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RIGHT TO INTERVENE AND THE RESPONSIBILITY TO PROTECT:

From Reaction to Prevention

■ Marc Batac

/Getty Images

From the humanitarian intervention debate deadlock in the 90's, the international community is nearing consensus on the necessity to respond to massive human rights violations within states, culminating in the Responsibility to Protect's (RtoP) adoption of the then 191 members of the United Nations in the 2005 World Summit. However, there remain misconceptions as well as legitimate issues, driving the resistance to the idea, which need to be clarified and addressed. Satisfying answers can only be achieved if civil society will join the discussion dominated by states and international bodies.

R2P is a normative framework addressing the need for action from the so-called international community to prevent and respond to four specific atrocity crimes: genocides, war crimes, ethnic cleansing and crimes against humanity. It is often attributed to two sources: the concept introduced in the 2001 seminal report of the International Commission on Intervention and State Sovereignty (ICISS), and the United Nations-mandated norm particularly expressed in the 2005 UN World Summit Outcome Document[1].

It can be summarized into three responsibilities or "Pillars"[2] : (1) the primary responsibility of individual States to protect its populations, not just its citizens, from these crimes; (2) the responsibility of the international community to assist States to fulfill their responsibility, either through encouragement, capacity-building and protection assistance, and to support the UN in establishing an early warning capability; and, (3) in situations where a State is manifestly failing to protect its population from the four crimes, the responsibility of the international community - through the UN and its Security Council - to take action through peaceful diplomatic and humanitarian means and, if that fails and only as last resort and on a case-to-case basis, other more forceful means, in a manner consistent with the provisions of the UN Charter.

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[1]Hugh Breakey (May 2011). The Responsibility to Protect and the Protection of Civilians in armed Conflicts: Review and Analysis, published at https://www.griffith.edu.au/__data/assets/pdf_file/0007/333844/Responsibility-to-Protect-and-the-Protection-of-Civilians-in-Armed-Conflict-Review-and-Analysis.pdf (Accessed on March 13, 2016).

[2]In 2009, the UN Secretary-General's 2009 Report entitled "Implementing the Responsibility to Protect" was published to provide further understanding for RtoP. It established the three-pillar framework for RtoP based on the paragraphs 138-139 of the 2015 World Summit Outcome Document.

Transitional Justice in practice

"Beyond truth and reconciliation commissions, we would like, in this issue, to look into other forms of justice which can be delivered to the people in a transitioning context..."

Transitional justice is the overarching theme for this issue.

Transitional justice is not only a timely concern in a number of countries experiencing post-conflict or post-authoritarian transitions, in which IID and our partners are active. It also allows for a confluence of all the issues lying at the core of IID's work. Peace and human security, self-determination, human rights and democratization are concerns that underpin transitional justice issues.

Transitional justice is the kind of justice provided to the people during a transition (post-conflict, post-crisis, post-dictatorship, etc.). The two main goals of transitional justice - healing wounds of the past and educate for a better future – can be completed by the respect and implementation of the right of victims to truth, justice, reparations and guarantee of non-repetition of the injustice perpetrated.

Beyond truth and reconciliation commissions, we would like, in this issue, to look into other forms of justice which can be delivered to the people in a transitioning context – should it be retributive, restorative, social or a simple sense of relief for the victims.

In that sense, this issue does not intend to be limited to "formal" experiences of transitional justice in the region, but will also delve into alternative forms of transitional justice, opportunities for new transitional justice processes, or even issues which do not seem directly related to transitional justice. We for instance identified the Responsibility to Protect norm as being closely related to transitional justice concerns, although the two themes are often tackled separately.

Thus it is apropos that we look into the experiences of Timor-Leste, Burma/Myanmar, Mindanao and the region at large where IID is working.

This edition will feature topics such as:

- **Alternative transitional justice mechanisms in the Bangsamoro (Mindanao) in the absence or before the establishment a formal transitional justice process;**
- **Transitional and restorative justice to bring about reconciliation after extrajudicial killings of Lumad (indigenous peoples in Mindanao);**
- **Assessing the opportunities for transitional justice in post-junta Myanmar/Burma;**
- **Lessons/pursuit of transitional justice mechanisms in Timor-Leste; and**
- **The use of the RtoP norm in Southeast Asia.**

A special contribution on the transitional justice experience in Colombia by IID's former fellow Kristian Helbolzheimer is likewise featured. Helbolzheimer works at Conciliation Resources (CR) and represented it at the International Contact Group of the peace talks between the Philippine government and the Moro Islamic Liberation Front (MILF).

Indeed, while transitional justice may be context specific, the rich lessons that can be learned from each specific experience help breaks down the borders that are oftentimes the cause of an injustice.

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Assessing the Opportunities to Deliver Justice in a Transitioning Myanmar

■ Juliette Loesch

Most of National League of Democracy (NLD) leader Daw Suu Kyi's interventions since her party's electoral triumph in November 2015 have emphasized the necessity to work toward "national reconciliation."


/AFP Photo

The need for reconciliation is particularly prevalent between the Myanmar military – the Tatmadaw – and the population, including the ethnic communities. Reconciliation must however be supported by a certain amount of truth and justice, without which people cannot undergo the healing process that will allow them to move on and unite to achieve the country's economic recovery and transition toward a reliable democracy. This being said, bringing about truth and justice might be one of the most difficult challenges of the new administration.

A multitude of atrocities have been committed since the country gained independence in 1948. We can nonetheless identify two types of crimes, which must be addressed in priority to support the processes of transition and national reconciliation. These are, on the one hand, the political crimes perpetrated by the junta to maintain its domination over the state apparatus. On the second hand, the military and ethnic armed organizations (EAOs) share responsibility for numerous human rights violations, especially against civilian populations, which have studded decades of armed conflict. Following a rights-based standpoint, perpetrators of such crimes must be prosecuted according to the standards of international humanitarian and human rights laws. This perspective is nonetheless dim in the current context of Myanmar, where the military – and more generally the former regime – enjoys an impunity that can hardly be challenged.

The Constitution, first, withdraws the military from the jurisdiction of civilian courts by stating in its article 319 that "the Courts-Martial shall … adjudicate Defence Services personnel." Article 445 then offers immunity from prosecution to the "State Law and Order Restoration Council and the State Peace and Development Council for any act done in the execution of their respective duties."

A bill introduced before the Parliament in December 2015 aimed to extend this immunity to the Head of State. The text was not yet approved, since a new Parliament was convened before it could be discussed during the plenary session. However, with still 25% of the legislature being composed of representatives of the Tatmadaw, the proposed measure might re-surface within the next five years. Finally, Daw Suu Kyi who is a Nobel Peace Laureate, is adopting a pragmatic position to ensure that the military will not oppose the political transition, and therefore already implicitly opted for impunity when she asked, in December 2015 as well, her party's affiliates not to seek revenge for past crimes, thus implying that her government will de facto grant amnesty to the members of the former regime. Actually, even in the case where the aforementioned obstacles would be removed, the inefficiency and lack of independence of the judiciary would still represent an important barrier to justice. A parliamentary committee confirmed in late 2015 the existence of a chain of bribery and of the patronage of junior judges by senior judges that often affect the outcome of

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Birthing the RtoP Norm

The Post-Cold War period was characterized by the rise of (and the shift in the attention of the world's major powers from inter-state to) intra-state armed conflicts, and by the lamentable failure of the international community to prevent or respond to these events[3]. Especially throughout the 90's, the debate surrounding humanitarian military intervention (HMI) and national sovereignty raged but ultimately ended in a deadlock; a deadlock to which RtoP was the polished theoretical response. However, despite the conceptual strides, RtoP also remains to be a polarizing topic.

In some quarters, it is hailed as a significant re-conception on how we appreciate sovereignty in relation to human rights, and a turning point on how we respond to mass atrocities. In others, it is dismissed as an empty rhetoric that at best lacks legal basis and enforceability; and at worst, disguises hegemonic and non-humanitarian interventionist agenda of some states, which often hastens and worsens rather prevents mass atrocities and violent conflict[4 5]. In relation to the latter, there are also criticisms against RtoP's flagrant silence on the fourth core atrocity crime under public international law—the crime of aggression[6]. This apparent focus RtoP discussions on the conflict and human rights situation in the Global South and "fragile" states[7] evades the scrutiny of the direct or indirect hand of the Global North and "mature" democracies in the occurrence of gross violation of human rights, especially in these "fragile" states. As in curing illnesses, effective solutions can only be made if we begin with truthful and complete diagnosis of the problem.

Added Value to Peace-building

So how is RtoP different from humanitarian military intervention (HMI)? What is its added value, on top of the existing international law and established norms pertaining to human rights and mass atrocities? How can we use RtoP in our work on human security, conflict prevention and peace building in Southeast Asia?

First, Pillar I or the primary responsibility of the state to protect its population is well founded in international law even without the RtoP. It is Pillars II and III—the collective obligation of the international community to support states in fulfilling their primary duty—that is the fundamental contribution of this norm. In contrast to HMI, the norm notably shifts from "right to interfere" to "responsibility to protect," which for ICISS means, "evaluating the issues from the point of view of those needing support, rather than those who may be considering intervention[8]." Unfortunately, without concrete discussions and proposals on how victims-survivors or vulnerable populations of these atrocity crimes can be heard and demand the fulfillment of these obligations, this laudable objective of "evaluating the issues from the point of view of those needing support" this remains to be rhetoric.

Second, under Pillar I, RtoP is significant as it supports the Universal Declaration on Human Rights (UDHR) and other covenants in asserting that the responsibility of the individual states is not limited to their citizens, rather extends to populations including non-citizens within their territorial jurisdictions. This is particularly relevant when engaging the Association of Southeast Asian Nations (ASEAN) states, especially the Myanmar/Burma government on the issue of minorities being refused identity and rights as citizens, and of refugees being refused protection and aid, as have been demonstrated by the humanitarian crisis concerning the Muslim Rohingyas last year.

Third, while RtoP is similar to the HMI doctrine such that both are rooted in the need for international action to respond to humanitarian emergencies, RtoP emphasizes on prevention and capacity building rather than reaction. Even in cases of reaction, it emphasizes the use of peaceful diplomatic and humanitarian means rather than military intervention. As a normative framework, RtoP can serve as a vehicle in lobbying governments for policy and paradigm

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/Reuters

[3]Often cited are the genocide in Rwanda in 1994, the ethnic cleansing in Srebrenica in 1995 and in Kosovo in 1999.
[4]Luke Glanville (2012). The Responsibility to Protect Beyond Borders, Human Rights Law Review 12:1.
[5]Even Gareth Evans, co-chair of the ICISS that originally formulated the RtoP, lamented the misuse of the principle to justify the War in Iraq. See Gareth Evans (31 March 2006), 'From Humanitarian Intervention to the Responsibility to Protect', published at http://www.crisisgroup.org/en/publication-type/speeches/2006/from-humanitarian-intervention-to-the-responsibility-to-protect.aspx (Accessed March 22, 2016).
[6]See for instance: Danijela Barjaktarovic (2012), 'Responsibility to Protect' from Aggression, Serbian Political Thought No. 1/2012, Year IV, Vol. 5.
[7]Among the century's most controversial acts of aggression is the illegal invasion and occupation of Iraq by the United States and the United Kingdom in March 2013. Various human rights organizations such as Amnesty International and Human Rights Watch documented hundreds of thousands of Iraqi civilians killed during the invasion and first year of occupation. This is often attributed for the destabilization of the region that allowed jihadist Islamists, like the Daesh or Islamic State, to prosper. In our own backyard in SEA, Operation Menu, a covert United States Strategic Air Command bombing campaign conducted in eastern Cambodia and Laos during the Vietnam War, and the subsequent invasion of Cambodia are often cited by historians as events that have helped create the conditions for or hastened the rise to power of the genocidal Khmer Rouge.
[8]See International Commission on Intervention and State Sovereignty, The Responsibility to Protect (Ottawa: International Development Research Centre, 2001), available at http://responsibilitytoprotect.org/ICISS%20Report.pdf (Accessed March 22, 2015).

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criminal and civil cases. The Presidents who took office between 2008 and 2016 furthermore appointed all current judges, a state of things that casts severe doubts on their ability to impartially prosecute representatives of the former regime. Lastly, the principle of complementarity for prosecutions of international crimes cannot be invoked to open procedures against suspects before the International Criminal Court, since Myanmar is not party to the Rome statute.

The outcomes of the difficulties to prosecute perpetrators of human rights violations are a deep-rooted silence and opacity about the very existence of such crimes. The absence of justice is then doubled by an absence of truth that cannot satisfy the victims and/or their relatives, and renders the construction of a collective memory impossible.

This notwithstanding, examples taken from other countries demonstrate that impunity and the search for truth can be addressed through transitional justice processes, when prosecutions are not in order. In Timor-Leste, the Commission for Reception, Truth and Reconciliation (CAVR) gathered, processed and publicly released available data on the crimes committed during the period 1974-1999. In South Africa, the Truth and Reconciliation Commission investigated human rights abuses that took place between 1960 and 1994. In both cases, the non-binding character of such mechanisms sidestepped the constraints attached to constitutional, legal or political immunities. Indeed, the CAVR investigations were not considered as pre-criminal procedures, and even though some might have been opened, this was not directly on the basis of what was found by the commission. In South Africa, immunity from prosecution was guaranteed under the form of amnesties that were "traded" against the testimonies of the perpetrators of certain crimes. Still, both the crimes and the responsibility of their authors were documented and recognized.

Regrettably, it seems that even transitional justice processes would face difficulties in Myanmar, as the Tatmadaw would certainly not like to acknowledge the crimes they have committed, even with the assurance that there would be no prosecution. In the context of the ongoing political transition, the military more than ever needs to protect its reputation by keeping a firm hand on the process. It is furthermore improbable that the military would decide overnight to contradict its decade-long policies of preserving its honor and status. Meanwhile, the EAOs would certainly not participate in transitional justice processes unless an agreement would be reached with the State and the military would comply with such procedures as well.

Yet, even though opportunities for delivering justice seem limited, this does not mean that nothing can be done for the moment. Civilian and/or state initiatives should as early as now start the process of healing and reconciliation and gather the conditions to be able to deliver formal justice once the civilian government will be consolidated. For that purpose, emphasis should be put on research and documentation of human rights violations committed by the EAOs and the Tatmadaw, including enforced disappearances, extra-judicial killings and sexual and gender-based violence. Community-based dialogues aiming to assess the need for and perception of justice and to bring about forms of reconciliation and rehabilitation might also be considered, especially involving local bureaucrats and officers together with communities. The new government should also prioritize a reform of the justice sector.

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shift towards addressing systemic and structural causes of violent conflict and of widespread and gross violation of human rights. This means pushing the international community, particularly the security sector and foreign ministries of the Global North, to honor and realise the claim that prevention is the core aspect of RtoP, by concretizing their respective roles and by supporting civil society and local communities' peace building efforts, such as, in developing human rights institutions and legitimate and accountable decision-making processes, empowering marginalised sectors and communities to participate in public life, enhancing social cohesion through community dialogues, transitional justice and reconciliation, and addressing (both vertical and horizontal) social and economic inequalities.

The norm's focus on prevention and its argument that protection of the fundamental human rights of populations as the foundation of sovereignty demonstrate how RtoP can support sovereignty rather than undermine it. In this sense, RtoP may be a key entry point towards softening the Association of Southeast Asian Nations (ASEAN) and its member-states' position on non-interference, since a number of states in the region continue to face challenges in addressing ethnic and other identity-based conflicts.

The discourse have come a long way from purely reactive and mostly military, to more preventive and less intrusive international response to atrocity crimes but there is still much to improve on in RtoP in order to effectively wield such for peace building. As it is an evolving norm, the civil society and peace building movement, particularly in the Global South, have to join and expand on the discourse, to ensure the norm's conceptual evolution will be loyal to the aim of crafting a principled framework and an adequate mechanism that could guide our collective response to humanitarian catastrophes.

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Reconciling perpetrators and victims:

How Timor-Leste did it.

Pat Walsh was seconded by the UN to work as Special Adviser to the CAVR and following its dissolution in 2005 he served as Senior Adviser to the Post-CAVR Technical Secretariat. He visited Manila in December 2015 with Timorese colleagues to launch the new English version of the Chega! report at UP. His website is www.patwalsh.net

■ Pat Walsh

One of the key policy challenges the new nation of Timor-Leste faced on becoming independent after 1999 was what to do about the many violations of human rights committed during the previous 24 years of internal turmoil and Indonesian occupation.

Forgiving and forgetting was not an option. Ignoring the horrors of the past would have frustrated victims, given rise to potential destabilising pay back, and mocked the new nation's proclaimed commitment to human rights and the rule of law. At the same time, conventional court proceedings for all the crimes committed were not an option because the new nation lacked the capacity to undertake due process for the massive case load it had inherited.

Instead, Timor-Leste embarked on a third way. It divided past crimes into serious (murder, torture, rape, command responsibility) and less serious (intimidation, displacement, arson, looting) and set up a Serious Crimes panel staffed by international judges to deal with the first group of offences and a truth and reconciliation commission to deal with the latter.

The truth and reconciliation commission is best known by its Portuguese acronym CAVR. Its report, entitled Chega!, includes a detailed account of how CAVR and its processes worked and is available in English on www.chegareport.net

CAVR was legislated for in 2001 and operated for 4 years, 2002-2005. Both the content of its mandate and the seven East Timorese commissioners appointed to lead the Commission were the subject of extensive prior consultation with all stakeholders. Experts from a number of other truth commissions were also consulted.

CAVR was mandated to undertake the following four tasks:

- establish the truth about human rights violations committed on all sides between 1974 and 1999;
- restore the dignity of victims;
- facilitate community reconciliation;
- report on its work, findings and recommendations.

CAVR's truth-seeking included both serious and so-called less serious offences and was required to be impartial, objective and conducted without fear or favour whether the crimes in question were committed by the Indonesian military or the East Timorese Resistance. The period in question also included the civil war waged between the two major Timorese political parties in 1975 before the Indonesian invasion.

A range of mechanisms were used to establish the truth. These included taking statements from a cross-section of some 8000 victims, interviewing key actors under oath, conducting national and local public hearings on a range of violations, accessing official de-classified documents, and commissioning original research on the death toll. Public hearings, and especially the eight hearings conducted in the national capital, were particularly important. Broadcast live, well-attended by the public, and offering different points of view, they were powerful reminders to the nation of the horrendous impact of impunity and the imperative of rule of law and accountability. They also gave victims an important opportunity to be heard and honoured officially. These victim accounts form the substance of the CAVR report but have also been published in book form and retained in video at the CAVR archives for future use, including by the education system.

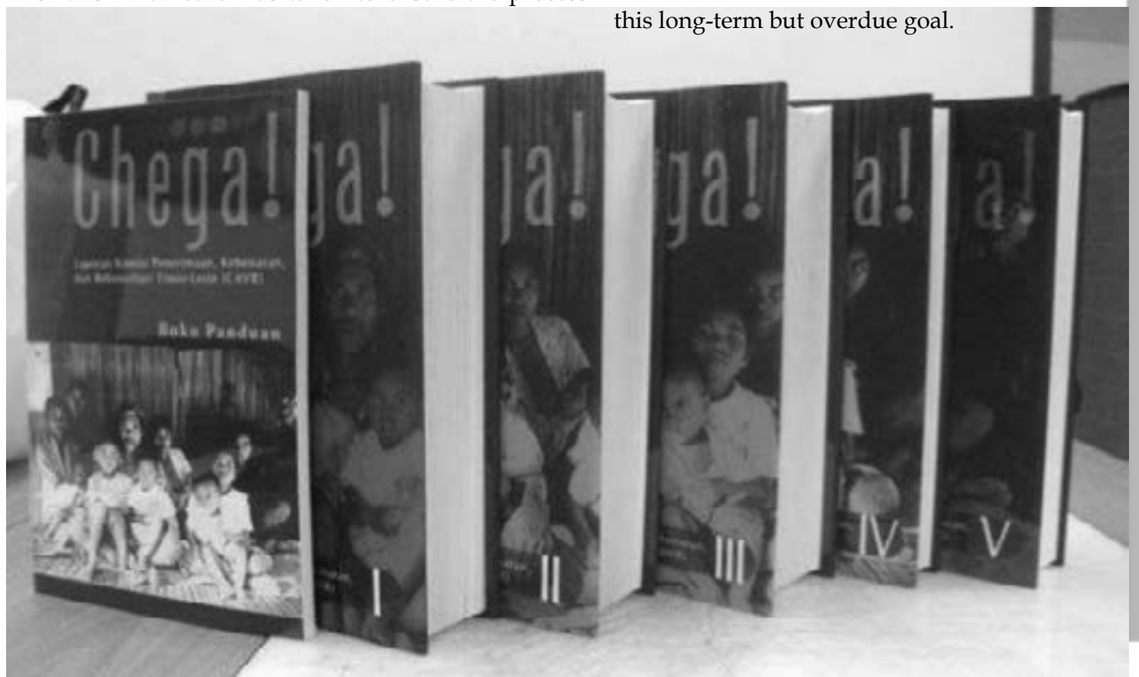
CAVR sought to contribute to the restoration of the dignity of traumatised Timorese victims by being victim-centric and victim-friendly. This involved listening closely to victims and ensuring their sensitive participation in each stage of the CAVR process, administering an urgent reparations program, making their voices heard through the CAVR report, and devoting many of the commission's recommendations to addressing their rights, including to truth, justice, reparations and peace or non-recurrence.

Regrettably, CAVR's key pro-victim recommendations on justice and reparations have not been acted on. Indonesian perpetrators, in particular, continue to enjoy impunity and the Timor-Leste authorities worry that even the targeted recommendation on reparations made by CAVR would be administratively, financially and politically too demanding. Instead, the government argues that independence, development and government services are sufficient even though these measures fall short of recognition of violation and the individual's right to reparations and accountability. As a result, victims feel short-changed; they see perpetrators enjoying a good life while they struggle and veterans rewarded while their contribution to the nation has not been adequately acknowledged.

CAVR's most original creation was its community reconciliation procedure (CRP). CRP was designed to pre-empt potential threats to peace at the grassroots by facilitating a meeting between perpetrators of less serious offences (Timorese militia who had worked with the Indonesian military) and their victims. CAVR conducted some 1500 reconciliations of this kind. Care was taken to ensure the process was culturally appropriate and respected by including familiar customary practices and rituals and holding the ceremony in simple, local settings not large formal venues. Low level perpetrators participated voluntarily and, to earn reception back into the community or forgiveness, had to confess to their misdeeds and satisfy victims that they had told the whole truth, were genuinely remorseful and would not re-offend. Perhaps the most effective element in the process was the opportunity the process gave victims to hear, for the first time, why perpetrators had offended, and, vice versa, for perpetrators to hear first hand the impact of their actions on innocent members of the community. That is, CAVR's experience is that the truth, understanding and a readiness to trust is a powerful contributor to lasting reconciliation.

The CAVR report is called Chega! (enough!, no more!) the Portuguese word CAVR commissioners felt best conveyed the central message the victims wanted Timor-Leste, Indonesia and the world to hear and act on. Regrettably, Indonesia has not prosecuted its principal culprits, has ignored Chega! and remains effectively in denial about its past, both in Timor-Leste and in Indonesia proper.

Progress on justice in Timor-Leste and related issues such as reparations will depend on public enlightenment about the truth of what happened in Timor-Leste. It is hoped that the recent decision by the Prime Minister of Timor-Leste to explore the feasibility of a CAVR follow-on institution will contribute to this long-term but overdue goal.



ANALYSIS

Could Transitional Justice have Facilitated Reconciliation Between Algeria and France?

Learning Lessons from Indonesia and Timor Leste

■ Juliette Loesch

March 19 marks the 54th anniversary of the end of the Algerian war, when Algeria gained independence from France, thus ending almost a century and a half of colonization.

For the first time, a French President will celebrate the "national day for the remembrance of the civilian and military victims of the war of Algeria and struggles in Tunisia and Morocco", which was established by a law passed in 2012. Yet, this celebration is subject to a number of criticisms, and many claim that justice, truth and reconciliation still have to be delivered. Dissimulation of archives, failure to publicly acknowledge certain crimes, including torture and massacres, and biased political discourses in the two countries have until now impeded historians to establish a precise and neutral narrative of the conflict.

Meanwhile, amnesty laws were enacted in both France and Algeria to transpose a clause incorporated in the Evian Accords of 1962[1], which guarantees immunity from prosecutions for all actions committed in relation with the conflict. Because of this, a Court could examine neither the facts nor the individual liability of suspected perpetrators of human rights violations. The successive French governments furthermore denied the systematic nature of some of the crimes committed by the French army, which partly justifies their qualification as crimes against humanity. By the same, the Algerian war was only recognized as such by then French President Jacques Chirac in 1999, that is 37 years after the ceasefire. France has in fact always denied the nature of armed conflict of this confrontation, which is still being referred to in dedicated legislative pieces as the Algerian "events." The Algerian government, for its part, remained attached to a pro-nationalist discourse, which has infused most of historiographic work related to the war – with the more or less direct involvement of censorship. The crimes committed by the combatants of the National Liberation Front, particularly terrorist attacks, were therefore not acknowledged and even became a taboo.

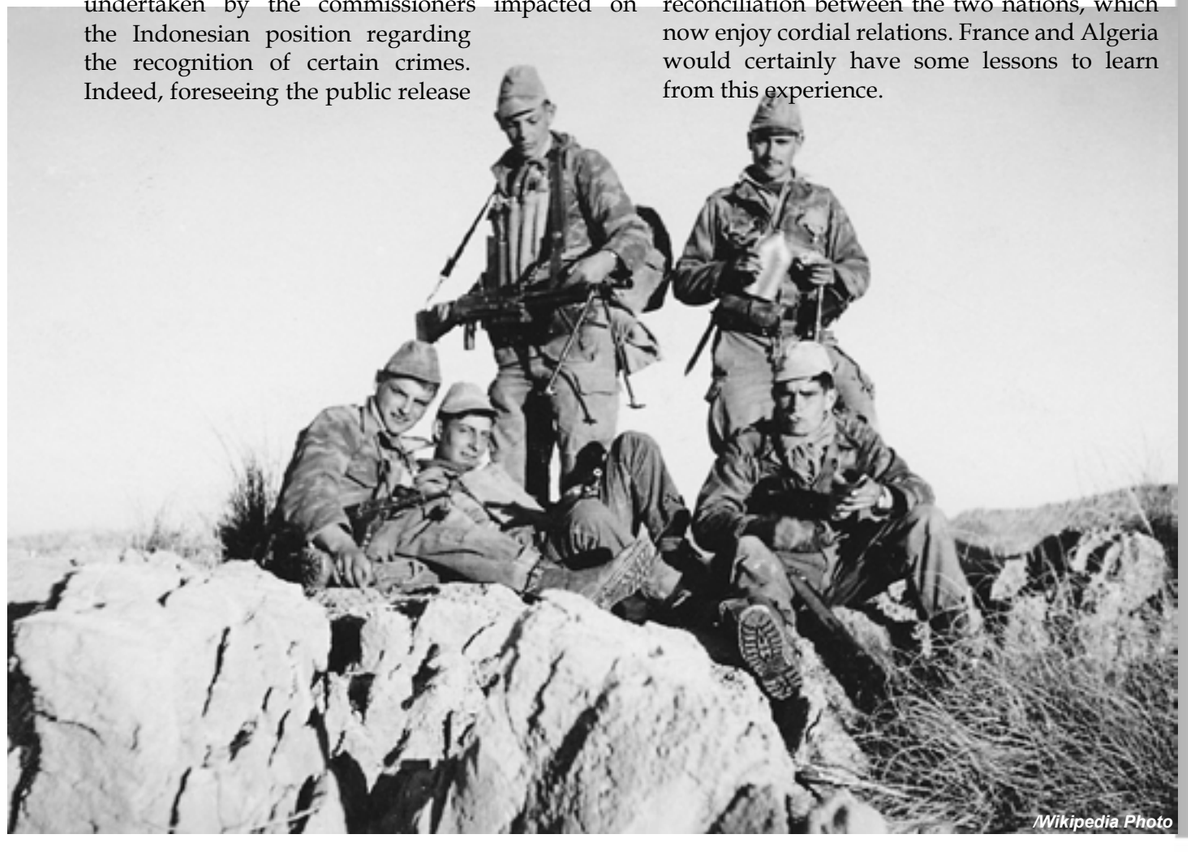
In the absence of prosecutions and reliable scientific research on the Algerian war, truth has long been eluded, thus implying grave consequences for the populations of the two countries and the relationship among them. The first consequence is the impossibility to elaborate consensual national and bi-national histories. In the case of France, the historian Gilles Manceron argues that the failure of the State to adopt a public stand on the war, to acknowledge its responsibility and to provide justice to the victims of the crimes committed during the conflict has prevented the construction of an official discourse on the legacy of colonization. This has allowed the perpetuation of discriminative practices against immigrant populations, particularly coming from former colonies[2]. In Algeria, the absence of contradictory discourse on the conflict has enabled the National Liberation Front to transform its nationalist propaganda into official history – thus excluding all other interpretations and paving the way for the regime's later shift to authoritarianism. In both countries, the lack of knowledge about one's past can lead an individual to overcompensate by finding new marks of identification. Several authors have identified this desperate search for identity as an important factor of radicalization and violent extremism[3]. The non-prosecutions of the crimes committed during the war furthermore resulted in difficult relations between France and Algeria. The latter, more particularly, has accused France of genocide and crimes against humanity. Even though such affirmations might be justified in some points, the non-resolution of this historical and legal debate still hamper the normalization of the relations between the two countries, which could have otherwise engaged in a productive partnership.

Although unique, the French-Algerian case might in some instances be compared to what happened during and after the conflict and subsequent occupation of East-Timor by the Indonesian army. This period, running from 1974 to 1999, saw massive human rights violations, which might have to some extent confined to crimes against humanity. Yet, even after Timor-Leste regained its independence in 2002, Indonesia hardly acknowledged any crimes and failed to prosecute perpetrators of human rights violations who returned to their home country. An important part of the Indonesian population moreover still ignores what occurred in East-Timor, since the Timorese issue does not appear in Indonesian history manuals.

In contrast to France and Algeria, Timor-Leste nevertheless decided not to be silent around the crimes, which were committed during this period. The transitional government of Timor-Leste therefore initiated, through the establishment of the Commission for Reception, Truth and Reconciliation (CAVR) in 2001, a major process of truth-seeking, truth-telling and eventually history-building. Interestingly, although the Commission's work was not formally recognized by Indonesia, it can be said that the importance of the investigations that were undertaken by the commissioners impacted on the Indonesian position regarding the recognition of certain crimes. Indeed, foreseeing the public release of the CAVR's report and its conclusions in 2005, the Indonesian government could no longer assume its policy of denial, and decided to jointly establish, with Timor-Leste, the Indonesia-Timor-Leste Commission on Truth and Friendship to investigate on acts of violence that occurred around and during the Popular consultation of 1999. The report of this Commission, released in 2008, was endorsed by then Indonesian President Yudhoyono, thus providing the first acknowledgement by the government of human rights violations committed by state institutions in Timor.

In addition to having immensely contributed to the documentation on the Timorese struggle for self-determination, those transitional justice processes definitely participated in the normalization of the country, including by providing reparation and rehabilitation to the Timorese people. Transitional justice was also in that case the sole process which has, even minimally, affected the Indonesian government's usual policy of silence and has resulted in the formal recognition of some crimes by the latter.

Finally, transitional justice in Timor-Leste did not aim to teach people to hate Indonesia, but actually supported a process of reconciliation between the two nations, which now enjoy cordial relations. France and Algeria would certainly have some lessons to learn from this experience.



/Wikipedia Photo

[1]The Evian Accords, signed on March 19, 1962 by France and the Provisional Government of the Algerian Republic, ended the Algerian War with a formal ceasefire, organized a referendum for self-determination and formalized the idea of cooperative exchange between the two countries.

[2]Gilles Manceron (2003). Marianne et les colonies. Une introduction à l'histoire coloniale de la France, La Découverte, Paris.

[3]See for instance: Olivier Roy (2015), « Le djihadisme est une révolte générationnelle et nihiliste », published on Lemonde.fr, http://www.lemonde.fr/idees/article/2015/11/24/le-djihadisme-une-revolte-generationnelle-et-nihiliste_4815992_3232.html (accessed on March, 14, 2016.)

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in Colombia is probably unprecedented.

In 2013 the National Center for Historical Memory presented the "Basta Ya!" (Enough!) report, documenting the fifty years of armed conflict, the different forms of violence, the responsibility of the different armed actors, and the impact on society. The report confirmed that Colombia is among the countries with most internally displaced people (over six million); kidnappings (27,000); forced disappearances (25,000); land mines; and violence against journalists, human rights defenders, indigenous people and women.

A law on victims and land restitution (2011) has provided for the creation of a Unit for Reparations of Victims. This government body has embarked in the most ambitious program for reparations of victims in the world. The Unit is also in charge of the registration of victims. By March 2016 the official number had reached 7,8 million, some 15% of the population. Another relevant trait is that the process of reparations started before the armed conflict terminated.

Despite initial reluctance, the government and FARC have increasingly more explicitly acknowledged their responsibility in human rights violations, and have publicly asked victims for forgiveness.

Parties have agreed that a special tribunal for peace, and special justice courts will undertake investigation, prosecution and sentencing. If offenders collaborate with the justice system they will benefit from reduced sentences, having to serve their term repairing victims and society, instead of sitting in a prison. Alternatively they can be sentenced for up to 20 years in prison.

The agreement has been hailed as groundbreaking. President Juan Manuel Santos suggested it is "something that has never been achieved in any peace negotiation". However it has not come without controversy, essentially because perpetrators may evade prison; and because state agents would receive similar benefits to insurgents.

Transitional justice responds to local circumstances

These developments in Colombia are not to suggest that the Mindanao approach is wrong. It simply reinforces the message that transitional justice is a flexible framework that responds differently to the different circumstances in each context.

The levels of violence in Colombia have been much higher than in the Philippines. And unlike Mindanao, some of the most serious crimes in Colombia took place in recent years.

This has led the International Criminal Court to monitor the peace negotiations very closely to ensure there is no impunity. Blanket amnesty is not acceptable in the Colombian context.

At the same time Colombian society is extremely concerned about the risk of impunity and have very high expectations for the State to take responsibility in addressing past crimes and preventing new ones from happening.

It might therefore be safe to say that the Colombian approach to transitional justice responds to a bottom-up pressure from society towards the peace panels. In the Mindanao context, it is rather a top-down effort to mainstream the concepts and practices related to international standards on human rights.

The Mindanao Transitional Justice and Reconciliation Commission have done a fantastic task that is fundamental to set the stage for the next steps. It is now up to people in the Bangsamoro, in Mindanao and in the Philippines as a whole to articulate their expectations for a Filipino approach to transitional justice.

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by shedding light on this still "unknown" community. It also provides people who are more or less directly affected by the conflict with a platform where they can share their stories, hopes and grievances, although the focus is not necessarily set on the victims of the conflict. Finally, because the stories are published on the Internet, they can serve as a basis for the documentation of the history of the conflict, while providing a moral relief to the participants, who are assured that they could reach a number of people outside of their areas.

It is worth emphasizing that civil society, including the religious sector, was always at the forefront of these initiatives and can therefore be regarded as the vanguard for transitional justice in this area. This being said, the necessary fight against impunity for human rights violations and the long-term guarantees of non-repetition will only happen through the full cooperation of the State, which is responsible for prosecutions and systemic reforms. The TJRC's report will be publicly launched on March 16th. The Government has yet to demonstrate its willingness to operationalize its recommendations, even in the absence of a Bangsamoro Basic Law.

Alternative Forms of Transitional Justice in the Conflict-Affected Areas of Mindanao:

Delivering Truth and Reconciliation in a Stalled Peace Process

■ Juliette Loesch

The peace agreements signed by the Government of the Philippines (GPH) and the Moro Islamic Liberation Front (MILF) in 2012 and 2014 foresee the creation of a Transitional Justice and Reconciliation Commission (TJRC). By the same, the proposed Bangsamoro Basic Law (BBL), a legislative piece aiming to implement the agreement's provisions, states that the future Bangsamoro Government shall create "a Transitional Justice mechanism to address the legitimate grievances of the Bangsamoro." (Article IX, Sec. 4.) Yet, the parties to the process have until now failed to deliver on this subject.

/AFP Photo

With no BBL being passed by the Congress, the TJRC's report now remains the sole basis for a future operationalization of transitional justice processes. This report has however been kept undisclosed since its release in late 2015, a state of things which has prevented any action so far.

This notwithstanding, and in contrary to other contexts, initiatives to promote truth and reconciliation did not wait for an official impulse to be piloted in conflict-affected areas. This article therefore argues that transitional justice, although alternative and informal, is already being delivered in the conflict-affected areas of Mindanao.

Community-based dialogues have been organized by civil society organizations for the longest time to tackle inter-confessional misperceptions between Moros and Christian settlers. They also provided spaces for marginalized communities such as indigenous peoples (IP) or internally displaced persons (IDPs) to share their grievances and claims. Those dialogues helped appeasing the perceived religious color of the conflict, promoted understanding among the different populations, and supported reflection about collaborative ways toward peace.

As early as in the 1970s, Catholic institutions initiated inter-religious dialogues. Some of these programs spread during the 1980s. In the 1990s, this tendency accelerated after President Ramos decided to associate more closely the Church with the peace process – notably through the National Unification Commission. At the same time, Cotabato Archbishop Cardinal Orlando Quevedo helped found the Bishops-Ulama Conference (BUC).

Conflict prevention mechanisms also facilitated dialogues among communities, defused entrenched grievances, and provided forms of reconciliation. The Bantay Ceasefire (Ceasefire Watch) volunteers, for instance, were trained to use a dialogical approach to mitigate risks of violence, an approach that was later adopted by the International Monitoring Team (IMT).

The "Culture of Peace" seminars organized by the Oblate of Mary Immaculate (OMI), in Pikit, are another example of how civil society was able to set up informal mechanisms that would result in rehabilitation and reconciliation among the different communities. The seminars aimed to reintegrate the participants as inhabitants of declared Peace Zones. They assisted them in re-framing their narratives on cultural identity, war, and peace, and sometimes through deeply emotional processes. They notably encouraged dialogue among people who otherwise might not have found the opportunities to communicate.

Peace-building projects in the Bangsamoro have not only focused on immediate reconciliation but also on truth-telling. The outcomes of such programs can be identified as being factors of rehabilitation and reparation, long-term reconciliation and a support for later documentation.

Fr. Bert Layson, coordinator of the OMI, for instance committed to report more than a hundred stories based on his experience as a peace-builder, which he compiled in a book.

A "modern" version of this would be the Facebook page "Stories of the Bangsamoro". "Stories of the Bangsamoro" gathers a community of more than 3,600 followers and organized a small exposition in Manila. The page helps reintroducing the Bangsamoro into the wider Filipino nation

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Photo Credits: Fabio Diaz, World Bulletin

Philippines and Colombia:

Different approaches to similar problems

■ **Kristian Herbolzheimer**

The Philippines and Colombia could not be geographically more distant from each other. 12 hours time difference separates these two countries, situated in the Eastern and the Western hemisphere. And yet they share a striking number of economic, social, historical, and geo-political similarities. These are mid income countries, formal democracies, former Spanish colonies, and strong American allies.

Both countries have also been suffering decades of armed conflict, with tragic consequences for the civilian population: hundreds of thousands of deaths, millions of people displaced. Massive amounts of money have been wasted on addressing political problems by military means. A few people are benefiting from the shadow economy that thrives in conflict-ridden contexts, while the vast majorities are deprived from their rights to peaceful life.

Despite this tragedy, Mindanao and Colombia are today global symbols of peace. At a time of increased tensions and violence in many parts of the world, the Comprehensive Agreement of the Bangsamoro (CAB) in 2014 was the first major peace agreement in the world since the one that put an end to war in Nepal in 2006. Colombia will soon follow with its own Comprehensive Agreement with the communist insurgency.

However when it comes to addressing the legacy of decades of violence both countries are taking very different approaches.

Philippines: a nascent concern for transitional justice

Recently the Transitional Justice and Reconciliation Commission (TJRC) released a report on how to proceed with transitional justice in Mindanao. Their main recommendation is to create a national commission on the Bangsamoro that would operate for six years and conduct hearings, contribute to resolving land disputes and to strengthening the rule of law, and promoting healing and reconciliation.

This report is an unprecedented development in the Philippines, and therefore one of the major outputs of the peace process. The report indeed expresses a concern that "the country has not been successful in addressing the many forms of injustice stemming from impunity and other factors, nor has it been able to achieve reconciliation". It further suggests, "past initiatives of transitional justice have been problematic and ineffective".

However the report responds primarily to a mandate given by the peace panels of the Government and the Moro Islamic Liberation Front (MILF). There has up to date not been any major and sustained social or political pressure in the Philippines or even in the Bangsamoro for a comprehensive response to past grievances and historical injustices.

Colombia: an innovative response to victim's rights

The developments in Colombia have followed a very different path. The rights of the victims and the need for accountability has been the most contentious agenda item in the peace negotiations between the government and the Revolutionary Armed Forces of Colombia (FARC).

This is the first peace process where negotiating panels have invited and listened to victims of the armed conflict, and framed the agreement on transitional justice explicitly to respond to the victim´s rights to truth, justice, reparation and guarantees for non-recurrence.

This commitment is largely a response to the unwavering efforts of human rights organizations. The level of documentation and analysis of violence

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