

## 9.1 The Foundations

There are several important precursors to reconstruction including setting the record of past abuses straight, achieving a modicum of justice for past violations, and creating a national desire for reconciliation upon which society can start to rebuild its values, institutions, and human rights defence mechanisms.

An issue is a broad based public recognition and understanding of what has happened so that society as a whole can reconcile itself to the past, reaffirm that they share a common destiny, and move on. Sometimes reconciliation can merge into forgiveness, but this far from essential. In situations like Rwanda or the former Yugoslavia, forgiveness may not be possible. However, be it forgiveness or reconciliation, there is a potentially crucial role for an HRO in helping to establish what truly happened.

Perception is a large part of the whole process, and it is important that objective observers attempt to clarify past human rights violations. The truism that truth is the first casualty of war is particularly evident where there have been gross violations of human rights. Parties to conflicts invariably attempt to portray their opponents as the more egregious violators of human rights. Equally, some parties to the conflicts will have been better able to hide their violations, often through further violations such as the 'disappearance' of torture victims. Invariably the record needs to be, and needs to be seen as having been, set straight.

Where possible, this setting the record straight is best done by the society itself which will then have 'ownership' in the results. For example, 'truth commissions' or other national mechanisms can be part of larger peace processes. Effective national mechanisms will draw much of their strength from the fact that they have been arrived at through some process of negotiation between the parties to the conflict. Alternately, where national mechanisms are unilaterally set up by one party to the conflict, it is unlikely that they will be truly unbiased, and even more unlikely that they will be perceived as unbiased.

A recent example of a negotiated national mechanism was the El Salvadorean Truth Commission created as part of the San José Agreement. Working concurrently with, but not part of, ONUSAL and its human rights division, the Truth Commission's mandate was to investigate any act of violence during the previous twelve years that was brought to their attention. With a very short time mandate,<sup>187</sup> it examined many of the more notorious cases and came up with a number of recommendations for judicial reform. There was no intention or possibility that it would be a comprehensive examination of the past, but like test cases in supreme courts, it established an attitude and approach for the reconstruction that was to follow. In the words of Diego García-Sayán the former Director of the Human Rights Division of ONUSAL, "The Truth Commission's accomplishment was to reclaim Salvadoran's sense of their own recent history, and to provide facts to clear the way to the future"<sup>188</sup>.

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<sup>187</sup> Initially six months, but received one extension.

<sup>188</sup> p. 33, García-Sayán, *op.cit.*