



Ministry of Foreign Affairs



BEYOND PEACE VERSUS JUSTICE: FIGHTING IMPUNITY IN PEACEBUILDING CONTEXTS
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OUTCOME DOCUMENT

The conference on *Fighting Impunity in Peacebuilding Contexts* brought together 150 policymakers, researchers and practitioners representing over 20 countries from all geographical regions. Together, they were well positioned to consider how the international community can facilitate peacebuilding strategies that recognize the need for justice and the rights of victims as well as other war affected communities. From the diverse voices that participated in the two days of discussion emerged one clear message: in peacebuilding contexts, past violence must be confronted and addressed in order to break the cycle of conflict. The obligation to acknowledge victims, and the importance in this respect of reparations, material or symbolic, was also collectively recognized.

The idea of transitional justice and peacebuilding as contradictory initiatives was summarily rejected by participants, particularly those who are on the front lines of the fight against impunity. As Alex Boraine, President of the International Center for Transitional Justice, stated in his opening speech, “Peacebuilding without justice is only building.”

Yet there are still significant obstacles to fighting impunity on the national, regional and international levels—and each new situation presents its own distinctive challenges and opportunities. It is clear from the discussions that there is a need for a better balance between international and national measures so that international efforts are more oriented towards supporting rather than supplanting local efforts. Moreover, while lessons can be learned, no model can be imposed. Peacebuilding contexts require a broad holistic approach to transitional justice, including prosecutions, truth commissions, reparations programs for victims, institutional reform and local level justice and reconciliation initiatives that can offer many avenues for accountability and justice.

This outcome document will list some of the major challenges to ensuring justice in peacebuilding that were identified by panelists and participants, and will summarize some of the creative and interesting ideas offered for advancing transitional justice.

CHALLENGES

1. The rhetorical commitment of the international community to transitional justice is not equaled by the resources it makes available. This disparity prompts the question: Why is it more of a challenge to support justice initiatives than security and development initiatives in peacebuilding contexts? Three obstacles were identified: political will, ownership and time. Participants repeatedly pointed out that political will and leadership are scarce in volatile peacebuilding situations.

INTERNATIONAL VS. LOCAL

2. The challenge of balancing international and national measures to fight impunity was addressed throughout the conference. There was general agreement that national ownership of transitional justice is critical for the sustainability of a peace process—yet at the same time, international and regional measures are necessary when local actors and institutions cannot or will not respond in good time. In his opening remarks, Maxime Verhagen, Netherlands Minister of Foreign Affairs, emphasized that the aim of international justice must be to contribute to, and provide an incentive for, national processes.
3. When international measures are necessary, such as the International Criminal Tribunals for the former Yugoslavia and Rwanda or the International Criminal Court (ICC), there are serious challenges related to the legal and moral responsibilities of these international bodies to victims and other domestic constituencies. Given that the imminent closure of the Yugoslavian and Rwandan Tribunals, for example, these bodies must grapple with the problem of how to provide ongoing witness protection, supervision of lengthy prison terms, and reviews of convictions due to new evidence or other changed circumstances.

VICTIMS AND SOCIETY

4. Transitional justice as a field is only beginning to take on the challenge of social and economic rights, although a number of truth commissions, including those in Sierra Leone and Liberia, have focused at least partially on corruption and lack of development. A critical question debated at the conference was: Can positive peace be built without addressing the structural inequities that lead to violations of social and economic rights? Many argued that there can be no hierarchy of rights and that justice efforts must also address the patterns of privilege that lead to systemic and structural violations. On the other hand, concern was expressed that a broader agenda for transitional justice measures would dilute or undermine such efforts.
5. The point was made that in the process of demanding their rights, victims often place themselves at risk or are perceived to be in opposition to the government. Furthermore, the weight of ensuring the implementation of justice measures, particularly reparations, is often primarily on the victims—as evidenced by the presentations on the arduous reparations struggles in The Philippines and Sierra Leone. The international community, including international NGOs, was challenged to do more to support victims and organizations advocating for victims' rights.
6. Questions of balance came up in the discussion of reparations as well. What is a fair balance between symbolic and material reparations? Community and individual reparations? Participants also posed questions about how to balance reparations for victims with ongoing government obligations to provide development for society as a whole.
7. In discussions about the role of security system reform, it was stressed that the security system is challenged to balance a focus on both accountability for the past and accountability for the present. Effective reform efforts must result in the delivery of more effective security, and must not become preoccupied only with dealing with past crimes. There was also a question raised as to the extent to which non-state actors, who may include unregulated militias and vigilante groups, should be formerly involved in security system reform and security provision.

PAST, PRESENT AND FUTURE

8. In terms of the relationship between transitional justice and peacebuilding, participants generally agreed that it is not one of intrinsic incompatibility or tension. The challenge is to create transitional justice measures that will strengthen local capacities to resolve conflict without violence. This implies that transitional justice measures must be forward looking—not an end in and of themselves. Transitional justice cannot be indifferent to the type of societies involved.
9. Keynote speaker James Orengo, Minister of Lands, Republic of Kenya, stated that the nature of the state can pose a serious impediment to any reform process if it “still bears the birthmarks of imperial presidency or colonial rule.” Several participants emphasized a concern about how to deal with situations when political elites linked to former regimes seek to establish themselves in the new government by politicizing justice and reform issues.

OTHER MAIN CHALLENGES

10. Participants were also reminded of the challenge of impunity for international actors, particularly economic actors, such as multinationals, who can play an important role in internal conflicts—for example, through resource extraction. This makes transitional justice an important topic, not just for post-conflict countries, but also for “donor” or home countries. The focus must be not just on “the corrupt” but also on “those who corrupt.”
11. Minister Verhagen also emphasized that it is a matter not of choosing between measures but of appropriate sequencing. Sequencing was discussed heatedly by participants. In some contexts, it might be appropriate to establish truth commissions before embarking on criminal trials, particularly when perpetrators of human rights violations retain significant power and the structures of impunity remain intact. However, the challenges of establishing truth commissions in these contexts should not be underestimated. Those with power will likely attempt to weaken or control truth commissions, and particular vigilance will be necessary.

ADVANCING TRANSITIONAL JUSTICE IN PRACTICE

Bert Koenders, Minister for Development Cooperation of The Netherlands, stated in his opening presentation that the international community can play a role by 1) facilitating inclusive, transparent dialogue on transitional justice; 2) financing transitional justice; and 3) addressing root causes—to which we add facilitating implementation and ensuring sustainability. This section categorizes the various ideas for advancing transitional justice in practice:

1. Facilitating inclusive, transparent discussions on transitional justice

- a) Committing to a rights-based approach to victims—restoring to them the dignity they deserve. Such a commitment requires consulting with victims and providing adequate information to allow them to make informed decisions. This also means including, victims, and particularly women victims, in discussions and decisions on transitional justice at the local, national, regional and international levels.
- b) Progressing beyond the idea of sexual and gender-based violence as a womens’ issue. Sexual violence and mutilation also concern atrocities committed against men and

boys—even if this is a minority of cases. We need more participation of men working on the issue of sexual and gender-based violence, but also a better understanding of masculine vulnerability in conflict and peacebuilding contexts. Presenters on the panel on gender justice called on transitional justice advocates to work towards a comprehensive definition of victims with an inclusive approach to gender.

- c) Better information leads to better policy. Participants sought more research on transitional justice strategies that were effective or ineffective—for example, there was a call for a comparative assessment of recent reparations programs in order to design programs that are better suited to specific country contexts. Specific suggestions included further research on best practices, increased opportunities for exchanges of comparative regional experiences, and support for networks of activists and practitioners working on similar initiatives, for example a network of people who have worked in truth commissions. In this respect learning from, but not copying, transitional models and experiences from other societies is important.
- d) Recognizing the important role civil society plays in national debates on transitional justice, and provide these organizations with the resources, training and political support needed to increase their effectiveness.
- e) Supporting security system reform that provides for accountability for past violations of human rights, for example through vetting, as well as reform to prevent future violations.
- f) Use transitional justice measures preventively to identify and respond to risk factors for violence and human rights violations, for example truth-seeking initiatives can identify and analyze root causes of conflict and suggest legislation and reform.

2. Financing transitional justice

- a) Incorporating transitional justice in peacebuilding strategies and budgets.
- b) Exploring new ways to fund reparations—for example, the recommendation of the Sierra Leone Truth and Reconciliation Commission to tax the mineral wealth of the country, thus transforming conflict diamonds into reparative diamonds. In South Africa, a one-time tax on companies that continued to operate in the country throughout apartheid was proposed to generate funds for reparations for victims. The UN Peacebuilding Fund experience in providing catalytic funding for reparations in Sierra Leone is an interesting example.
- c) Supporting victims' efforts to take legal action against indicted political leaders, as well as the home governments of corporations that have been identified as being complicit with violence and human rights violations or that have benefited from conflict. This is another possible means of generating funds for reparations for victims.
- d) Providing equal funding to victims and ex-combatants in peacebuilding contexts was a sensitive topic. There was much focus on the inequity between benefits offered to ex-combatants and the absence of reparations programs for victims. The point was also made that combatants can also be victims, particularly in the case of child soldiers. A possible way forward would involve a focus on communities instead of individual

combatants or victims. Participants were informed of the Stockholm Initiative for Disarmament Demobilization and Reintegration (DDR)—an initiative of the Swedish government that proposes the idea of two funding windows for peacebuilding: one for DDR, and one for support to affected communities.

3. Addressing root causes, facilitating implementation, and ensuring sustainability of transitional justice measures

- a) The majority of human rights violations are suffered by women. Using transitional justice measures to identify and recognize the factors that make women more vulnerable to particular types of abuses, and recommending or implementing reforms, can contribute to empowering women and reducing their vulnerability to future or ongoing violence. A significant portion of the Truth and Reconciliation Report in Sierra Leone, for example, focused on women and their experience of the war, as well as the situation of women before the conflict. Many recommendations aimed to enhance the rights of women, including with specific recommendations for the enactment of gender laws to end the status of women in the Sierra Leonean society as second class citizens.
- b) The Truth Commissions in Sierra Leone and Liberia included mandates to focus on economic human rights violations, but these crimes have received less attention than civil and political rights violations. The newly adopted Optional Protocol to the International Covenant on Economic, Social and Cultural Rights provides a framework for broadening the lens of transitional justice to incorporate social and economic rights, creating an impetus for transitional justice measures to address the structural inequities that lead to violations of social and economic rights.
- c) Gathering and analyzing human rights violations in specific contexts through a mapping exercise can contribute to galvanizing political will. Mapping experiences can provide three kinds of information: increased understanding of the extent and types of crimes; increased understanding of the capacity and independence of the national judicial systems; and recommendations for appropriate transitional justice measures based in national contexts.
- d) Considering the idea of transformative reparations, a concept based on the argument that reparation for massive violations should focus not only on restitution, but on a democratic transformation. This idea, which may include linking reparations to social services, means responding not just to past crimes, but also to present needs and on-going violations, including economic, social and cultural violations.
- e) Supporting the Rome Statute as complementary to national efforts of fighting impunity. Complimentarity provides important opportunities to promote domestic initiatives to address impunity, but case studies from Uganda and Colombia demonstrate the complexities in evaluating domestic criminal justice initiatives. Participants stressed the need for more communication from the ICC on the criteria for opening an investigation. Clear and consistent information from the ICC can strengthen its ability to act as a catalyst for complimentarity.
- f) Ensuring the sustainability of the international community's commitment to international criminal justice by supporting sustainable solutions for adequate long term follow up of the work of the international and hybrid tribunals. Ideas discussed in the

conference included maintaining radically down-sized courts, with lists of prosecutors and judges who could be called upon to deal with residual issues such as fugitive defendants. The second was to support the work of the tribunals that has been transferred to domestic courts, such as the War Crimes Chamber of Bosnia and Herzegovina. The importance of safeguarding and providing access to the archives of these tribunals as “bulwarks against revisionism” was underscored.

*We are pleased to announce as well that many of the presentations and background papers for the conference will be compiled in an edited volume to be published as part of the *Series on Transitional Justice* published by Intersentia Publishers in Antwerp (Belgium).