



Inicijativa za REKOM
Initiative for REKOM
Иницијатива за РЕКОМ
Nisma për KOMRA
Pobuda za REKOM

REKOM QUESTIONS AND ANSWERS

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Q: What is REKOM's goal?

A: The goal is to create an accurate, objective and official record of war crimes and other serious violations of human rights; to recognize the victims and their suffering; and to prevent the recurrence of such crimes.

Q: Why establish REKOM, when there are institutions designed to do this job in the successor states of the former Yugoslavia?

A: Individual state institutions are not capable of collecting all the data themselves that is necessary to achieve this goal. Many victims were killed in one successor state, while the perpetrators live in another. Regional cooperation between and among the post-Yugoslav states is necessary, but such cooperation is not easy to establish and maintain following the wars and massive violations of human rights. To get comprehensive data on all the victims, to allow the voice of the victims to be heard, and to determine the objective facts about the political and social circumstances that contributed to the outbreak of the war, we need an inter-state, independent and impartial regional commission.

Q: What could such a commission do?

A: It could prevent falsehoods from being aired to the public or, if already aired, the commission could show that such claims were no longer credible. It could provide a public platform for the voices of the victims and, through their public testimonies and public hearings, create a fuller understanding among the general public, and generate respect and solidarity both with those victims whose plight is well known, and also with those victims who perhaps were not seen as such in the past. The commission could establish a register of victims and casualties and thus prevent manipulation of the numbers of those killed and injured.

Q: How is it possible that a commission could deal with offenses, in this case with war crimes, when there are courts tasked to do this job? Wouldn't the mere existence of such a commission be inconsistent with the constitutions of potential signatories?

A: RECOM will be establishing the facts about war crimes, something which is usually the responsibility of and within the remit of parliamentary commissions, commissions of inquiry, investigative commissions and all truth commissions. Neither RECOM, nor any other commission of a similar nature, have the right to try cases, or impose penalties for any crimes.

The constitutions of all successor states of the former Yugoslavia stipulate that treaties must be ratified in accordance with the Constitution, which is to say that they ought not to be in conflict with the constitution of the country. RECOM would certainly not be established contrary to the constitutions of signatory states, because they themselves will have taken part in the drafting of the Statute and all other regulations necessary for the Commission to begin its work. Furthermore, at the end of the process to establish RECOM, the states party to agreement would jointly sign an international treaty to establish the Commission. In this way, the Commission would operate synchronously with domestic laws of any state.

Q: There are still many difficult problems in the region, including primarily the fact that Serbia has not recognized Kosovo's independence. Doesn't this mean that RECOM would be still-born as Serbia would not sign a treaty that would implicitly recognize Kosovo?

A: Every state is free to recognize another state. This problem – despite Serbia's refusal to recognize Kosovo as an independent state – is not insurmountable. From the standpoint of international law, signing a treaty does not mean that the parties automatically recognize each other as a state. Participation in conferences and signing or ratifying a contract does not imply recognition of an hitherto unrecognized state. States can join international treaties and unilateral acts without a legal contract. That is why this should not constitute an insurmountable problem on the road to establishing RECOM. In addition, Serbia is certainly the most suited of all potential signatories to suggest the form of a document (an international treaty or political agreement) which will allow all post-Yugoslav countries to be involved in the establishment of RECOM.

Q: Those who criticize RECOM claim that the commission "wants to usurp judicial power." Is RECOM really a new Hague tribunal?

A: It is envisaged in the draft Statute, that RECOM will not issue verdicts, and hence will not exercise judicial power. RECOM will have the authority to establish the facts about war crimes and other serious human rights violations, but will have no authority to do so in any final, definitive way, nor will it have the right to impose any sort of sanction or prohibition. Whenever such powers are lacking, there is no exercise of judicial power. Indeed Article 46 of RECOM's draft Statute, specifically stipulates that the findings of RECOM "do not have the effect of court judgments, nor do they prejudice the eventual outcome of any trial."

Q: But RECOM "establishes the facts" about the crime, and that is precisely what the courts do. Doesn't this show that RECOM is a court in disguise?

A: RECOM would indeed have the right to "establish the facts." But RECOM would not be able to perform any judicial act, such as sentencing. The courts determine the facts, as does RECOM, but to infer that RECOM is, consequently, a court, is wrong. To draw such a conclusion would be to go by the following logic: "a car has wheels, a bicycle has wheels, ergo a bicycle is a car." A claim that as both RECOM and the courts determine the facts, RECOM is therefore a court is obviously wrong, because it is possible to imagine many situations in which institutions 'establish

the facts without resulting court judgments and verdicts, just as there are many vehicles with wheels, but that does not mean that they are all cars.

Q: What then is the future Commission missing which prevents its findings from becoming, in fact, verdicts?

A: Courts has specific powers which constitute them *as* courts. So-called truth commissions do not have such powers or authority, and therefore are not courts. Along with determining the facts (which a truth commission can do as well), the judicial function presupposes reaching a final decision to resolve a dispute in each case, and the imposition of sanctions. According to its draft Statute, RECOM will not solve anything in any particular, nor resolve any dispute, nor will it have any kind of authority to reach a final legal decision or impose any sanction.

Q: Be that as it may, why should the questions of mass human rights abuses be left to a commission, and not the courts?

A: The courts perform an important function establishing the facts about mass and grave violations of human rights., but work slowly. Courts also deal with perpetrators and not victims. In court proceedings, victims serve to prove the defendant's criminal responsibility. Further, recognition of injustices inflicted on the victims or the creation of a registry of victims and missing persons in the wars is not under the jurisdiction of any court. If the Commission doesn't begin its work soon, as soon as possible, the testimony of victims will be lost. Precisely for these reasons, in modern societies, human rights violations are the task of police, prosecutors, domestic and international courts, but also of investigative commissions (commissions of inquiry), including so-called truth commissions. And so such commissions are neither police, nor prosecutor, or court.

Q: Has the question "Can a truth commission prosecute crimes or not?" ever been answered in any other country?

A: In a decision dated December 7 2010, the Philippine Supreme Court threw out a complaint that the Commission's authorities made it a body with judicial power. The Court explained that in order to perceive and treat the establishment of the facts as a judicial function, it "must be accompanied by the authority of a related body to apply the law to factual findings for the purpose of an authoritative, final and definitive decision or resolution of the dispute." The Philippine Commission, or other truth commissions for that matter, has no such authority.

Q: What kind of verdicts have other, similar commissions around the world handed down? Has there ever been a death sentence?

A: Nowhere in the world, has a truth commission pronounced sentence on anyone. Nowhere in the world, has a commission sentenced or subjected them to the justice of the mob. And never and nowhere, has a commission sentenced anyone to death, even where it might have obtained information, through the testimony of the survivors, of a person having committed murder, torture, rape, or a similar terrible misdeed. There are courts to do that.

Q: Does the obligation that the state run media have, to broadcast the hearings of the perpetrators or their victims, mean that the citizens will be forced to watch the hearings?

A: Claims that people would be forced to watch RECOM's sessions are an insult to the victims. The draft Statute does not say that the public will be forced to watch the interviews or the testimonies of victims and witnesses, or any thematic sessions. Everyone will remain in control of the off switch. However, it is natural to expect that people will have a personal, professional, moral, ethical and emotional need to hear what happened to others, to learn or test their knowledge about the war and the suffering of other people.

Q: Would the future commission have the right to punish people who decline an invitation to attend these sessions?

A: In accordance with the legislation necessary for the establishment of RECOM by the signatories, if a person refuses to make a statement to the Commission without an acceptable reason, the courts may impose a punishment which may be a fine, or imprisonment (maximum one month in Croatia, Bosnia and Kosovo, and two months in Montenegro).

Q: Is this not usurping judicial power?

A: Absolutely not. Similar provisions have already been present for more than a century in the legislation of New Zealand, Belgium, Italy, Israel, Canada and Australia. The Slovenian law on parliamentary investigations and the law on parliamentary committees in Croatia and Kosovo also recognize the same type of punishment for persons who refuse to give statements.

Q: Would RECOM punish the perpetrators of war crimes, if it obtained evidence of atrocities?

A: RECOM has no authority to punish anyone. When it recognizes or finds that there is a serious likelihood that a person has committed a war crime or gross human rights violation, RECOM can only note in its final report that, according to Commission's findings, that there is evidence about this, and it can then submit the relevant material to the prosecutor.

Q: Faced with the threat of punishment by the Commission, won't there be a chance that witnesses have to testify against themselves or their loved ones and become defendants or the accused?

A: This is incorrect. RECOM's draft Statute does not recognise the concept of defendants or the accused. In addition, the draft Statute stipulates (in Article 17, paragraph 5) that, in this aspect, the same guarantees apply before RECOM as when before the courts, regarding the right to refuse to answer certain questions, while for certain categories of persons separate rules apply regarding the release from any duty to testify (or in the case of the Commission, the duty to give a statement).

Q: Isn't it too late for all this now? We have read recently that five organizations have left the Coalition for RECOM, and that the whole process has failed?

A: The Coalition for RECOM includes over 1,600 organizations and individuals. In such a broad coalition different views on methods and a common goal are expected. It is quite normal to have

various organizations and individuals join the initiative on a daily basis, and it is equally normal that some individuals and organizations leave it for various reasons. The small number of organizations that have left the initiative for RECOM, and the large number of those supporting it, together with hundreds of thousands of citizens who have given their support to RECOM, prove that the initiative makes good sense.

Q: The media talk about how Natasa Kandic has left the Coalition having squandered €2.5 to €3.5 million euros. Is this true?

A: No, it isn't true. The Humanitarian Law Center (HLC), and Natasa Kandic as the organization's executive director, are responsible for project implementation and expenditure of funds in keeping with contracts signed with the European Commission, the Ministry of Foreign Affairs of the Netherlands, the National Endowment for Democracy, and other donors who have supported RECOM's development. Natasa Kandic was the initiator, and continues to lead the Coalition for RECOM in Serbia. The Humanitarian Law Center is a member of RECOM. As for the claims of alleged fraud, they are attacks on the most committed activists of the initiative for RECOM and are totally without foundation. Data on how the funds for RECOM are allocated and spent are public and can be obtained directly through HLC's web site along with audited accounts and statements from auditors that raise no objection to the manner in which the funds are being spent and allocated. This data demonstrates that the "millions" of Euros mentioned in the media did not end up in the HLC Director's purse, but have instead been spent on consultations, translation, promotional material, accommodation and transportation for hundreds of RECOM activists.

Q: Are you saying that the media have lied?

A: It is obvious that the media have been publishing a lot of falsehoods about RECOM. It is usual for journalists when presenting serious accusations to offer the right of reply, but RECOM supporters assaulted in the media never had the chance to express their views. This demonstrates evidence of serious unprofessionalism and also violates international standards of news reporting, and the Munich Declaration, an internationally recognised ethical code for journalists. The Code of Ethics of the Society of Professional Journalists calls on journalists to "diligently seek out subjects of news stories to give them the opportunity to respond to allegations of wrongdoing." Those sections of the media that have reported a distorted image of RECOM are characterized by hate speech, lies, slander and distortion of facts. Fortunately, other media outlets have presented the facts about RECOM truthfully and accurately.

Q: Who will benefit from the establishment of RECOM and who will end up hurt?

A: Everyone will benefit, and no one will be hurt. Claims that RECOM is of use to some countries and peoples and harmful to others are completely untrue. Analysis of the reports from different local communities and different backgrounds and environments which criticize RECOM on the grounds of its partiality prove precisely this. An initiative which is characterized in every area as harmful to the local, i.e. national interests, and beneficial for the neighboring peoples and states, is of course actually impossible. Analysis of the texts which criticize RECOM proves quite well that the criticism is usually factually incorrect, that it stems from a false logic, that it is contradictory, and that no matter how convincing these critical reports may seem when read independently, together they are an expression of individual and collective fear of critical self-examination.

Q: One gets the impression that all victims will be equal before RECOM. Will that lead to a leveling of the responsibility of states that participated in the wars? And will it, consequently, lead to equating the victim with the aggressor?

A: Victims who died or were killed in the war are treated as equal, because there can be no difference among the dead, regardless of whether they were victims of war crimes or of genocide. However, there are differences in accountability for war crimes, given the type of crime. The largest share of responsibility is on those accused of genocide, which is among the most serious crimes. The responsibilities of the state have been examined by the International Court of Justice, an example of which was the lawsuit filed by Bosnia and Herzegovina against the Federal Republic of Yugoslavia, Serbia *defacto*. The responsibility of states and institutions are also established before the national courts, although many cases of claims for financial reparations and redress show that courts in the region tend to protect their own institutions (either by rejecting the claims altogether, or by awarding victims of war crimes humiliatingly low monetary compensation).