCE) reports that the entity level courts often make no effort to conceal the identities of witnesses, even as early on as in the indictment.[330] The entity level courtrooms often lack voice-distortion capabilities and technology for video-linked testimony.[331] Representatives for victim-witness associations stated that there are victims in the area who would testify only if protective measures were put in place.[332] Without these measures in place, many witnesses remain hidden. It is not only protective measures that are lacking inside and outside the courtroom that prevent persons from testifying and revealing their wartime experiences, there is also

[326] ibid, 10
[327] The *Vlasenko et al*. case involves three men who were former members of the VRS who allegedly participated in the persecution of non-Serbs in the municipality of Prijedor in 1992
[328] S. Ucanbarlic, "State Prosecution witness fails to appear at Prijedor War Crimes Trial." BIRN BiH Justice Report 01 September 2015 accessed: http://www.justice-report.com/en/articles/te%C5%A1ko-u%C4%87i-u-trag-svjedocima
[329] [329] "Witness Protection and Support in BiH Domestic War Crimes Trials: Obstacles and Recommendations a year after the adoption of the National Strategy for War Crimes Processing. A Report on the Capacity Building and Legacy Implementation Project." OSCE BiH 2010 p. 14
[330] ibid, 14
[331] ibid, 15
[332] ibid, 16

insufficient support in Republika Srpska that prevents people from revealing the truth of what happened to them.

Edin Ramulic, the spokesperson for *Izvor*,[333] explained that psychological support in the entity level is missing for victims of war, especially female rape survivors. He claimed that there was not enough mental health support in the Banja Luka district and many survivors have nowhere to turn for help.[334] Furthermore, victims of sexual assault face difficulty in receiving victim of war status in Republika Srpska,[335] unlike in the Federation, where sexually assaulted victims of war have their own special category and are afforded social benefits.[336] In terms of truth telling, the denial of psychological support and social benefits to victims of sexual assault has resulted in inadequate understanding of the extent of wartime rape in Prijedor.[337]

Victim-witnesses who traveled to The Hague to testify in war crimes cases expressed dissatisfaction at the process of testifying, but at least there were mechanisms in place to ensure that they were protected and could receive support to help them through the process. With such protection in place, it facilitates the testimonies of more victim-witnesses, which ultimately helps to create a more accurate historical record and help end impunity. Without victims being able to come forward and tell their story in a court of law, it decreases the possibility for these results, and it also means that victims may have to keep their stories to themselves because they have no one to turn to who can help them heal.

[333] The Association of Women from Prijedor
[334] Author interview with Edin Ramulic, Prjedor 12 March 2015
[335] Republika Srpska's Law on the Protection of Civilian Victims of War promises social protection to persons who suffered damage on 60% of their bodies, but this does not include psychological damage, thus disqualifying most sexual assault victims. Accessed: http://www.balkaninsight.com/en/article/ai-calls-on-republika-srpska-to-help-wartime-rape-victims/1440/2
[336] "Guide for Civilian Victims of War: How to enjoy the right to protection as a civilian victim of war in the Federation of Bosnia and Herzegovina" iCSpi, MPI, ICMP. Sarajevo 2007 Article 2 accessed: http://www.ic-mp.org/wp-content/uploads/2008/02/guidebook-wictim-of-war-fbih.pdf
[337] Ramulic explained that there has not been a comprehensive study to investigate wartime rape in Prijedor during the war. Sexual violence that occurred in the camps is more well known because their were often witnesses, however it is suspected that many women were raped inside their homes, but due to the stigma and lack of protection for victims, many women have not come out and revealed their stories. Author interview with Ramulic, Prijedor, 12 March 2012

In addition to the dissatisfaction victims feel in relation to the process and outcome of trials within the Court of BiH and the Banja Luka district court, there is also the refusal to recognize the suffering of victims within the Serb-majority community of Prijedor. There have been efforts to raise awareness in the city, in the form of memorialization and marches, but despite these attempts at recognition, the Bosnian Serb leaders of the city have yet to publicly acknowledge the crimes perpetrated in Prijedor[338]. One such example of recognition was the attempt to build a memorial at Omarska, which is now an iron mine owned by Arcelor Mittal. Although the company participated in negotiations with victims to memorialize part of the mine, once the local Bosnian Serb politicians learned about the project it was abruptly stopped.[339] Prijedor Mayor, Marko Pavic has prohibited the gathering of survivors in the center of Prijedor to commemorate the loss of their loved ones because he claims it will damage the reputation of the city.[340] The local government in Prijedor has perpetuated a culture of silence through the municipality in regards to dealing with the past. Such a silence denies the victims' their right to express their suffering publicly and it allows the government to pretend that such violence never happened. However, the experiences that these people underwent cannot be forgotten. They cannot be expected to forget it and move on with their lives if there is no opportunity to speak out and be honest about what they endured. Therefore, no matter what the courts do, either the Tribunal or the local judiciaries, if the municipality silences the victims then they cannot come to terms with their past. There can be no reconciliation if there is not local support for the recognition of suffering.

4.4 Outreach: Local mission, but lacking results

Unlike the ICTY, the local courts in Bosnia have the advantage of serving justice close to home and operating in a language that is intelligible to the victims of the war.

[338] E. Hodzic, "31 May – Worldwide White Armband Day." *Stop Genocide Denial: For victims right to remember* 15 May 2012. Accessed: http://stopgenocidedenial.org/2012/05/15/remembering-prijedor-massacre/
[339] J.N. Clark, "International trials and reconciliation." p 94-95
[340] D. Dzidic, "White Ribbons Against Genocide Denial." *BIRN Sarajevo* 12 May 2012 Accessed: http://www.balkaninsight.com/en/article/the-white-ribbons-against-genocide-denial

Furthermore, the State court of BiH opened the Public Information and Outreach Section (PIOS) at the commencement of its operations so it could immediately start disseminating information about its work to the local populations, making the work of the court more transparent.[341] The PIOS strived to be a two-way office, both promoting information about its work and being open to listening to the people and their questions and concerns.[342] In order to implement such a goal, the PIOS created a network of Court Support Network (CSN), which consisted of NGOs across the country that receive information from the court about its functioning and operations and then spread it in their communities.[343] Prijedor was home to one of the CSN's centers. However, this initiative was only sustained for a couple of years,[344] and by 2010 local victims associations have said that they lost trust in the Court of BiH.[345] Hodzic found that people from Prijedor actually had more knowledge of the working of the ICTY than they did about the Court of BiH.[346]

The PIOS has also connected with the local media by assisting in the training journalists for reporting war crimes trials, and releasing videos of trials to both journalists and the general public.[347] The PIOS has invited associations of victims groups to visit the court and acquaint them with the nature of the court and proceedings, which aims to reduce the fear they may have about coming to testify.[348] But despite these early efforts to create transparency, the Court of BiH has lost legitimacy because of biased media reports and politically driven attacks against it.[349] In response the Court of BiH has not created a comprehensive plan to further engage the public in its outreach to promote a more positive

[341] Court of Bosnia and Herzegovina, "Public Information and Outreach Section: Introduction" accessed: http://www.sudbih.gov.ba/?opcija=sadrzaj&kat=7&id=81&jezik=e
[342] ibid
[343] "Looking for Justice: The War Crimes Chamber in Bosnia and Herzegovina" Ch. 6 Outreach and Communications. HRW Feb. 2006 accessed: https://www.hrw.org/reports/2006/ij0206/6.htm
[344] "Delivering Justice in BiH" OSCE p. 88-90
[345] ibid, the general population of BiH has also reported that they did not have faith in the Court of BiH to fairly prosecute war crimes cases p. 90
[346] R. Hodzic, "Living the Legacy" p. 122
[347] "Looking for justice" HRW ch. 6
[348] Ibid
[349] "Delivering Justice" OSCE p. 90

portrayal of itself. The local population holds the State Court in generally low regard.[350] Even though the State Court is operating much closer to home than the ICTY, it is still not generally trusted by the people and its outreach efforts have not done much to combat the widespread negativity that has permeated society. Without the work of the court being accepted by the local populations then it cannot be a successful tool to promote reconciliation.

Assessment and Conclusion

War crimes trials have many goals in order to help bring about justice after atrocious human rights violations. They are supposed to punish perpetrators, establish a truthful record of the past, and deliver justice to victims. However, there are many tensions between the purported aims of international tribunals. As a result, the emphasis on holding individuals accountable in order to deliver justice does not does not always equate with victim satisfaction at the outcome of trials. Victims are not only dissatisfied with the judicial mechanisms for dealing with the past, but those in Prijedor are also left without a voice in the local reconciliation process because of the culture of denial that exists in their community. No matter what the Tribunal or the local courts do to combat impunity for war crimes, the effects of these trials do not directly improve the lives of survivors who are in Prijedor. The political climate of the municipality is not conducive for reconciliation because public dialogue and remembrance is nonexistent. Victims are thus left without mechanisms in their community for dealing with the past, so no matter what the trials are able to accomplish it is insufficient for realistically contributing to reconciliation.

[350] Clark found that 60% of Bosnians from all ethnic groups found the State Court either "unsuccessful" or very "unsuccessful" in its operations. From: "The State Court of Bosnia and Herzegovina" p. 382

The political ill will to promote reconciliation diminishes the effectiveness of war crimes trials to transform the society. Despite what the courts have established as historic fact, political elites ignore this information and either minimize or fail to recognize the suffering of victims. Since most victims do not have the opportunity to participate in the criminal trials, it the political elites or the biased media who they receive their information from.[351] This propagation of misinformation from the top creates an environment of ignorance, and healing is impossible without all sides accepting the truth and coming to an understanding.

Although the political climate in Prijedor greatly hinders facilitating reconciliation, criminal trials cannot be said to be completely useless in helping a society heal that has been devastated by war. The Tribunal did get off to a slow start, focusing too much of its early energy on small-level players, but they were still able to combat impunity and prove to the world that commission of these crimes will not be tolerated. With so many war criminals from Prijedor indicted and facing justice, it helped displaced individuals feel safe returning to their home after the war. Such a return indicates the vindication of the victim; they are resilient in the face of atrocity.

The ICTY also helped build the capacity of the Court of BiH so that it was a functioning court that could successfully adjudicate on war crimes cases. As such, lower and mid-level perpetrators who escaped prosecutions by The Hague are still being held accountable for their actions. During and immediately after the war it would have been impossible to carry out fair trials within the Bosnian judiciary, but with time and training the institution has been strengthened and successfully has tried cases handed down from the ICTY and also issued their own indictments.

[351] R. Hodzic, "Living the Legacy of Mass Atrocities" 8 J. Int'l Crim. Just. 113 2010 p 114-115

In terms of holding individuals accountable for their crimes, both the ICTY and the Bosnian courts have been successful. They have made use of innovative doctrines and helped evolve international law. But there are complications in the competing aims of international justice that leaves victims dissatisfied. The acceptance of plea bargains infuriates the victims. Even though plea-bargaining is meant to benefit the victims and the judicial process, the low prison sentences for those who confess and express remorse only frustrates the victims and leaves them with a sense of injustice. Victims have felt such injustice after both the ICTY and Court of BiH have accepted guilty pleas from defendants who committed crimes in Prijedor.

Guilty pleas have also proved insufficient as truth telling mechanisms. In both jurisdictions those who entered plea bargains only confessed to a fraction of what they were charged with. Such a half-hearted plea obscures the whole truth, leaving victims in the dark about what happened and why it happened. Although a courtroom may not be the best forum for history writing, the Tribunal lauds itself for achieving it but these guilty pleas are specific instances of where the truth did not prevail. Additionally, guilty pleas are supposed to expedite a trial and help reveal the truth, but the lack of a stringent criterion of what should be included in a guilty plea often results in only partial discovery of the truth.

The second mechanism for truth-telling was the participation of victim-witnesses. The ICTY contains much more comprehensive measures for protective measures to ensure the victim-witness is safe can avoid re-traumatization than both the state and entity court in BiH. Such mechanisms encourage the participation of victims to come forward and express their experiences, but it was generally the case that victims found the adversarial legal process an unsatisfactory forum for sharing their story of suffering. However, the protective measures offered by the ICTY encourages victims to participate in the trial more so than within Bosnia. The purpose of truth-telling is to create a comprehensive understanding of past atrocities so

as to preclude future abuses, but if victim-witnesses are threatened and afraid to speak out, then the positive effects of testifying are outweighed by the negative.

Finally, despite all the work these courts have done to hold individuals accountable and contribute to an accurate record of the past, it will not help foster reconciliation if the survivors of war do not have access to the information. It took the ICTY four years after the first indictment to establish its Outreach Program, and another six years for there to be an organized community meeting in Prijedor to educate the city about the work of the Tribunal. With such a politicized environment present in Prijedor, the Tribunal should have made more of an effort to reach the people it was supposed to be serving. Without such outreach, the political elites and the media were able to distort what information they shared with the people. Thus rendering the goals of accountability and truth-telling futile because the benefits of delivering justice remained distant from those it was supposed to serve.

It is easier for the local courts to reach the people because of language and logistical issues, but even still they are not serving the people as they should. What started as a strong outreach program has faltered, leaving people uneducated about the work of the Court of BiH. As the ICTY closes its doors, the local courts are the last hope for combatting impunity and delivering justice, but if the people are unaware and uneducated about its work then adjudication of war crimes will not help reconcile the people of Prijedor.

After the war, victims had great hope for the ICTY, that it would serve justice and help reconcile their community.[352] However, as time passed they grew frustrated and disenchanted with the Tribunal. When the domestic court began prosecuting war criminals, their hope was reignited that they would finally see their perpetrators brought to justice.[353] However, there is a greater problem facing reconciliation in Prijedor and it does not matter what these courts are able to achieve in terms of ending impunity and establishing the truth

[352] R. Hodzic, "Living the Legacy of Past Atrocities" p. 132
[353] ibid, 132

because if there is not a change in the political climate of Prijedor then reconciliation will never happen. The culture of denial shuts down dialogue. It refuses to look at the established facts and have the different sides come together and agree upon the truth. Without such cooperation between all sides to look at the past and take responsibility for it, then the city of Prijedor cannot move on to a more promising future.

The incomplete reconciliation in Prijedor may have dire implications in the future. War crimes trials were meant to promote peace and reconciliation, by ending collective guilt and precluding the possibility for retributive violence. Without these goals achieved, the same cycle of violence may occur again. As Republika Srpska claims it will hold a referendum for independence in 2018,[354] it is possible that this circle of history may repeat itself. Even without the outbreak of a new war, violence against Muslims in Prijedor still occurs today. During the summer of 2015 Bosnian Serbs attacked four Muslims in the center of Prijedor, and interrupted two Muslim weddings with verbal interjections that led to fist fights.[355]Such violent incidents are likely when people still divide themselves based on ethnicity.

Thirty years before the establishment of the ICTY, Arendt wondered whether a legal trial could serve justice after the commission of such atrocious crimes. Her question is still pertinent today, as mass violence is still occurring around the globe and the world community is continuously trying to find ways to deal with it. With the development of international law, and the increased emphasis placed on criminal prosecutions after mass atrocity, it must be assessed whether criminal accountability is the best way to deal with war crimes. In the case of Prijedor, criminal trials served justice to the extent that some individuals were punished for their actions and a historical record was established through the trials, but in terms of

[354] J. Lyon, "Is War About to Breakout in the Balkans?" *Foreign Policy* 26 October 2015 http://foreignpolicy.com/2015/10/26/war-break-out-balkans-bosnia-republika-srpska-dayton/
[355] S. Latal, "Attack on Bosnian Muslims Raises Tensions in Prijedor." *BIRN Sarajevo* 13 August 2015 accessed: http://www.balkaninsight.com/en/article/new-incident-brings-ethnic-tensions-in-bosnia-to-boil-08-13-2015

reconciling a community torn apart by war, criminal prosecutions hardly influenced the life of those suffering the most.

Appendix 1

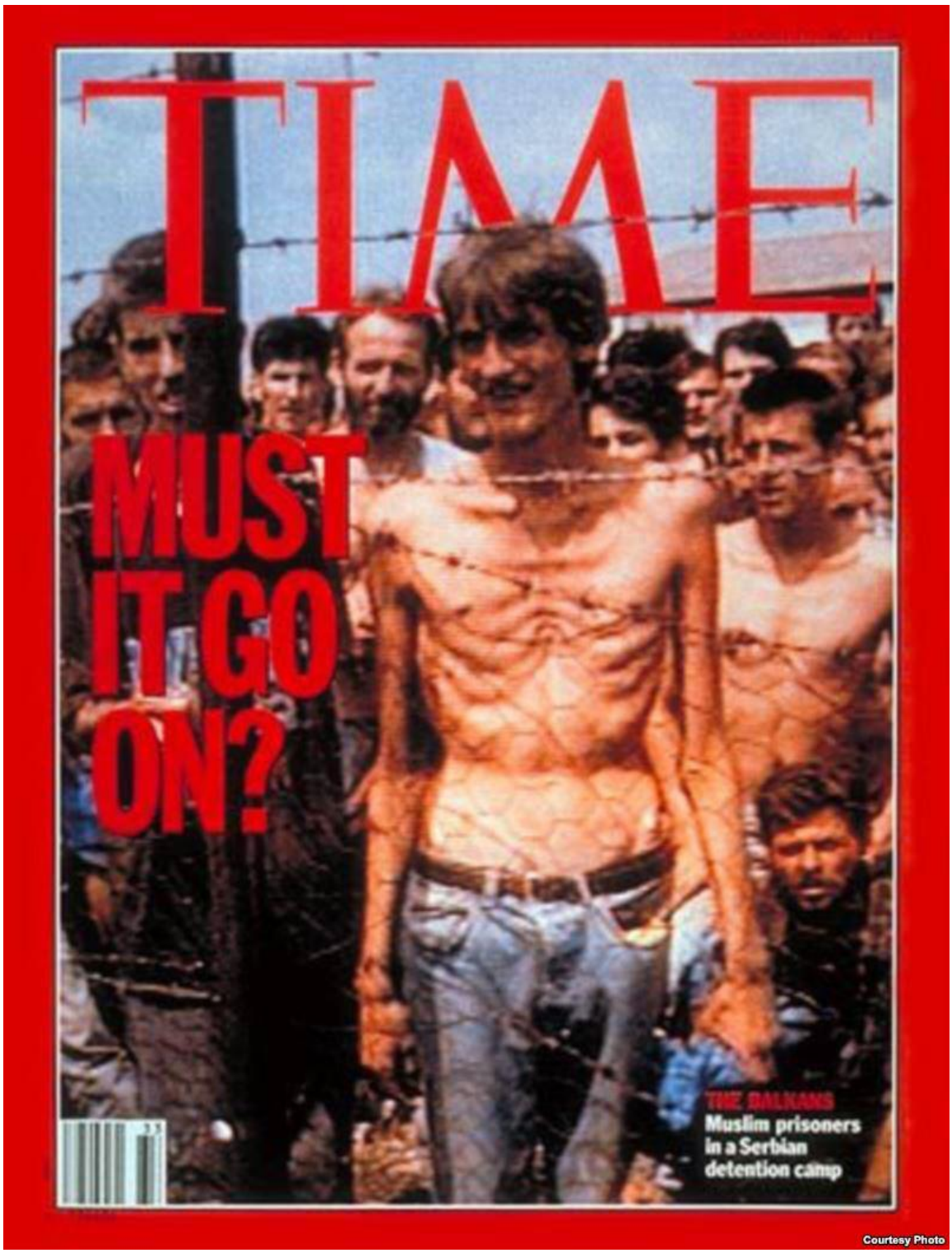
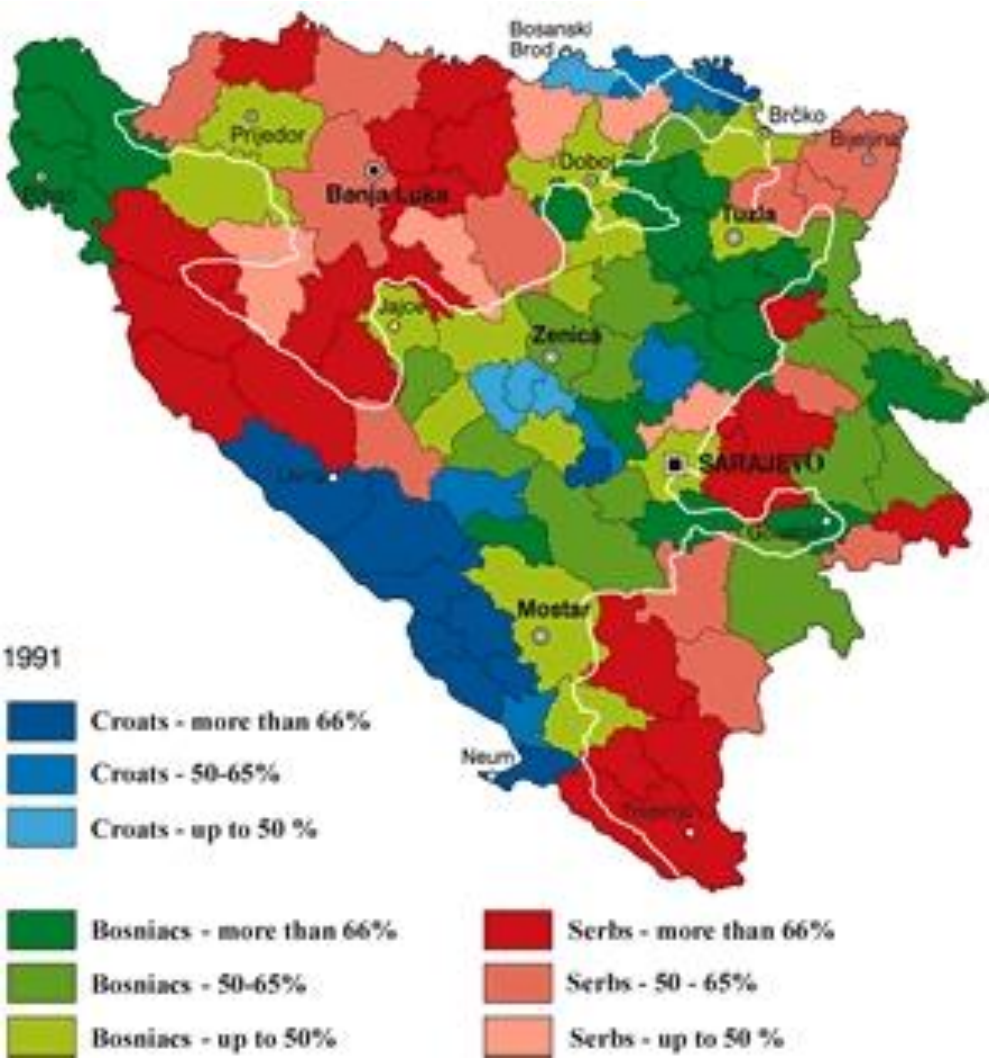


Image 1.1 The mistreatment of non-Serbs revealed to the world.
Published in Time Magazine, 17 August 1992. Retrieved from:
http://content.time.com/time/covers/0,16641,19920817,00.html

Appendix 2

Map of breakup of Yugoslavia,
retrieved from: http://www.mapshop.com/classroom/history/World/yugoslavia-conflict-mapX.asp

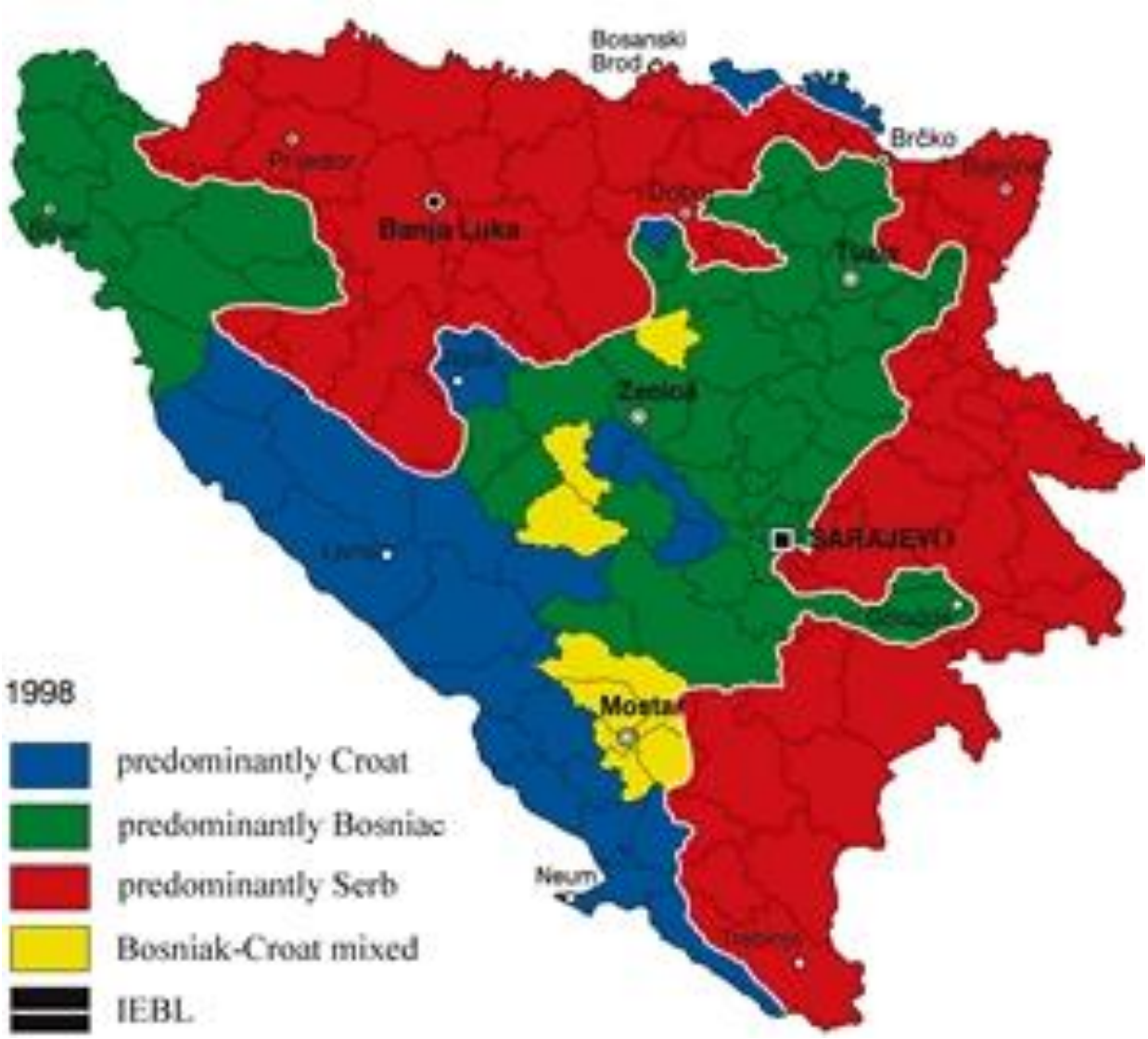
Appendix 3



Ethnic groups in Bosnia and Herzegovina 1991

Map retrieved from: A.P Kreso, "The War and Post-war Impact on the Educational System of Bosnia and Herzegovina. International Review of Education (2008) 54:353–374

Appendix 4



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