

Report on Impunity Watch Panel Discussion

Transitional justice: are we ticking the boxes when we should be joining the dots?

Café Dudok, The Hague, 15 December 2009

Panel:

- Mô Bleeker, Senior Adviser, Federal Department of Foreign Affairs of Switzerland
- Jelena Milic, Executive Director of the Centre for Euro-Atlantic Studies (CEAS), Serbia
- Barbara Oomen, Head of the Social Science Department and Associate Professor of Law at Roosevelt Academy, Middelburg, the Netherlands
- Jonathan Sisson, Senior Adviser, Centre for Peacebuilding (KOFF), Swisspeace, Switzerland

Moderator:

- Harm Ede Botje, journalist, Vrij Nederland

Transitional justice measures can help troubled states break recurrent cycles of violence and abuse by addressing the grievances, power structures and prejudices that surround war crimes - but not if they are inconsistent, piecemeal or isolated from other efforts to establish peace, build democracy and reduce poverty; such measures must also take into account and address the obstacles that threaten their impact.

This was the overall conclusion of a panel discussion held in The Hague on 15 December 2009 by Impunity Watch to explore why accountability for war crimes remains elusive even in countries where international intervention has been substantial and long-standing.

The event built on a comparative reading of research conducted by Impunity Watch in Guatemala and Serbia - very different countries, with different experiences of conflict and international intervention - which highlighted the tendency to emphasise one aspect of transitional justice at the expense of all others, and the consequences that has for achieving progress in the combat of impunity.

Experts on both countries formed the panel, providing governmental and non-governmental, local and international, viewpoints on transitional justice projects, helping thus to explore the extent to which post-conflict states and the international community understand the interrelation of different measures. Attending the debate, many officials from the Hague-based international tribunals, and academics and activists who deal with aspects of transitional justice and human rights protection, made interesting and informative contributions.

The event's title asked whether transitional justice, now established as a central and high-profile part of international efforts to discourage or deal with conflict and the human rights abuses that almost always accompany it, is falling short of its mission to promote truth, justice, reparation and non-recurrence of abuses because of problems with creating,

implementing and maintaining sensitive, country-specific strategies that are focused on impunity reduction.

Susan Kemp, Impunity Watch Legal Adviser, started the discussion by presenting what Impunity Watch's reports showed in this regard: in the former Yugoslavia, criminal prosecution in local and international courts has overshadowed all other areas, and only now is truth-seeking emerging to tackle the wide public and political resistance to recognising and accounting for the war crimes exposed in hundreds of trials, and rejecting the structures and prejudices that facilitated their commission; in some ways, Guatemala shows a mirror image, in that it has experienced two respected truth-seeking processes and is yet to see any real achievement of criminal accountability, but faces even greater challenges since the truth commissions did not lead to widespread societal acknowledgement of victims' suffering or the injustices that led to it. How did these situations emerge, and why weren't the problems we see today predicted and factored into international impunity agendas?

Panelist Mo Bleeker, a senior adviser to the Swiss foreign ministry on dealing with the past and prevention of genocide, has been involved in transitional justice in Guatemala for many years, and described the conundrum that faces all projects in this field – to implement a strategy to reduce impunity, it is essential to engage with the state, but where a culture of impunity has taken a firm hold, there is generally little or no political will or courage to seek true accountability and break with the corrupt and abusive practices that underpin conflict-era crimes; in fact, many in the political establishment oppose this in order to hold on to their positions and privileges. This is why, for example, the Guatemalan truth commission reports turned out to be dead letters – state engagement was needed to disseminate them in relevant languages and through appropriate media, to integrate their conclusions into educational curricula, to pursue lines of criminal enquiry, and to dismantle structural inequality.

For Jonathan Sisson, senior adviser to Swisspeace, such contradictions and imperfections are inevitable, considering the youth and vulnerability of the very concept of transitional justice. In this sense, although frustrations exist with the institutions and processes applied, the fact that such issues are even being discussed represents the significant progress made in the past few decades.

The strength of international interest in a troubled state is clearly pivotal to the effectiveness of its transitional justice processes, and in this regard, Serbia has been more fortunate than Guatemala. The establishment of the ICTY, an international tribunal to address war crimes committed in the former Yugoslavia in the 1990s, and the measures that have been developed to accompany it, is a case in point. According to Jelena Milic, director of the Centre for Euro-Atlantic Studies in Belgrade, these efforts have led to distinct improvements in Serbia, although there is still much to be done. While a significant and positive factor, neither international nor local war crimes trials are in themselves an appropriate response to impunity there: their number and frequency is drastically disproportional to the extent of crimes, meaning the needs of victims are still not fully addressed; moreover, the distance and divisions that commonly exists between victims, the courts in which alleged perpetrators are tried, and the societies from which the latter hail, limit the wider resonance and effects that criminal justice is supposed to have. This disconnection between court processes and public perceptions represents a serious obstacle to reducing impunity, and points to large gaps in the transitional justice strategy for the region.

The panelists described steps that the international community could have taken to ensure that

the measures emphasised in these two countries had the greatest possible effect on the problem of impunity: in Guatemala, it could have provided sufficient funding for distribution and popularisation of the reports, and made the installation of a commission to follow up on findings mandatory, while with regard to Serbia, the conditionality imposed on its EU-membership bid should have been communicated in such a way as to counter the common tendency to interpret it as meaning that the delivery of remaining war crimes suspects to the international tribunal in The Hague would end obligations to deal with the past.

Clearly, as Impunity Watch's director, Marlies Stappers, pointed out, the application of particular transitional justice mechanisms is not enough - while achieving tangible results in particular areas, they struggle to inform and convince the populations of post-conflict states that crimes were committed, that they were unjustified, and that victims deserve reparation and protection. And without changes in public perceptions of impunity, the necessary political will among local elites to root out impunity is unlikely to grow. In this respect, the international community has shown its ability to take strategic measures to achieve such goals when problems are understood and mechanisms designed and implemented with care and commitment. Here, Stappers cited the CICIG, a hybrid, ad hoc institution supported by the UN in Guatemala to identify and dismantle the clandestine groups that operate with impunity to the extent that they threaten the very existence of the state. While its mandate relates to current crime, the individuals and structures involved are often one and the same as those responsible for conflict-era abuses. Through its work over the past couple of years, the commission has exposed the workings and effects of impunity to the Guatemalan public, and changes in public perceptions are now evident. This points to the fact that the intrinsic intransparency of impunity is what allows ordinary people to ignore calls for its reduction - we need therefore to pin it down, demonstrate its workings, and drive home its effects on the safety and livelihoods of the population. Exposing impunity is half the battle.

The CICIG provides another example of how transitional justice approaches need to be improved. As Mo Bleeker explained, it is an institution with local legitimacy, while many mechanisms in this field are viewed with suspicion as foreign impositions with suspect agendas. This has certainly been the case with war crimes trials for abuses committed in the former Yugoslavia, despite the regional approach of the ICTY and its emphasis on individual guilt. Expectations are therefore high of the grassroots, cross-border initiative to establish the truth of what happened - known as the RECOM - although it is still in its early stages.

For Jeff Handmaker of the Hague-based Institute for Social Studies, who attended the debate, the legitimacy of the International Criminal Court is perhaps the most serious challenge within the sphere of international transitional justice. The court has so far given the impression that it is only interested in addressing war crimes in Africa, imposing foreign approaches to dealing with conflict, thus creating an impression there of double standards and Western arrogance. This has aroused hostility to the ICC and other transitional justice initiatives, playing into the hands of those whose interests lie in weakening the call for combating impunity. The international community would be wiser to build on pre-existing local mechanisms and practices to deal with gross human rights abuses, said Handmaker.

Barbara Oomen, who has recently conducted research on justice efforts in the former Yugoslavia, Rwanda, East Timor and Cambodia, stressed that mechanisms for dealing with the past must achieve local legitimacy, whether international(ised) or home-grown initiatives. They should also be designed so as to integrate with each other and with wider efforts towards socio-economic justice.

This point was echoed by Michelle Parlevliet, a member of the audience who has worked extensively on transitional justice issues in several countries, including South Africa. She explained that the criticisms now leveled at that country's truth and reconciliation commission, possibly the best-known example of home-grown transitional justice, often fail to recognise that it was not supposed to be a stand-alone mechanism. Rather, it was originally intended to form one part of a three-pronged approach to resolving the underlying injustices of the apartheid regime, including land reform and a redistributive socio-economic development policy. As the latter two aspects were dropped from government policy or delayed in implementation, the TRC came to be viewed as the primary, if not only, tool responsible for dealing with the entire legacy of the apartheid past. This illustrates the unrealistic expectations that too often accompany transitional justice mechanisms, and the manner in which they can become isolated from other strategies to deal with the aftermath of gross abuses. The reality is that they can only ever be one component of a transition, and so must form part of a well-based, multi-faceted strategy to address the root causes of crimes and impunity for them.

Susan Kemp added here that coherence and coordination between different aspects of international conflict resolution, transitional justice and developmental assistance programmes is essential, meaning governments and agencies seeking to assist must communicate better about impunity, including among their own departments or ministries. Otherwise, we too often see contrary strategies, whereby, for example, the development or justice ministry supports accountability policies, but the defence, interior or foreign ministry wants to have a relationship with the individuals or structures responsible for abuses.

These and other points made during the panel discussion event are now being integrated into a comparative analysis of Impunity Watch's Guatemalan and Serbian research that seeks to establish key lessons for state and non-state, local and international, actors involved in combating impunity.