

CONTINUITIES OF VIOLENCE: WHAT ROLE FOR TRANSITIONAL JUSTICE AND THE RULE OF LAW?

This panel was convened at 12:45 pm, Friday, April 11, by its moderator, Lorna McGregor of the University of Essex, who introduced the panelists: Catherine O'Rourke of the Transitional Justice Institute, University of Ulster; Colette Rausch of the U.S. Institute of Peace; Katya Salazar of the Due Process of Law Foundation; and Julie Werbel of USAID.*

SUMMARY OF PANEL[†]

This panel explored a number of compelling issues in transitional justice (TJ) and rule of law (RoL) initiatives. Professor Lorna McGregor from the University of Essex served as moderator for the panel. She helped to frame the tenor of the conversation by asking probing questions of the panelists and the audience members. In particular, she queried whether it was the job of TJ and the RoL to deal with newer forms of violence or 'ordinary crime.' Professor McGregor sought clarification on what was required of TJ and the RoL as fields, if the answer to this question was in the affirmative. Some elements in her comments resonated with concerns in the literature about the ever-expanding fields of TJ and RoL, which are criticized for becoming so broad that they include everything and nothing at the same time.

Ms. Colette Rausch, from the U.S. Institute of Peace, discussed some of the underlying assumptions in the fields of TJ and RoL that have led to difficulties. She discussed how the traditional focus of RoL efforts on institution-building and forward-looking initiatives, while TJ deals with backward-looking initiatives, was an inadequate model. She argued that this dichotomy was not working in practice because following conflicts, violence continues in many different forms—with structures of violence remaining in place, morphing to organized crime, or repeating similar patterns of human rights abuses. Ms. Rausch criticized both fields for only focusing on limited aspects of violence because the underlying causes of grievances continue and manifest themselves in present-day violence. She contended that in societies traumatized by violence, it is imperative to be mindful of the fact that the past is always in the present, and that power structures and spoilers often do not want a successful transition. She recommended that instead of practitioners continuing to work in silos (which only nibbles at the edges of problems), a more dynamic and systems approach needed to be adopted. Such an approach would pay attention to economic, social, political, historical, and legal factors that drive conflict and would entail taking a step back to look at chronic and continued violence and query why certain patterns of violence persist in an effort to identify the root causes of violence and unpeel problems.

The second panelist, Ms. Julie Werbel from USAID, spoke about security-sector reform (SSR). She defined this as the transparent and accountable management of the security sector, which focuses on issues of governance as well as capability, security, and justice. Ms. Werbel noted that historically the donor community has invested in SSR much more than the justice sector, which has led to more arrests than the ability to process alleged perpetrators. She then discussed the turn to security and justice reform, which is aimed at dealing with legacies of conflict that often implicate the security sector in past abuses.

* Dr. O'Rourke, Ms. Rausch, and Ms. Werbel did not submit remarks for the *Proceedings*.

[†] This panel was summarized by Matiangai V.S. Sirleaf, Sharswood Fellow in International Law at the University of Pennsylvania Law School, and was originally published at ASIL CABLES (Apr. 13, 2014, 11:00 am), <http://www.asil.org/blogs/continuities-violence-what-role-transitional-justice-and-rule-law>.

Ms. Werbel argued that the aim of both processes was to reduce recidivism into civil war, and that SSR is aimed at establishing a professional and apolitical security sector. Ms. Rausch noted that SSR has been inadequately conceptualized in the fields of TJ and RoL and that emphasis has been placed on peace and not justice. She highlighted post-conflict vetting efforts as particularly useful in achieving more of a balance between the two imperatives.

Ms. Rausch also discussed the challenges presented by disarmament, demobilization, and reintegration efforts, which aim to integrate former armed groups with flexible membership, which can easily incorporate criminal elements or sub-elements. She argued that TJ lacks solutions to organized crime as distinct problems from grievance-based violence, because in these circumstances it is hard to convince people that crime does not pay with the traditional TJ tools.

The third panelist, Professor Catherine O'Rourke from the TJ Institute at the University of Ulster, examined the conceptual questions presented by feminist theory and TJ. She discussed a number of pressing issues, including whether TJ is transformative for women and how TJ addresses gender-based crimes. Professor O'Rourke interrogated the privileging of serious violations as a gendered phenomenon, which neglects private violence and violence in the home, which are often gender-based. She also examined how the increase in political violence often exacerbates private violence. Professor O'Rourke stressed that TJ is based on the idea of living with limited justice, but that the conception of TJ as limited to the "worst violations" often privileges males' experiences of victimization during conflict. She noted that this was compounded by the problem of a largely male combatant group reintegrating into a largely female civilian population following a conflict. She concluded by posing the normative question: Is it okay that there is such a gendered justice gap?

REMARKS BY KATYA SALAZAR*

Transitional justice mechanisms have been used in Latin America to deal with the legacy of periods of internal conflicts, dictatorships, and mass human rights violations. While their main goals have been to know the truth about what really happened during those periods, as well as obtaining justice and reparations for the victims and punishment for the perpetrators, a key element of the "package" has been to prevent the recurrence of violence and to contribute to a sustainable peace.

Much has been achieved in Latin America in terms of transitional justice, but the idea of this panel is to somehow evaluate these achievements vis-à-vis the current challenges faced by these countries. Have transitional justice processes helped to overcome structural problems, especially those that played a key role in the dramatic events that took place? If not, why not? And what can we do or suggest that will help us to move forward?

The following are some initial reflections based on our experience in Latin America. More than an answer, these reflections are a kind of self-questioning to help us to be more effective when we want to share lessons learned with other regions.

1. Are concrete measures to prosecute human rights violations or prosecute high-ranking officials more important than broader improvements in the judiciaries?

It is important to recognize the weaknesses of the judicial systems to properly prosecute grave human rights violations and therefore the need to take concrete measures to address these weaknesses. Good examples are the creation of special national courts, specialized

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