

Memory, Truth, Justice

Recommendations on Dealing with Burdened Past

A Handout by the
German Commission for Justice and Peace

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E-Mail: Justitia-et-Pax-Deutschland@dbk.de

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Foreword

In 1999, the German Commission for Justice and Peace established a project group entitled "Reconciliation Processes and Dealing with Traumas" and commissioned it to set out specific courses of action and tools for dealing with burdened past. Over and above this, the conditions enabling reconciliation processes to take place were to be clarified and recommendations drafted for a morally responsible way to deal with past injustices. This commission had been preceded by an international workshop held at the Buchenwald Memorial (1998), as well as by a national workshop in the former Headquarters of the Ministry for State Security of the GDR (1999)¹. These workshops clearly revealed the immense potential of the question.

The project group thereupon drafted country studies based on examples from Africa, America, Asia and Europe, with advice from experts from the respective regions covering repression itself, how repression is dealt with, the state of democratisation and the relationships between these three factors. Soon it became clear that there are ethical perspectives common to all cultures and regions, a point also reflected in the Universal Declaration on Human Rights. Whilst cultural and religious particularities do play a certain role when it comes to the details of how past human rights violations are dealt with, for example in the manner in which they are commemorated, and in the rites and traditions, in light of the universality of domination exercised by regimes based on injustice and violence, at the same time there are however certainly universal answers to these human rights violations within the societal and political framework. In some cases, these are documented in international conventions, as in the case of the right of the victims of basic rights violations to an effective remedy, as well as to compensation and rehabilitation. This also includes the right to learn the truth about crimes that have been committed.

As a result of its evaluation of the studies within country contexts from different continents, the German Commission for Justice and Peace submits recommendations for tackling past human rights violations. We are very much aware of the short-lived nature of our work and of the boundaries imposed on our insights to date. This makes us realise all the more the need to enter into a broader dialogue via this document. As a result, the recommendations do not claim to conclude the discussion where the content is concerned. Rather, they should be understood as a contribution to this discussion and as an invitation to enter into further debate. It is an attempt to make the large number of experiences from the various contexts mutually useful. If these recommendations have helped to do so, they will have achieved their purpose.

¹ cf. 6.2. Selected reference material for a documentation of the workshops

1. Introduction

Regimes based on violence and injustice leave an inheritance of long-term consequences among the people and societies affected. Despite its considerable influence on current trends, the destructive potential of this heritage is frequently underestimated in considering the deceptive "return to normality". Tackling a burdened past is one of the major challenges to be faced in creating societies capable of remaining at peace in the long term. This critical debate on past injustice is comprehensively concerned with regaining political legitimacy by orientating the political system in line with human rights. These must always form a critical standard for the current perception of power (in democracies as well). The preferable path of implementing human rights-friendly system structures – in fact until now the only approach which is half-way functional – is that of democratisation.

The critical debate on past injustice is not the only question here, but it is an indispensable precondition for long-term democratisation. This also applies to established democratic societies. How a society deals with a past that is burdened by violence, and in particular with the victims of injustice and violence, is always also a test-bed for the state of its democratic culture. "Looking back", accompanied by measures to restore justice, always simultaneously includes "looking forward" since at least when it is meant seriously, it entails precautions to protect against future human rights violations. This is not lastly the cause of the general preventive function of dealing with injustice and violence in this manner.

Our experience shows that other ways of dealing with traumatic past, such as a general amnesty, unavoidably leading to amnesia within society, to blind, fanatical persecution, unequal treatment of offenders, favouring for instance those with the greatest responsibility and disfavouring their henchmen, as well as the instrumentalisation of suffering for ideological or religious purposes, are not ethically acceptable, nor are they effective or sustainable alternatives. Inherent in such measures is the temptation to take a simple path, namely that of "clear" and short-term "solutions". Much as one might wish to draw a line between the past and the future, such an approach is unrealistic and merely conceals the wounds that need to be treated instead of helping to heal them. It is only in rare cases that the short-term impact of a relative "pacification" of the situation is responsibly balanced against the medium- and short-term contamination of the political and social climate. Below, we would like to suggest a path which at first sight is certainly more complicated and requires greater effort, yet which is orientated in line with the suffering people and which consistently follows the model of a reconciled society able to live in peace.

We realise here that the opportunities to take the first crucial steps in this direction fall within specific, often very short time windows. If these opportunities are missed, much greater efforts are generally needed to produce the required effects. At the same time, the debate over a violence-disfigured past is a process which can only be considered in very long, cross-generational periods. The question of how this process can be suitably promoted is to be discussed repeatedly between the various social groups. Here, on the basis of the particular situation in a country, it must be specifically borne in mind how the recommended elements can be carried out to ensure promotion of the project as a whole.

On principle, "injustice and violence" are taken here to mean all kinds of human rights violations. The focus however is on particularly serious violations of human rights, such as genocide, slavery or trafficking in slaves, arbitrary, summary and extralegal executions, disappearances, torture, sexual violence and other cruel, inhuman or degrading treatment or punishment, continued arbitrary deprivation of liberty, and systematic discrimination.

The term 'victim' is applied to persons who "[...] individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation [...] of internationally recognised human rights norms."² In this sense, the family members for instance of a "disappeared person" may be regarded as victims too, since they also incurred suffering and injustice as a consequence of the loss of the person directly affected, and by not knowing that person's fate.

There is a need to distinguish among the offenders between those who bear responsibility at higher political level for human rights violations and those who carried out the crimes. The courts have jurisdiction for both groups. Over and above this, those who have facilitated the conditions under which the human rights violations were carried out, in other words the hangers-on, bear moral or political guilt.³

The intention below is to outline several central insights which have been reached in the project group's debate with a number of case examples, and to provide recommendations for action by society as a whole and by the Church in particular. Here, the recommendations target both societies in which a regime change has taken place, and those in which such a change is something to work towards.

² Boven, Theo van, The Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms. In: State Responsibility and the Individual: Reparation in Instances of Grave Violations of Human Rights, ed. by A. Randelzhofer and C. Tomuschat, The Hague 1999, p. 352

³ cf. in this context the pioneering statements of Karl Jaspers. In: Jaspers, Karl, Die Schuldfrage. Heidelberg 1946.

The basic patterns and functions of the impact of violence show fundamental similarities.

Violence on people and societies has similar psycho-social impact patterns despite all the differences in intensity, duration, etc. Irrespective of their historic cause and the concrete manifestation of violence, violent systems, especially as time passes, tend to involve in the system the societies and persons concerned, where the latter are not defined as enemies (and in some cases even then!). The loss of trust within society and between societies is related to this increasing penetration of violence into society. At the same time, traditional social structures and traditions are discredited or destroyed. The system of involvement in injustice and violence promotes trends towards reducing the awareness of injustice. In particular, these trends increase with the duration and intensity of a violent system.

Experiences of injustice and violence deeply impact all persons and societies concerned.

People are aware to greater or lesser degrees of their exposure to being marked in this manner by injustice and violence. In the case of victims, this circumstance is manifest. However, it can equally be the case for offenders, as well as for the great majority of those who look on, look away, or sit on the fence. Experience with violence must be interpreted. In particular, collective experiences of violence create patterns for interpretation which are needed to restore a view of the world, inner order, individual identity and society. An attempt is made to alleviate the feeling of powerlessness resulting from experiencing violence by explaining it and giving it a meaning. Developing a view of the world which is aware of where the risks are coming from and makes them understandable in subjective terms is a central step to restore this minimum of confidence in the world which people and societies need in order to exist. The development of these interpretation patterns however carries the risk of promoting projections founded on emotional and existential shock and permitting these to form the basis of the world view. These interpretations, as subjectively cohesive as they may be, should be opened up to other perspectives of events, and should lead to an understanding of how one is personally affected. At the same time, no illusions may be permitted in attempting to overcome the consequences of violence on those directly effected. Where the superior power of the experience of violence is so great that as in the case of traumatisation it cannot be convincingly interpreted individually, but only suppressed, those affected remain particularly imprisoned by their experiences. Even

where it is possible to cognitively process events, this suffices at best to help those involved to live with the trauma which they have suffered. It cannot heal it.

Against the background of serious human rights violations, carried out in the past, all social groups must redefine their relationships with one another during the period of a social transition. This is a matter of facing up to the past since, otherwise, traditional structures are not broken up, old behavioural patterns and enmities are passed on through the generations, and these can be given a new lease of life in times of crisis, enriched by a tissue of legends and lies.⁴

The interpretation patterns and perception structures between large social groups such as nations seize in particular on collective fears and longings. They reflect historical experience. The historically-developed interpretation patterns form an arsenal which frequently comes into play in a major fashion when collaboratively dealing with factual problems, and may influence groups to the point where the problems remain unsolvable. Special attention, when dealing with the impact of long-lasting violence, must be paid to the passing down of the experience of violence between the generations. In particular, an experience of violence and guilt that has not been dealt with is passed on from one generation to the next, both consciously and unconsciously, and defines the everyday conduct of the players to a degree which they themselves frequently hardly perceive, and in most cases no longer understand. The danger of this potential for interpretation patterns and possible identities to take on their own persona, based on experience of violence, should not be underestimated.

For the political and practical debate on the marks left on a society as a result of experiencing repression and violence, the specific conditions need to be analysed.

There is no doubt that experiences of violence may be generalised in light of the fundamental similarity of their basic patterns. However, they are made under concrete, unmistakable historic circumstances, and their impact can also be articulated and processed only under these very circumstances. This is why it is central to the debate on the burdened past to consider each case in its particularity. Even if the basic patterns for the impact of violence are the same, depending on the duration, intensity, form, traditional and cultural structures and patterns or on the degree of the continuity of injustice and violence, the experience of violence may lead to very different forms of articulation. Hence, it becomes a marked distinguishing factor whether (such as in Guatemala) one is able to fall back on the existing social structures and the concomitant cultural canon of the Mayas, or whether (as in Russia) such structures and their foundations have been largely destroyed. Despite all the similarities that can be

⁴ A Just Peace. ed. Sekretariat der Deutschen Bischofskonferenz, Bonn 2000, pp. 108 et seqq.

ascertained, there can therefore be no uniform plan for dealing with violence-burdened past. Nonetheless, it is possible to identify several central elements for the process of dealing with the burdened past.

2. Basics of dealing with the characterisation by injustice, violence and their consequences

2.1 Solidarity with the victims – Restoring their dignity⁵

Overcoming violence requires learning to see reality both with the eyes of the victims and of the others. Reconciliation processes are to be measured by solidarity with and respect for the victims. The main tasks in these contexts include doing one's utmost to restore the dignity of the victims [cf. Chapter 3.7]. What is needed is practical solidarity, listening to and meeting the concerns and needs of the victims. In this, legal, social and political rehabilitation takes on an indispensable role. Over and above this, there is a need to create "protected spaces", for victims in particular, in which their experience can be expressed in a suitable form. Particular attention is also needed in order to counter trends towards marginalising the victims. Such trends, which frequently also have grave economic effects on those concerned, are as a rule experienced by them as being a continuation of the marginalisation caused by violence. No less problematic is the frequently observed trend towards the ideological instrumentalisation of politically opportune victims, which must be countered in a clear, decisive manner.

2.2 Differentiated discussion with the offenders

Over and above solidarity with the victims, there is a need to deal with the offenders in a differentiated manner [cf. Chapter 3.10 and 3.11]. As difficult as it may appear in individual cases, this is concerned with enabling them to reform, and with also providing offerings for their psycho-social support. Nor may the offenders be marginalised. Rash, generalising punishment primarily serves society's need to restore cohesion within society by marginalising the "guilty". The profound impact of violence cannot be overcome by these means. This does not mean that criminal prosecution should not occur. Indeed, it is explicitly recommended because the danger otherwise arises of factual amnesty turning into general forgetfulness. The required approach strives to develop a differentiated view of the various forms of offence and responsibility for offences. It takes the offenders' reprehensible failure seriously, and does not attempt to place them in such a light as to make them seem harmless.

⁵ cf. Annex

2.3 Linking the phenomenon of violence to concrete human guilt and its consequences

It is only by realising that violence is always a result of concrete human guilt and its consequences that the phenomenon of violence, which in the respective situations is frequently experienced as overpowering, can be returned to its real dimensions without making it seem harmless. An essential element of effective peace and reconciliation lies in linking violence to free human activity and the concomitant human ability to contract guilt. In contrast to the apparent inevitability of violence, this link leads to the ability to change. Forgiveness and reconciliation can at best be achieved by facing up to the burdened past. Forgiveness and reconciliation can neither take place nor be called for in an abstract and general manner; they are concrete and can only occur once it has become clear who is guilty of what and against whom, and thus who is in a position to forgive.

2.4 Revealing the system behind violence and repression

Having said all this, the fact of linking the phenomenon of violence to concrete human guilt and its consequences fails to achieve its goal if it does not also reveal the systemic, structural conditions of injustice and violence [cf. Chapter 3.5. and 3.6.]. Unjust and violent regimes are characterised by a significant trend towards involving people in their machinations and making them into accomplices. This applies in many cases in particular also in relation to the victims.

A debate on injustice and violence, as well as its consequences, which seeks reconciliation depends on an unambiguous clarification of its foundations, structures and impacts, such as in perception patterns or stereotypes. This is concerned with developing a comprehensive view of violence and its consequences. This process includes for instance the insight that even violence which is inflicted for reasons of justified self-defence or in emergency assistance also inflicts deep wounds on both the victims and in different ways on the offenders. Revealing individual and structurally-related violence in the actions of different players, as well as naming the persons affected by violence and its consequences, victims and offenders alike, can become a precondition for social and individual change if one astutely takes account of the political potential.

2.5 Problems and challenges in dealing with the consequences of injustice and violence

The central challenge in dealing with the consequences of injustice and violence consists, in addition to restoring the victims' dignity, of a suitable dialogue with regard to the consequences. On principle, some typical reactions to the experience of violence can be ascertained which come to notice in different ways, depending on the structure of the political, social and cultural conditions. It should be stressed here that sexualised violence specifically exacerbates the problems.

2.5.1 Fear

Dealing with guilt and violence is more fraught with fear, the closer one is temporally or emotionally to the experience of violence. If the offenders are still untouched and honoured by society, the fear factor, for the survivors in particular, can hardly be overestimated.

2.5.2 Shame

Feelings of shame arise to differing degrees both among a considerable number of offenders, and among the large majority of surviving victims. On the part of the offenders, co-perpetrators, spectators, and the apathetic, the generally unarticulated experience of guilt is felt as a partial loss of self-esteem. Among the victims, shame is an expression of the loss of dignity experienced. On principle, shame, which at the same time is to be taken seriously among the offenders as a positive element of a perception of justice which has not been destroyed, removes the willingness and ability of both individuals and society to speak of the experience of violence and guilt. Just as fear, it leads to rejection reactions.

2.5.3 Rejection

In light of the real threat to the positive self-perceptions of individuals and societies, defensive reactions come as no surprise. They range from cold or enraged denial, via suppression, silence and making events appear less harmful than they really were, through to placing one's own actions in an heroic light. The other side of the latter is the

demonisation of some convenient scapegoat. Demonisation promotes trends towards non-differentiated charges, as well as towards calls for revenge.

Taking a look at the discussion of the experience of violence, the fact of making individual groups of victims into heroes is no less problematic since for one thing it marginalises other groups of victims, and at the same time by using an overinterpretation of the events in terms of their significance – be it national or religious – it rashly suppresses the experienced senselessness of violence and guilt, and does not permit a discussion of it to come to light.

A further defensive strategy can be found in speaking of the need to return to normality, which under the cover of reconciliation, through not speaking about violence, leads to an uncritical settlement with the offenders.

2.5.4 Awkward self-related discourses

One of the central problems encountered when dealing with a violence-burdened past lies in the trend towards awkward self-related discourses. Against the background of the social and individual insecurities caused by violence and the experience of violence, and which can be caused by dealing with it, it is understandable that individuals, as well as the various social groups, embed their respective particular experience in specific interpretation systems, and in some cases even lay it to rest here. In particular with groups of victims, an important protective function is frequently inherent to these interpretation systems, and it is this function that we need to comprehend. No less than this, the narratives developing in these contexts normally tend in particular in offender contexts to reduce one's own share in injustice and violence and to help one see oneself as a group which has merely reacted to the violence imposed from outside. In this way, the closed nature of these interpretation patterns may go so far as eradicating the necessary perception of violence and injustice, and as a result the awareness of injustice in one's own actions. Such interpretation systems can be maintained in the long term only by excluding the victims and survivors, or by including only specific groups of victims. Hence, they contribute towards a more far-reaching marginalisation of the excluded victims and survivors, who frequently experience a continuation of past marginalisation and persecution. To deal appropriately with the experience of violence, this problematic orientation towards self needs to be broken down in some way, and the survivors' perspectives need to be appropriately included in the debates going on within society. Such a change of perspective is one of the central preconditions for societies and individuals being able to change the manner in which they are marked by injustice and violence. In addition, it is a principle of justice towards the victims and

survivors to create for their perspectives and experiences a space within society, and hence to release them at least partly from their precarious isolation.

2.5.5 Grief and commemoration

In addition to the promotion and establishment of an ability within society and for individuals to speak about the experience of violence and guilt, it is a matter of strengthening or creating places and forms for personal and societal grief in which guilt, loss and what cannot be settled quickly find their places [cf. Chapter 3.8.]. As important as are the offerings of meaning and interpretation, the goal must be to create a cultural context in which these can be questioned on the basis of grief and commemoration. This includes a plea for open discursive forms of commemoration, in which the necessary exchanges can take place in an appropriate manner. The trend towards closed interpretations is to be countered by a critical impulse which also poses the question of the respective social functionalisation of the interpretation.

2.6 Role of external players in dealing with burdened past

Let us start with a fundamental statement, namely that external players – in other words those who are not involved in the strict sense of the word in the corresponding conflict constellation – play a subordinate role in processes of overcoming violence, although in the most positive case this role can be highly productive [cf. Chapter 3.12.].

It makes sense for the role of external players to take the form of moderation, supportive supervision and providing specific expertise from one's own experience environment. External players may provide a valuable impetus in overcoming the awkward self-related discourses mentioned, in particular because they play a subordinate role in the interpretation and experience patterns. Preconditions for action by outsiders include

- the need specifically named by the internal players,
- specific and methodical competence,
- openness and willingness to opt for traditional and local conflict resolution approaches,
- trust on the part of the internal players,
- and, closely related to this, as great a transparency as possible concerning the outsiders' access and interests with regard to the conflict constellation to be dealt with.

The latter applies particularly to players who, whilst they do not belong to the conflict in the narrower sense, have become involved in it in an extensive manner. (Such as: The States of the European Union in relation to the war in the former Yugoslavia)

Over and above this, the plausibility of the external players will depend not lastly on the degree to which they are dealing and have dealt fairly and self-critically with their "own" conflict constellations.

Particular opportunities are offered by the comparative procedure to reflect on differing experiences of violence. In comparison, both the specific and the general aspects of the problem of violence come into play. In particular with long-term incidences of violence where there is a tendency for them to be scarcely perceived as such, a comparison makes it possible to create a greater awareness of the relevant structures since the customary defence mechanisms do not apply in the same way to the other example. In addition to this methodical support, the exchange with external players, where they understand their role with the appropriate reserve, is to help encourage the internal players. In light of the discouragement dynamics that are typical of violence, which not lastly result from the long periods needed for processing, as well as the frequently considerable pressure under which the internal players are working, this factor should not be underestimated.

3. Recommendations

3.1 The foundation: More just laws

The possibility of implementing concrete past-policy measures in a changing society is frequently available only for a short time. It is hence a matter of seizing the day and using it. As a rule, all subsequent attempts to work in this direction are much more laborious.

It is fundamental in this context to enact statutes which guarantee the rehabilitation and compensation of the victims, including their legal advice, medical care and social reintegration. The necessary funding must be made available to implement those statutes. Also, uncovering the truth on the human rights violations that have been committed should be systematically promoted by means of clear statutory regulations, as well as by opening archives, granting access to graves and promoting scientific research. Beyond this, facilities such as "lustration" procedures⁶ and truth commissions require the protection of and punishments imposed by the legislature. In some situations, furthermore, a witness protection programme must be drafted and the protection of defenders of human rights, journalists and scientists ensured who are dealing with the history of repression.

Further fundamental statutory acts are needed in order to push forward the processes of democratisation, which are an important precondition for a broad debate on the past. A democratically-functioning state, rule-of-law practice by the judiciary, independent media, and respect for human rights, all need to be guaranteed. All statutes of the old system which lend legitimacy to authoritarian or dictatorial structures must be broken down. Finally, these structures must themselves be destroyed, for instance by banning criminal organisations and their successor organisations.

Training of staff for courts, social and medical facilities, which is particularly adapted to dealing with persons traumatised by the past, is another step in constructively dealing with this very past.

In light of limited funding, priorities must frequently be set for specific reparation activities. It is crucial for these to be made strongly dependent on the actual financial situation of the state or the enterprises or associations in question, and on the seriousness of the crimes that have been committed.

⁶ Lustration procedures involve vetting current holders of offices and functions to ascertain whether they have been discredited by their activities in the previous regime in a manner disallowing them from continuing to exercise their office.

The democratisation of the political arena and of society can be heavily promoted by changes in legislation. The goals for dealing politically with the violence-burdened past should hence also be provided with as sound a legal foundation as possible. Staff employed at the courts and in social as well as medical facilities should receive special training in dealing with persons who have been traumatised in the past. All these steps require appropriate funding.

3.2 Changing the elite

The dissolution of a crime-ridden regime does not automatically remove the elites that supported this system or collaborated with it, even if in many cases they themselves have become compromised. These may be members of the former state power structures, including the bureaucracy, the security apparatus, the judiciary, the business community, but also doctors, teachers, journalists or clergy.

Renewal of the elites, who either have key positions or positions of trust, in addition to the structural reconstruction of the state system, is necessary not only to complete the caesura with the previous regime at personnel level. If there is no evaluation or lustration, there is a risk of old behavioural patterns and rules – quite apart from ideologies – being inherited, more or less under the surface, into the new society that is to be created, such as a trend towards violent strategies, to conspiratorial, opaque action, and to the exclusion of the public from matters relating to society as a whole. The risk also exists that the previous holders of power positions may promote only their own kind, but not former adversaries or those previously bearing the brunt of discrimination or persecution, and will work together with these, or that they may also abuse their current positions also to blur the traces of the injustice that they have done, and once more persecute or at least hinder those who try to clarify them.

Steps to renew the elites may consist of the following:

- removing the right to vote for those who have become compromised by the previous system in the course of lustration for a certain period (or forever);
- dismissing them from key posts or trusted positions in the state and in society;
- devaluing their frequently informal network structures;
- in the security sector reaching fundamental structural reforms leading to changed HR recruitment concepts.

In the case of clergy, lawyers, physicians and journalists who are not on the state payroll, instances such as professional associations or neutral commissions should implement lustration procedures.

Society must agree in specific cases on who is regarded as having been compromised in line with the specific types of guilt and involvement. One should not underestimate the impact of the open discourse resulting from such a practice. The process of talking and responding is an appropriate method of consciously dealing with the past. Beyond the legal processes, carrying on this discourse in a manner in keeping with the rule of law is suited to renew society from within by also discussing acts which cannot be brought before a court, but which nevertheless violate human rights and privacy, and where provable – with all due care – attributing them to concrete persons.

Such a change of elites is conditional on the possibility for a renewal of personnel, be it through suitable staff who were not prominent before, through newly-trained staff or by bringing in outside players.

In order to effect a rapid, extensive change of elites, a variety of factors must be taken into account, such as

- how large the proportion of involvement in the old regime was within the population;
- how tenaciously the old orientation patterns live on in society;
- how strong the insight or resistance of the old elites is or what power base the new system has (perhaps also through external support); and
- to what degree external players promote or hinder this change of elites.

Persons who are appointed to key posts or positions of trust in the state and in society (representatives of the bureaucracy, of the security apparatus, of the judiciary, of the business community, as well as physicians, journalists and clergy) should be subjected to a lustration procedure.

3.3 Symbolic political acts in relation to the past

A major form of political action in the context described here is an official confession of guilt towards the victims.

This manner of dealing with burdened past also manifests itself over and above this in symbolic political acts. These are suited to demonstrate to the population the boundaries that have been imposed on the old unjust regime or – if the messages are to the contrary – to justify it. Such symbolic actions may include the following:

- renaming streets, facilities (such as schools) and regions;
- removing old monuments (commemorative plaques, memorials, museums) and setting up new ones;
- abolishing old memorial days and establishing new ones; and

- replacing the anthem and the state symbols of the old regime with new ones.

If a society is willing to break with the old unjust system, the above steps will unavoidably be the order of the day. This is not a matter of blindly destroying the old symbols, but of creating an awareness of which names, places, events and symbols are regarded as exemplary and worthy of commemorating, and which should no longer fulfil this function. The impetus for this can just as easily come from above (from the state) as from below (from society). The important thing here is an open discussion enabling those involved to gain an increased awareness. The respective result of the discourse may be regarded as an indication of the status of the understanding of itself that the society has reached, and which orientations continue to have, or have newly taken on, an influence. Politicians in particular must be clear that, for instance, they are involved in symbolic politics by visiting a certain place. The sum of these symbolic acts may hence be regarded as a basic canon of a society's orientations in terms of its ideas – on condition that the political sphere represents the will of the populace.

Political acts such as apologies towards the victims and symbolic acts such as renaming public places, establishing commemorative places and days and removing old ones embodying the unjust regime are appropriate to satisfy the victims, in addition to other measures, and to reorientate society.

3.4 Surrendering knowledge permitting dominance

The dissolution of a crime-ridden or even only authoritarian regime frequently gives rise to a considerable imbalance in the power to dispose of accumulated knowledge permitting dominance: The surviving dependants of those who have been murdered or who have disappeared do not know where their family members have been taken, former prisoners do not know who denounced them, and citizens who were spied on do not know what kind of information the State has collected on them. The victims of terror and repression do not find out who is responsible for their repression, whether there have been orders and which structures the regime used.

Information giving rise to this imbalance of knowledge may no longer be kept secret. Firstly, the victims and their family members have the right to know what has happened to them and who is responsible for those events. They must be given the opportunity to get to know their personal history.

Secondly, society must learn what human rights violations have been carried out, which structures the regime used in doing so, how far the collaboration extended and which forms of resistance existed. Scientists and journalists should receive access to the

archives in order to research such questions. This is important because otherwise it becomes possible to deny facts, and myths can be created about the past as tools of present day policy. Only a society which has dealt critically with its past can identify new dangers and take structural precautions to minimise the possibility of new crimes and new injustice.

If, however, access to and dealing with old knowledge permitting dominance is not democratically controlled, it remains possible to use it in the old ways in the interest of the old elites: Persons can be blackmailed or slandered, old structures in the state and in society can continue to function, mental imprints among the populace continue to apply unconsciously.

If the new state itself does not have the old knowledge permitting dominance, it must ensure access to this knowledge, and where the rights of those concerned require this, must enable them to gain access to it.

In order to find and decode the former knowledge permitting dominance, societies rely on “insiders” who have themselves contracted guilt. It should therefore be taken into account that these old cadres may give up their knowledge only in excerpts, calculatedly and in an attempt to manipulate.

The state or the groups which are in possession of knowledge permitting dominance collected in the context of repression have a duty to provide this knowledge to the victims or their relatives, as well as to the society in question, in other words to open archives and grant inspection of files.

3.5 Critical journalistic, scientific and artistic approaches towards dealing with the past

Publishing and historical research may well bloom in times of social turbulence. Artists discuss the problems which were previously subject to taboos in poems and novels, in plays, films, pictures, sculptures and music. The silence is broken.

Little is gained, however, if this process of reflection, regaining awareness and language blooms only for a short time, or indeed is impeded or prevented from the outset. There is a need for an ongoing pluralistic dialogue to be pursued in society, with many voices, while maintaining privacy. An indispensable precondition for this is to ensure access to the facts, in other words to all types of sources. Here, science has the task of eliminating blank spaces and stopping legends being formed. Journalists safeguard the public debate with the pointed questions, and artists express the events in their own way. The

present method of dealing with the burdened past must itself, in turn, become the object of critical debate. Critical historical science takes on a central role in this context. This work should be promoted by creating independent memorials, research facilities, workshops and grants. It appears important in doing so not to work in isolation, but for international exchanges – in particular with players from countries which already have experience in dealing with the past – and interdisciplinary cooperation to be cultivated. A central challenge consists of not involving only specialist groups or interested parties, but of approaching as large sections of the populace as possible.

Scientists, journalists and artists need encouragement and assistance to be able to develop the dialogue within society, independently and with as much exposure as possible, concerning questions on which silence has heretofore reigned, in particular with regard to the burdened past.

3.6 Promotion of suitable curricula for educational facilities

Caesura or continuity in society's self-perception, a part of which is the nature of dealing with the past, also find their expression in the teaching content provided at schools, vocational colleges and universities. History textbooks in which whole groups of the population continue to be ignored, discrimination condoned and crimes against humanity disregarded are not fit to produce an educated generation.

The history of injustice and violence may neither be made to seem harmless nor hushed up. The forms of resistance against it, as well as the role of emancipation movements, should also be the subject of discussion. Teachers should be suitably trained and provided with teaching material enabling them to communicate facts and school pupils given the means to tackle documents critically. International school book commissions can help to prevent one-sidedness by seeking input beyond the national discourse. Furthermore, there is a need for pedagogical concepts according to which not only material facts are communicated, but empathy for the victims is created and an open discussion can be promoted. History competitions are an additional offering to promote independent learning of history that has been subject to taboos.

Universities should make it a priority to include the burdened past in teaching and research.

The history of the dominance of injustice and violence, including forms of resistance, is to be suitably accommodated in the curricula of schools, universities and other educational establishments.

3.7 Legal and psycho-social rehabilitation of the victims

Discrimination and persecution, detention and mistreatment leave serious marks on the souls and bodies of the victims. The witnesses of violence and people whose family members were injured or murdered in repression are also affected by this. They frequently have to deal with lifelong health impairment, suffer restricted educational and occupational opportunities, and thus live in poverty. One of the consequences of this is in most cases their marginalisation within society.

The rehabilitation of the victims is a central element of deliberate, critical dealing with past human rights violations. The State in whose name officials carried out crimes or whose authorities misused their powers is as a rule primarily responsible. Illegal human rights violations should also be made the responsibility of the State if the latter has not done enough to protect people on its sovereign territory against such attacks. Calls for compensation and restitution⁷ can however also target commercial enterprises and other corporate associations.⁸

A first step towards rehabilitation consists of removing earlier unjust judgments and of declaring unlawful unjust measures implemented out-of-court against individuals or whole groups. This act should be regarded as an obligation incumbent on the State.

Formal rehabilitation must be followed by steps suited to "restore the living conditions of the victims to their state prior to the violent acts".⁹ Such steps should consist of:

- creating conditions enabling refugees and deportees to return from exile or banishment without thereby causing new injustice;
- returning property or providing suitable compensation (cf. 3.7.1. and 3.7.2.);
- helping to gain vocational qualifications in line with abilities;
- supporting in seeking work, helping to start up in business;
- promotion of the psycho-social reintegration of victims of violence (cf. 3.7.3.);
- guaranteeing free medical care;¹⁰ and
- providing compensation for pain and suffering, compensation for detention and providing pensions.

These measures are a principle of justice. They do not place the victims in a privileged position, but are intended at best to compensate at least in part for the disadvantages they have incurred in comparison to the rest of the populace by virtue of persecution. If

⁷ Compensation and restitution are not possible in the moral sense; they are used here as legal terms with the meanings that are customary internationally.

⁸ Boven, Restitution, p. 353

⁹ REMHI Report p. 353

¹⁰ Psychosocial and medical care for victims is conditional on corresponding facilities being created with specially trained staff.

they are portrayed in this way to the public, these benefits can become a dignifying gesture towards the surviving victims.

A basic precondition for the realisation of these measures is to provide the necessary funding and the expansion of a corresponding infrastructure, including advice centres for the victims. This can however not become effective until it is supported by a well-wishing interest of society towards the victims.

The victims of political repression have a right to social and legal rehabilitation. This includes all measures designed to provide the victims with assistance in dealing with the consequences of injustice that has been inflicted, such as arbitrary detention, damage to health, reduced training and vocational opportunities and the confiscation of property with the intention of providing "compensation" for injustice that has been done. The goal is to restore the living conditions of the victims as far as possible to the state in which they were prior to the acts of violence, and to counteract their marginalisation within society.

3.7.1 Alleviation of material damage

Confiscation of land, companies, real estate, seed, cattle and other property is frequently used by repressive regimes and paramilitary gangs as a tool of discrimination against whole population groups. In some cases, those in power intend to use these measures to eliminate the previous social structures, whilst others are about simply enriching a plundering militia.

Alleviation of the damage caused thereby is a principle of justice as against the victims of such attacks. Over and above this, however, it can also serve to rebuild destroyed social relationships within a society. It is frequently needed to counter the impoverishment of individuals and whole layers of society caused by expropriation.

This alleviation of damage can be completed by returning property. If however the goods to be returned have in the interim been destroyed or transferred into the possession of a third party who was not involved in the injustice, so that new injustice would come about through return, it is possible for society to reach a consensus as to compensation. In order to assess whether returning could cause new injustice, the scope of participation by those benefiting from injustice should be taken into account, as should the time that has passed. It is also necessary to consider what their return or non-return would mean for society.

The victims themselves are frequently too weak to implement this requirement unless they belong to the new elite and have sufficient influence there. In most cases, they

require support so that effective mechanisms may be established to assert their interests. In so doing, the actual possibilities of the new state to provide restitution and compensation must certainly be taken into account. Effective sanctions coordinated with the respective circumstances in non-implementation of the agreed measures might increase the chances for success.

Property which was removed from its owner in the course of political repression is to be returned or, if this is not possible without unjustifiably placing third parties at a disadvantage, suitable restitution provided.

3.7.2 Compensation

Compensation in the form of restitution is not possible for the victims of violence. Nevertheless, compensation takes on a major function. In the concrete material recognition of the suffering which then aims to assuage it, both the political and moral recognition of this suffering is found, together with acceptance of political responsibility for the same, and the alleviation of the consequences sought.

Especially in international conflict constellations, it is hence recommended for compensation to take place among those who are the political and legal successors of the offenders. Political acceptance of responsibility towards the victims is highly significant here.

Compensation from those who are the political and legal successors of the offenders is essential because it documents the political and moral recognition of the injustice inflicted on the victims and the acceptance of responsibility for the consequences of the injustice.

3.7.3 Promotion of the psycho-social reintegration of victims of violence

The psycho-social reintegration of the victims of violence requires on the one hand the provision of offerings of individual support by trained specialist staff with the aim of supporting the personal healing process, restoring self-esteem and opening up new possibilities of life. On the other hand, the psycho-social reintegration of the victims is inconceivable without publicly restoring respect for and acceptance of the victims of violence within the social environment. In addition, community work aiming at this goal serves prevention of violence within society.

The psycho-social reintegration of victims of violence requires the support both of individuals, and of society.

3.7.4 Protected spaces and public fora for the victims

A major element of repression against individuals or groups lies in many cases in the verdict of silence which the offenders impose on surviving victims. They thus force the latter into their network of conspiracy in which the victims remain imprisoned even after becoming extricated from the situation in which they are subject to direct threat. The goal of this approach by the offenders is to retain control of events and thereby to ensure for themselves influence on future trends.

However, even in societies in which there is no actual verdict of silence, fellow citizens frequently treat the victims with indifference or indeed rejection, so that they fall silent.

Speaking about the injustice that has been suffered therefore becomes an act of liberation. In order to enable the victims to learn to speak about what they have suffered, protected spaces and internal fora are needed in which an undisturbed exchange is possible. In a second step, the victims, if they so wish, may be provided with public fora in which they can speak for themselves towards the rest of society. What is important here is that the victims are not perceived as persons to be pitied, but as personalities who have something relevant to say to society.

Protected areas and public fora should enable the victims to speak of the wrong that they have suffered and to experience respect.

3.8 Suitable ways of dealing with the dead and with the victims' graves

Executions are among the worst human rights violations. This particularly applies to extralegal executions. Frequently, the manner in which the dead are dealt with reflects, be it deliberately or not, the brutality of the violent act, and continues it in a specific manner. Dealing with the dead in a violent manner, reflected in making them disappear, in mutilation, or in anonymisation of the bodies, frequently directly targets the relatives or the group to which the dead belong. The family members experience such action as profound insecurity and humiliation which in many cases, in particular if the fate of the murdered person is unresolved, leads to an ongoing condition of traumatic insecurity.

The authorities must hence clarify these fates, must accordingly inform the surviving dependants, should they so wish, and where appropriate should issue a death certificate. Furthermore, the relatives should receive support when it comes to exhumation and burial. Frequently, the body or the place in which it was buried can no longer be identified. In this case, the surviving dependants, depending on the cultural and religious rite, should be allowed to name a place in which they would like to remember the murdered persons. This also applies if the offenders have removed all traces.

The right to a dignified burial applies on principle to all the dead, regardless of their conduct during their lifetimes. Nevertheless, it should be noted with regard to the burial of offenders in particular that the nature of the burial may by no means take on forms of glorification which create heroes and may injure the victims' feelings.

The dead have a right to dignified burial. The surviving dependants of those who have been killed have the right to be informed of the fate of the murder victim, to a death certificate, to exhumation and reburial of the body and to a personal place to commemorate the dead.

3.9 Regaining ethnic, religious and cultural identity

National, ethnic and religious identification frequently expresses itself with a high degree of ambivalence. Firstly, it forms a framework for political and cultural self-understanding, whilst at the same time, however, these self-perceptions may entail highly problematic concepts of the enemy, and may discredit other groups. As a rule, there is a relationship structure between the groups concerned which even in cases of a striking asymmetry is characterised on all sides by sub-division in terms of offenders and victims. The cultural and religious manifestations of the "other group" are frequently made here to be symbols of the individual experience of injustice and of violence which cause considerable damage to self-perceptions.

Not lastly for this reason, in the case of human rights violations against ethnic, religious or cultural groups, frequently glossed over by being referred to as "cleansing", in many cases both people themselves and everything embodying their culture is spoilt or destroyed: historical buildings, religious sites, cemeteries, libraries and archives. Replacing the names of places and of land, removing national symbols and customs, as well as imposing linguistic prohibitions, supplement the set of tools associated with elimination.

For this reason, all measures should be taken or promoted which are suitable to enable the group that has been the subject of attack to regain its cultural identity

- formation of religious communities, cultural associations or other clubs serving the purpose of self-organisation – in accordance with rule-of-law principles;
- rebuilding destroyed historical buildings and centres of worship and building new ones;
- (re-)establishing cemeteries;
- founding new libraries and archives, possibly with contributions to the culture in question from abroad;
- establishment of research institutes on history and culture, as well as event centres to care for the culture of the group in question;
- lessons in the mother tongue, in the group's history and culture;
- the possibility to change the names of places and land back to their original forms (perhaps also bilingual naming); and
- repealing the prohibition of symbols and customs that create identity.

Following the return of expellees and the self-aware emergence of a group formerly persecuted, there may be a rejection from other population groups and/or a radicalisation ranging through to attacks from those formerly disadvantaged. In such cases, the government should ensure de-escalation; international observers may be helpful in such a process.

All these listed measures do not release the formerly persecuted group from its obligation to subject its ethnic or national self-perception to a self-critical evaluation. In doing so, in particular with a view to symbols and customs, the question must be asked as to the degree to which these are regarded by other population groups as a provocation in light of their own sufferings. In the long term, the relationship between the various groups is to be developed in a manner encouraging coexistence within a community. The cultural and social reconstitution of the persecuted group is a necessary first step in this context.

Ethnic, religious or cultural groups which fell foul of injustice and violence have a right to regain their identity with their social, cultural and religious facilities, as well as their language, their history, their customs and their symbols. They are at the same time called upon in refining their self-perception to consider their neighbours' perspectives in a self-critical manner.

3.10 Criminal prosecution of the offenders

Murder, causing people to disappear, torture, sexual violence, bodily harm and other humiliating treatment always also do serious harm to the consciousness of right and wrong. The victims are robbed of all security, society is dominated by violence and fear. The offenders and their sympathisers feel that they are right as long as they have the power enabling them to do so. However, the fact of keeping their doings secret, the traces of which they often attempt to cover over, indicates that they too are aware of the rights of those whom they persecute.

Persons who are responsible for human rights violations, having planned or implemented them, should have to answer for them before a court. This is a matter of

- helping to reveal the truth,
- strengthening the distinction between right and wrong in the public awareness, and
- heightening the awareness of individual responsibility for offences.

Furthermore, the offenders should be afforded the opportunity to "deal with the past, to find their identity once more and to restore their relationships with the victims and with society."¹¹

Society itself depends on conviction of criminal offences and the implementation of what is right because, otherwise, the basic security emanating from the application of rule-of-law statutes remains frustrated and the state sends out the message that violence is certainly an acceptable means of implementing one's own interests. It is called upon at the same time in dealing with the offenders to develop a differentiated view of the various forms of offence and responsibility for such offences. Rash, generalising punishments are deleterious to the restoration of an awareness of right and wrong in the medium term.

One of the most important issues arising after a regime change when it comes to dealing with the past in legal terms is that of the statutes according to which proceedings against the offenders are to be carried out. To date, a variety of models has been developed and put into practice, such as taking advantage of the fact that dictators in some cases break their own laws, which in many cases were not intended to be legally binding. Nonetheless, the rule-of-law principle of the prohibition of retroactive application and reliance on arbitrary national statutes applying at the time of commission considerably impair criminal prosecution. The establishment of the International Court of Human Rights may show a way out of these problems because by these means human rights safeguarded by international law provide an instance where these can be asserted even

¹¹ REMHI Report p. 361

in the face of crimes already committed which cannot be prosecuted within the national rule-of-law framework. With criminal proceedings before national courts, inviting international observers is a suitable step towards promoting proceedings that are in compliance with the rule of law.

Human rights violations must be examined by courts, and those responsible must be made to face this very responsibility, whilst adhering to international human rights standards.

3.11. Integration of offenders and hangers-on

Especially where the direct offenders, "indirect offenders" (beneficiaries and spectators) as well as hangers-on, constitute a significant section of the population, the need exists over and above criminal prosecution to integrate them into the new society. In the event of a radical regime change, these persons are confronted with their own fall from power, in some cases also becoming fixated with a certain ideology and type of conduct – for example the tendency to act violently. History's "losers" do not give up easily; they gather to support one another, to extract vengeance or indeed to await their opportunity for a "roll back", or to work towards this.

A democratic society cannot afford to marginalise a larger group of individuals, nor may it do so. Marginalising offenders and hangers-on could lead to the formation of a subculture which would be able to place the young democracy at risk. The integration of offenders and hangers-on is hence largely concerned with protecting the civil society being created, for the self-perception of which it is however also important to deal humanely with this group of individuals.

A broad spectrum of measures is required for their integration:

- questioning on one's own past with the goal of thereby promoting the critical debate;
- public discussion fora on topics of recent history in which competing perceptions also find space, which must however be clearly distinguished from propaganda for the old regime;
- offering alternatives to the networks of offenders one intends to disassemble;
- therapy offerings for traumatised offenders, but also discussion offerings for persons robbed of any foothold by the change in political circumstances;
- pedagogical programmes to support those bereft of their roots, such as former child soldiers, to provide a framework within which those concerned are able to

build up their own feeling of self-worth; these should lead to employment which constitutes a real alternative to their previous lives for these persons too;

- the call to permit the victims to participate in restitution in moral form (apologies), in a social manifestation (service) or in terms of finance; and
- occupational (re-)integration.

Integration cannot take place unconditionally, however – the persons concerned here must accept the prohibition of criminal organisations, their symbols, writings, etc. and the disassembly of corresponding networks. It should be made clear to them that actions disrespectful of human dignity and corresponding propaganda will not be tolerated, that such offences committed in the past are to be named and punished. At the same time, scope is to be offered for personal insight, remorse and new beginnings.

Efforts to integrate offenders and hangers-on are set against promotion of changes of elites and criminal prosecution. All these steps are necessary. However, they must in each case be individually examined and balanced within society.

Society must make efforts to integrate as many direct and indirect offenders of the injustices committed, and is called upon to create adequate measures for this, such as surveys, public fora, therapy offerings, care and possibilities of restitution. This may not however hinder the goal of removing grievously involved persons from future prominent responsibility.

3.12. International observation and support

If the state which is in the course of regime change has had an aggressive foreign policy under the old regime, its transformation may be completed *sui genere* in an international context, in other words supported or even occupied by international players.

Working off internal disputes and repression can also be promoted by international commissions, such as the Truth Commission for Guatemala, or by international courts.

The manner in which a society deals critically with its own historical injustice is always difficult and leads to controversy. Sometimes, the regime change is implemented only superficially, which in turn leads to consequences in preventing democratic developments and in a currently fragile human rights situation.

On principle, international support for the democratisation process in a country is helpful; in each specific case, it is a matter of estimating where resources can be used

within society, where constructive approaches require promotion, and where political pressure is needed.

International monitoring, support, even political pressure where appropriate, offer a broad range of diplomatic efforts, at all levels of society and related to all the above recommendations; they can hence refer both to the call to introduce basic rule-of-law principles, to further the legal punishment of offenders, to rehabilitate the victims and to reorientate society.

These efforts may take on the following forms, for instance:

- legal advice in legislative projects;
- reactions to relapses in Parliament;
- police training;
- objections to violations of the rights of victims or to other human rights violations;
- scientific exchange with projects to carry out research into the history of repression and to overcome its consequences;
- promotion of international NGO projects which can then extend into society; and
- media reporting on all these issues.

It is important here to not organise the dialogue in a domineering fashion, but to create a mutual exchange from which all concerned are learning. One should not underestimate the message-creating effect of a visiting foreign statesman's selection of interlocutors when a guest in a country that is undergoing transformation.

These activities can be borne by non-governmental organisations (from another country or international organisations), foreign state facilities or transnational institutions (UN, OSCE, OAU, OAS, etc).¹²

Whilst the tasks of state and supra-state institutions all lie above in the field of the legislature, the judiciary and the executive, the challenges for the social facilities lie in organising the open discourse, promoting and monitoring state activities within the meaning of human rights protection, giving life to programmes benefiting former victims and helping to democratise society.

The debate on past human rights violations and the democratisation process in a country should be observed and supported at all levels of society, both by international players (such as UN organisations and international non-governmental organisations) and by foreign partners.

¹² The Churches as transnational organisations and their potential are illustrated in a separate chapter.

4. Churches and church communities as players in reconciliation¹³

All the above statements should be referred once more to the churches in particular, to their facilities and to their agencies. The Churches and church communities are subjected to the same temptations and mechanisms in dealing with violence and its consequences as are the wider societies. The Church's talk of reconciliation and of dealing with a violence-burdened past and present hence takes place not from a position of a passer-by, of a suprahistorical observatory, but from a position of consciously being a contemporary. The confession of guilt much observed world-wide which Pope John Paul II submitted for the Catholic Church in March 2000 points in this direction.¹⁴ We look in this connection full of gratitude to a rich tradition of courageous and fruitful witness. In many contexts, in particular also in the South, men and women of the Church have taken the risk-strewn path of overcoming violence and encouraging reconciliation. Their example and their experiences form the basis and the background of our considerations. The need for a constant self-critical examination of our activities is one of the essential insights which we can learn here.

This practical insight is central to the plausibility and authority of church statements and church activity. Only those who specifically confess their own historical and personal interdependence and involvement in the violent relationships and processes can give a plausible witness to overcoming violence. Against the background of the specific structure and problems of reconciliation processes, considerable significance attaches to the question of the plausibility of the various groups involved. It is a matter of restoring the trust of many people, destroyed by the experience of violence, even in relation to the Churches. Depending on the specific historical situation, this question will be asked with varying levels of urgency and intensity. Nevertheless, it must be stated that clarification of involvement in and being marked by violence and its consequences is also necessary if the Churches have been targets of persecution.

In particular after phases of repression, the undoubtedly difficult and painful period of asking questions is frequently experienced as a continuation of persecution, and as such is rejected. Critical questions as to involvement and disastrous marking are all too frequently perceived by those concerned as a general questioning of their suffering. By exaggerating the role as a victim and the suffering, which may even be correct in subjective terms, the offender's responsibility threatens to get out of focus. In some

¹³ On the theological discourse cf. in this context Heinrich, Axel: *Schuld und Versöhnung. Zum Umgang mit belasteter Vergangenheit in systematisch-theologischen und pastoral-praktischen Diskursen seit dem Zweiten Vatikanum*, Bonn 2001.

¹⁴ cf.: *Erinnern und Versöhnen: Die Kirche und die Verfehlungen in ihrer Vergangenheit* (Reihe: Neue Kriterien 2), Einsiedeln/Freiburg: Johannes 2000.

cases, this goes so far that the necessary critical questions about the systemic contexts can only be made heard with great effort.

In this context, a number of typical reaction and argumentation patterns can be identified which are closely related to one another.

- Referring to the mystic and holy character of the Church, it is generally denied that it is relevant for the Church to deal with itself self-critically as an institution.
- The Church's martyrs are instrumentalised as proof of the blameless conduct of the Church. The Church as a whole is overidentified with the martyrs.
- The offenders are individualised.

The latter sometimes makes it easier for pastors to gain access to the offenders. However, at the same time it promotes the trend to seek peace with the offenders at the expense of the victims. If one sees the offenders largely from a point of view of their personal compulsions, and needs and suppresses the system structures within which they acted, the concrete conditions and effects of their actions threaten to become unimportant in a manner not comprehensible for the victims. The price of such reintegration of the offenders is a sustained shattering of the trust of the victims and their offspring. In addition to this, comprehension of the contexts in which the violence took place remains superficial.

These patterns, which "collectivise" desired successes and "privatise" failure, can be easily read as an attempt to defuse the critical potential seeking change. With a view to the need to deal with these criticisms, it is crucial to develop a suitable linguistic ability. As suggestive as the mode of sharp, uncompromising charges frequently appears, the more does it prevent the ongoing exchange in many situations, in particular of intergenerational discussions. There is a need to endure the precarious tension between uncovering the truth on the objective reasons, circumstances and impacts of violence and the subjective perceptions and reasons, and as far as possible to make them fruitful for future coexistence without deviating from the principle of truthfulness. It is important here to develop a differentiated view of the different shares of the various groups, persons and authorities in the Church.

The central task for the Churches and church communities consists of being active, long-term counsel for the victims in a spirit of solidarity.

In light of the fact that those most affected by violence are usually at the same time the weakest, it is particularly necessary for the Churches to walk with and support the victims. Thus, there should be an area in which the serious injuries can be suitably

discussed. Churches should hence meet head on any development in which the victims are once more marginalised, and their experience of violence is therefore extended once more. It is important for the Churches to ensure that the voices of the victims are heard, in particular also in the political debate. By these means, they simultaneously show society a major service, since it may not overcome the fact of being marked by violence without the perspectives of the victims. In their efforts to overcome the violence, for the sake of their own message, the Churches must also include critical support of the offenders. Their work aims particularly to strengthen the willingness for reconciliation within society.

Over and above this, Church peace activities are faced in dealing with violent conflicts and their impacts with the specific challenge of taking up a critical distance towards attempts to lend a religious flavour to these conflicts.

Again and again, efforts are undertaken in conflict situations by the political arena to strengthen their respective interests by making use of religious feelings and symbols. For many affected by violence, this corresponds to a need for fundamental, meaningful interpretation of the experience of violence. In light of the existential nature of the experience of violence, religious interpretation patterns are particularly attractive in these contexts. The Churches and church communities are called upon in this situation to critically analyse both trends towards amplifying the religious identity of the victims, as well as the willingness to self-sacrifice, and trends to demonise the offenders. This applies equally to dealing with the political reconciliation rhetoric. For the sake of suitable linguistic ability within society, as well as specifically religious ability, it is a matter of decisively countering pseudo-religious arguments impacting in a precarious manner and lending legitimacy to violence, as well as superficial reconciliation rhetoric not expressing the actual causes and impacts of violence. Much depends on the practical sensitivity of the church players when dealing with the topic.

The concrete self-critical witness of the Churches and church communities is highly significant for the painful processes of fundamental social change.

Where this does not take place, the Churches quickly become more part of the problem than of the solution. Moreover, if they do not make a serious attempt to plausibly, reliably open up a suitable, concrete horizon within society on talking about violence, guilt, failure, as well as forgiveness, they largely fail to live up to their Apostolic mission.

4.1 Recommendations to the Catholic Church in Germany on dealing with burdened past

It is recommended for the Catholic Church in Germany in its facilities, associations and relief agencies to deal more intensively and systematically than previously with processes of dealing with violence- and guilt-burdened history. The Church should hereby become binding counsel of what has not been dealt with in historical terms. Against the everyday trends towards superficial "normalisation", it is a matter of persistently touching on the unresolved questions for the sake of creating societies that are able to sustainably live in peace.

4.1.1 Dealing with problems of German past

For the German case, the two central complexes of dealing with National Socialism and with the SED regime are to be named. Whilst critically dealing with National Socialism and its consequences has now become highly institutionalised, and hence has a considerable lobby, this by no means yet applies to dealing with the SED regime. Rather, one can observe that the latter process has been placed under pressure, as has become visible in light of some efforts to revise the Act on Documents of the State Security (StUG-Stasiunterlagengesetz). At the same time, and characteristically, offerings for psycho-social care of SED victims are by no means sufficient.

It is therefore recommended

- to critically and systematically support the revision of the Act on Documents of the State Security, as well as developments in the compensation question by the Church,
- within the framework of Caritas offerings, to provide psycho-social care for people who continue to suffer from the consequences of violence (specifically for victims of the SED regime) as well as the corresponding skill-building measures,
- within the church landscape to create or determine an institutional place to continually deal with the coming questions – including the role of the Church in the GDR. Both the unresolved questions of the ongoing impact of National Socialism and of the SED regime require an institutional home. The scientific, political and social experience gathered in this exchange should be discussed, and hence Church voices should be heard more loudly than has been the case heretofore in dealing with the topic in society as a whole.

- to provide via the reconciliation fund¹⁵ additional monies towards projects concerned with dealing with the SED regime,
- with regard to the credibility of the Church, further efforts should be made, involving the "Commission for Contemporary History", to define more clearly the role played by the Catholic Church during National Socialism and World War II, as well as in the GDR,
- to commemorate those who were deported and murdered from church hospitals and psychiatric institutes in the "Euthanasia Programme" with commemorative plaques in the facilities,
- to ensure the ongoing activity of the reconciliation fund after the expiry of its envisioned term in order to be able to continue to fund and conceptually promote appropriate projects, and
- in light of the remaining considerable significance which the commemorative sites (National Socialism and SED regime) have both for work to promote the discourse within society, and for personal processing, to examine the form in which pastoral offerings can be made in the context of work on commemorative sites, and
- continue to promote the Maximilian Kolbe Agency.

4.1.2 Support for dealing with burdened past in other contexts

For the above reasons, it is recommended that the church facilities exhaust their potential more intensively and systematically than has previously been the case to support processes for dealing with the burdened past. The necessary training requirement should be covered. The following proposals can be made in particular:

- to create basic and further training measures for organisations from the partner countries, as well as for staff of the church agencies and facilities (where appropriate as an exposure programme or in cooperation with a memorial site),
- through the German Commission for Justice and Peace and the relief agencies to suitably support regional conferences and contacts, as well as ongoing international exchanges, on matters related to dealing with burdened past,
- to encourage more strongly the development of skill-building measures necessary to deal with traumas,

¹⁵ The reconciliation fund has been established in the context of the Church to manage the compensation of forced labourers in church facilities during World War II. It serves to promote measures which in different ways strengthen reconciliation processes within Europe, and is institutionally linked to the Church's Espiscopal Renovabis Relief Agency. Further information at www.renovabis.de

- to examine with which international partners a regular international forum can be created for an exchange on the relevant problems as well as perspectives and mutual support structures.

4.1.3 Strengthening international legal standards in dealing with the dead and with graves

The significance of places of commemoration and of burial portrayed in Chapter 3.8. should be appropriately examined as to how international legal standards can be created to guarantee suitable approaches towards dealing with the dead, to ensure burial and commemoration places, free access to them and the broadest possible clarification of the whereabouts of family members, for instance by continuation of the existing bilateral war graves treaties. In light of the special sensitiveness of the Church, as well as that of the religious communities as a whole, for the significance of the ritual response to death, the Church takes on a special role as counsel for these questions.

5. Closing remarks

The recommendations put forward here are the fruit of years of thought and intensive debate. The German Commission for Justice and Peace is nevertheless well aware of the incomplete nature of its recommendations. Particularly in light of the ongoing consequences of violence-burdened past in Germany, it regards these recommendations as a starting point through which it would like to enter into a dialogue with the addressees in order to take account of their experiences and criticism in further work. These recommendations have been deliberately kept general and require specific implementation in the respective countries. It would therefore be a misunderstanding of our concerns were one to seize on the recommendations as simple instructions for dealing with a burdened past. Implementation of the elements that we have identified will in the respective contexts require the entire imagination and frequently the courage of all those concerned. In each society, experience can be gathered in this process which may greatly benefit other societies. The German Commission for Justice and Peace would therefore be glad if the recipients of this paper would develop its thoughts further using their experiences.

6. Annex

6.1 International conventions: Arrangements aimed at restoring victims' dignity

Universal Declaration of Human Rights (1949), Art. 8

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

International Covenant on Civil and Political Rights (1966), Art. 2 (3)(a)

"Each State Party [...] undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity..."

International Covenant on Civil and Political Rights (1966), Art. 9(5)

"Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

International Covenant on Civil and Political Rights (1966), Art. 14(6)

"When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him."

International Convention on the Elimination of All Forms of Racial Discrimination (1965), Art. 6

"States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination."

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984), Art. 14(1)

"Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation."

Convention on the Rights of the Child (1989), Art. 39

"States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

6.2. Selected reference material

Arenhövel, Mark, Demokratie und Erinnerung. Der Blick zurück auf Diktatur und Menschenrechtsverbrechen. Frankfurt a.M. 2000

Boven, Theo van, The Right to restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms. In: State Responsibility and the Individual: Reparation in Instances of Grave Violations of Human Rights, ed. by A. Randelzhofer and C. Tomuschat, The Hague 1999, pp. 339-354

A Just Peace. ed. Sekretariat der Deutschen Bischofskonferenz, Bonn 2000,

Grande, Dieter (ed.), Ohne Erinnerung keine Versöhnung. Ansätze und Überlegungen zu einer Charta Memoriae. Documentation of an international workshop at Buchenwald Memorial. Bonn 1999

Grande, Dieter (ed.), Der deutsch-deutsche Umgang mit der SED-Vergangenheit. Perspektiven kirchlichen Handelns. Documentation of a workshop in the Normannenstrasse Research Centre and Memorial in Berlin. Bonn 2001

Guatemala: Nunca más (Never again/Never more). Report (in Spanish) by the Interdiocesan Recovery of Historical Memory Project. ed. by Recuperación de la Memoria Histórica REMHI and the Human Rights Office of the Archdiocese of Guatemala (ODHA), Guatemala 1998

Hayner, Priscilla B., Fifteen Truth Commissions – 1974 to 1994. A Comparative Study. In: Human Rights Quarterly, Nov. 1994

Huyse, Luc, Reparation as a Dimension of Transitional Justice. In: Expert Seminar on Reparation for Victims of Gross and Systematic Human Rights Violations in the Context of Political Transitions. Leuven, 10 March 2002, pp. 54 et seqq.

Jaspers, Karl, Die Schuldfrage. Heidelberg 1946

Paris, Erna, Vergangenheit verstehen. Wahrheit, Lügen und Erinnerung. Berlin, Munich 2000

Schwan, Gesine, Politik und Schuld. Die zerstörerische Macht des Schweigens. Frankfurt a.M. 1997

Wahrheits- und Versöhnungskommission Südafrika. Das Schweigen gebrochen "Out of the Shadows". Geschichte – Anhörungen – Perspektiven. Frankfurt a.M. 2000