

Summary of “Peace Lens: On Transitional Justice in the Bangsamoro” roundtable discussion (October 23, 2013)

In the Framework Agreement of the Bangsamoro (FAB), the Normalization Section states that “The Parties agree to work out a program for transitional justice to address the legitimate grievances of the Bangsamoro people, correct historical injustices, and address human rights violations”.

A week before this roundtable discussion (RTD) was organized, both the Government of the Philippines (GPH) and the Moro Islamic Liberation Front (MILF) expressed that they have already achieved working consensus on the mechanisms that will address the different security aspects of normalization such as the private armed groups, and disposition of weapons and combatants, and land conflicts; the provision of socio-economic programs; and reconciliation.

The lead discussant for this third series of Peace Lens was *Kristian Herbolzheimer*, who is working with the Conciliation Resources as Director of the Philippines and Colombia Programmes. Mr. Herbolzheimer also represents Conciliation Resources in the International Contact Group on the GPH-MILF peace process.

Kristian Herbolzheimer emphasized the importance of transitional justice (TJ) for Mindanao which has gone through decades of complex and protracted war and armed conflict. He discussed about the basic components of transitional justice; the issues that TJ will need to address; and TJ as a necessary component to any peace agreement. Although there are basic concepts of TJ, he emphasized that there is no recipe that a country should follow because each society has different expectations and needs of what TJ should deliver.

The following summarizes the discussions and perspectives among the RTD participants from the academe, civil society organizations and people’s organizations during the roundtable discussion which followed Mr. Herbolzheimer’s talk.

What might a Bangsamoro/Filipino transitional justice model look like? What would be transitional justice in the Bangsamoro way? What would be the Philippine government's concept of transitional justice?

This is an important question especially in these times when the current judiciary is riddled with issues of alleged corruption and injustices within. So, how would transitional justice be possible in the Bangsamoro when the people lack trust in the current justice system? What should be the way of truth-telling for the Bangsamoro and in dealing with the past with these challenges ahead?

However, transitional justice does not need to stick on the present legal justice system because each society has different expectations on how transitional justice should be designed. It is an opportunity for the Bangsamoro to explore new models and go beyond the normal patterns. It is also a question if truth commissions in the past using the current justice system have really achieved justice at all. The legal system is only one of the paths in dealing with crimes committed.

For the transition period, it would be interesting to think if indigenous/customary justice systems can be tried as a first option with the legal system as a backup when the community process will not work.

What justice system will inform the transitional justice process?

There is a need to understand that currently in many Bangsamoro areas, there are three parallel justice systems: 1) Sharia law/the Islamic law system; 2) traditional justice system; 3) Philippine legal system. To which of these and to what extent could TJ connect when the Bangsamoro will be established? What should be applied in the transitional justice? What would be acceptable for the communities or which justice system they can connect to? How can the upcoming Bangsamoro Basic Law address these questions?

What are the existing transitional justice mechanisms or experiences where we can derive lessons and challenges we can learn?

In the post-conflict experience of Timor Leste, there were three phases of transitional justice: 1) grassroots level guided by cultural/traditional ways of reconciliation and truth-telling and dialogues between the offenders and the victims as led by local facilitators; 2) Digging up the issues – e.g., how hunger and aid was used to perpetuate violence; 3) Penalizing criminals. The challenge faced during this process was on how to imagine what will be done with the results of the transitional justice mechanisms.

One of the components of the Truth Commission in Timor Leste was truth-seeking. It is about finding the truth of what happened during the Indonesian occupation and also during the civil war between the Timorese. For the community indigenous processes, the idea was to reintegrate the people who had left because they had committed offenses against their community. One significant finding was the communities' concept of reparation: reparation for them was not in the form of compensation or money but public acknowledgement of the victims' sufferings and the wrongs committed in the country.

For the Bangsamoro transitional justice, it will be important to think of the justice mechanisms that already existed in the community. It could start from looking at what human rights violations occurred during the conflict? How can the transitional justice mechanisms be applied to address these human rights violations? What are the gaps in terms of applying these mechanisms? What are the alternatives that we can use to fill in the gaps?

Transitional justice in the Bangsamoro should also bring in the truths and narratives of injustices done to other groups.

The current discourse on injustices is mainly on the historical injustices committed by the State towards the Moro people. There is a need to bring in the injustices committed by the Moro people against the indigenous peoples, as well as injustices within and between the different Moro/Muslim groups. There are reasons for different groups' reservations not to discuss about their experiences. The reality that we are facing now is on how to let these truths out, especially from the point of view of the indigenous peoples and sidelined Moro/Muslim groups. If their perspectives will be part of the current discourse on closure and healing, it is already a big step towards moving forward. The indigenous peoples can also bring in their concept of transitional justice since they have their justice system and conflict resolution mechanisms.

What is the purpose of transitional justice in the context of the Bangsamoro?

One of the lessons learned from the transitional justice experience of Timor-Leste is that 'restorative face to face dialogue' between the victim and the offender can work if the offenses and crimes have not been grave. Researches have shown that these dialogues are more rewarding and effective than the legal process. Restorative justice seems to be more effective because of the direct participation of the victims. But for more serious crimes, dialogue will be part of it but needs to be part of a legal process. Victims on these serious cases also need restoration as well. In any case, one main purpose of transitional justice should be the restoration of the dignity and honor of the people.

Another important purpose of transitional justice is to provide a space where people are willing to understand the perspective of the other side(s) or groups by listening to their narratives. It is also a safe space where people are allowed to talk about their stories. This implies that TJ also needs to deal with how prepared people are to share about their stories of pain and injustice and on giving the people time to gradually gain trust in the process.

The aim of transitional justice is to address the legitimate grievances of the Bangsamoro people, address human rights violations and correct historical injustices, which should include not only the Bangsamoro but all the other people in Mindanao.

Putting the “Moro problem” in a proper perspective in dealing with transitional justice.

There is a need to look at how the Philippine government deals with the Moro problem before dealing with transitional justice. Transitional justice has to be put in place and be able to deal with the issues related to identity.

For some Moro/Muslim groups, even the Bangsamoro itself is an injustice handed to them. Not all of the Moro groups adhere to that identity. It should be understood that there are different layers of the Moro identity. Looking into the discourse of Bangsamoro, some Moro groups fear that it would erase their own identity and their historical past. There will be a bigger tragedy, a deeper injustice when a Moro group will be perceived as committing injustices towards their fellow Moros.

Is there a way to develop a framework for a transitional justice that acknowledges this diverse identity groups within the Bangsamoro and Mindanao? Otherwise, we will fall into trap of serving only one section of the society and inflame the wounds of others.

Who are the victims? Who are the unheard voices?

If transitional justice is about getting the perspectives of the victims and let them guide the process, then who are victims? Who are the offenders? Whose voice and memory should prevail? Is there a collective memory? Whose historical injustice are we thinking about? Aside from the current Bangsamoro discourse, there are other voices that should be heard. Same as other Moro groups, most of the IP groups those inside or adjacent to the core territory do not necessarily ascribe to the Bangsamoro identity.

In the discourse of transitional justice, it will be important to think how the youth would play an active role and how to bring in their perspectives. In the process of healing, it should not only be about the pains and sufferings of the forefathers but also talking about the injustices experienced by the youth and using their specific potentials to move forward as a society.

Defining our own way of transitional justice.

Transitional justice at the core is about creating spaces for people to talk what they think without fear. This is another path to peace besides the negotiating table.

The concept of transitional justice has been misleading in the experience of some other countries. Without ownership, people will get frustrated and disappointed. It would be good to design our own way without the strict concept of transitional justice and think creatively of the 'what', 'why' and the 'how', without letting the others to decide. For example, one such question relates to the issue of **truth-telling**, where we need to ask and find answers to the following questions:

Who should tell the truth and to whom? How much truth the communities or the victims can handle? How much truth will it take for healing to happen? How can they handle the truth about their history, about what the government did to them? How do we build again their trust to the government or to their perpetrators?

Further questions and challenges in the discourse of transitional justice in Mindanao:

- How far back into history do we need to look?
- What are we moving away from and what are we moving towards?
- How much truth, justice and reparation are needed on the one hand, but can also be afforded or provided on the other hand?
- To what extent can we link truth better to justice?

Video of Kristian Herbolzheimer's talk available for viewing at: <http://www.youtube.com/watch?v=jp0auBptK14>

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