

SPOTLIGHT ON R2P



Philippine Workshop on the Responsibility to Protect and Atrocity Prevention: The Relevance of Transitional Justice

The Asia Pacific Centre for the Responsibility to Protect (APR2)-Philippine Office organized a hybrid workshop on R2P and atrocity prevention and how they are linked to transitional justice on 7 October 2023 in Quezon City, The Philippines. This report provides a background, agenda, and highlights of panel presentations, discussions, and workshop recommendations from participants during the meeting.

Background

Filipinos have suffered greatly under various regimes. Under President Ferdinand Marcos, Sr., for example, human rights violations were perpetrated during Martial Law in many parts of the country. Though there had been efforts in addressing these human rights violations, the framework was not in the language of transitional justice. For example, the crafting and passage of the 1987 Constitution was not seen from the

perspective of the transitional justice pillar on guarantee of non-recurrence --- with the mandate to change the governance system and processes based on the 1972 Constitution (e.g. term of office of elected public officials) and with lengthy and explicit provisions on human rights meant to counter authoritarian tendencies and regimes. The creation of the Commission on Human Rights (CHR) and the Presidential Commission on Good Government (PCGG) were institutions meant to advance accountability; the 2013 Republic Act 10368 or the "Human Rights Victims Reparation and Recognition Act" that created the Human Rights Violation Victims Claims Board (HRVCB) and the Human Rights Violations Victims Memorial Commission (HRVVMC) was aimed at establishing a reparations and memorialization program. And yet, transitional justice was not explicitly mentioned in these mechanisms as

the normative or even policy framework to address past violence of an authoritarian regime; rather, it anchored on the human rights lens.

In contrast, transitional justice was explicitly mentioned in the peace accords between the Philippine Government and the Moro Islamic Liberation Front (MILF): the Framework Agreement on the Bangsamoro (FAB) and Comprehensive Agreement on the Bangsamoro (CAB) have specific provisions on transitional justice and even mandated the creation of the Transitional Justice and Reconciliation Commission (TJRC). The TJRC was tasked to study four (4) core issues, namely, historical injustice, legitimate grievance, human rights violations, and marginalization through land dispossession. The Commission also anchored their analysis and recommendations on the dealing with the past (DwP) framework that linked the transitional justice pillars (right

to know, right to justice, right to reparation, and guarantee of non-recurrence) to combatting impunity, advancing the rule of law, and working towards conflict transformation and healing. The TJRC Report also included the term 'mass atrocity crimes' in describing direct violence committed against the Bangsamoro people.

In 2018, the Bangsamoro Organic Law (BOL) that would create a Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) has been argued to be a transitional justice measure to advance the guarantee of non-recurrence. Additionally, the Article IX, Section 1 of the BOL provided for transitional justice, specifically, the call to implement the recommendations of the TJRC. Currently, transitional justice has been present in the parliamentary resolutions in the BARMM; several bills have also been filed/re-filed at the Philippine House of Representatives and Philippine Senate. Unfortunately, no progress on this matter to date.

From absence to presence of transitional justice in the discourse and practice of addressing past violence, much still needs to be done to link the term to atrocity crime prevention and the state's responsibility to protect its own citizens from war crimes, crimes against humanity, genocide, and ethnic cleansing. In 2016, the United Nations Human Rights Council (UNHRC) adopted a resolution that reiterated the responsibility of member states to protect their population from atrocity crimes and acknowledge the importance of transitional justice in this effort. In the same year, Rodrigo Roa Duterte was elected President of the Philippines. Throughout his administration, extra-judicial killings, especially linked to the state-sponsored war on drugs that victimized mostly the poor and marginalized was argued to be a state policy that went on unabated. Though there is a law against crimes against humanity in the country, namely, Republic Act 9851, this was not even in the list of potential mechanisms to bring him to justice. Withdrawal from the ICC was considered to be a substantive blow against this effort. Currently, under the administra-

tion of President Ferdinand Marcos, Jr., drug war killings seems to continue with impunity; there have also been rampant red-tagging as well as abduction and disappearances of human rights defenders. How can we move towards concretizing 'never again'? What is the relevance of the responsibility to protect (R2P) to transitional justice? How does transitional justice promote atrocity prevention? In the Philippines, how can we further advance transitional justice?

The objectives of the workshop were the following:

1. Bring together transitional justice (TJ) and responsibility to protect (R2P) advocates to discuss the relevance of transitional justice to R2P and explore how transitional justice promotes atrocity prevention;
2. Encourage sharing of learnings and good practices in TJ that have potential to contribute to atrocity prevention; and
3. Discuss strategies to harness partnership among advocates in promoting TJ and R2P as part of atrocities prevention in the Philippines

Agenda

The workshop was organized into four panel sessions followed by group discussions. A total of 23 participants from government, civil society, and indigenous peoples attended the one-day meeting.

The first session was on "R2P and Atrocity Prevention: Where does Transitional Justice fit in?" The first presenter was Mò Bleeker, former Special Envoy (for Peace, Dealing with the Past/Transitional Justice and Prevention) of the Federal Department of Foreign Affairs, Switzerland. Madame Bleeker discussed the significance of political will in advancing short/mid/long term agenda of transitional justice in the context of the legacy of violence in many countries. In this regard, she explained the relevance of using the DwP framework as key to preventing future atrocities. For her, efficient prevention requires a permanent architecture where actors agree on: "the nature of potential

risks and early detection, procedures for timely decision, protocols for timely risk mitigation and actions, installed permanent capacities, and cooperation between civil society, experts, and government." Additionally, she explained that prevention should be used as a lens to strengthen and sustain transitional justice processes through "trust building, addressing the needs of diverse stakeholders, strengthening existing institutions and legal framework, building accountable institutions and processes, transparency in decisions, contribution to democratic quality, and the importance of gender and participation of various actors."

On the other hand, Debbie Stothard, founder of ALTSEAN-Burma, centered her discussion on the need for transitional justice in Myanmar and the challenges she goes with it. Foremost is the guarantees granted to the military in the 2008 Constitution that stipulated immunity from prosecution (Art. 445) and power to decide on who can become Ministers for Defense, Home Affairs, and Border Affairs (Art. 232, b). Given constitutionally-backed measures, impunity had been institutionalized. Accountability has been absent with regard to the Rohingya genocide, on-going conflicts in Karen, Kachin, and Shan states as well as the observed increase in land grabbing. Violence has been prevalent in Myanmar.

Session 2 asked the question: "What is the context and experience of atrocity crimes in the Philippines and the relevance of transitional justice?" Atty. Ruben Carranza, Senior Expert at the International Center for Transitional Justice (ICTJ), advanced the idea of holding foreign actors accountable for atrocities committed along with local actors. In this light, Atty Carranza challenged the concept and idea of R2P and noted not too many success stories on its implementation. Being a foreign-led invocation tends to negate the importance of local and organic movements against authoritarian regimes as well as dissolves the accountability of atrocities committed by foreign actors. For example, according to Atty. Carranza,

“Transitional justice seeks truth, reparations and accountability in the aftermath of war and dictatorship so that they never again happen. R2P seeks to prevent atrocities, knowing how they unfolded in recent decades. Yet both R2P and TJ ignore history and Western accountability and share some of these blank spots: there is no TJ for US intervention in Vietnam, or for NATO war crimes in Afghanistan.”

Thus, he pushed for paying attention to the nuances of the intersection of R2P with transitional justice in a multipolar world, where authoritarian (and usually, violent) regimes are backed by foreign actors --- and in this light, he commented that we should not remain “indifferent (to) the asymmetry between how atrocities in the global South are characterized and how global North countries are left un-accountable for committing their own or for profiting from mass atrocities.”

For his part, Atty. Jose Manuel ‘Chel’ Diokno, founder of the Free Legal Assistance Group (FLAG), focused on the fundamental problem of having a broken justice system in the country that fuels impunity. The systemic defects in this justice system are plagued with delays, very low conviction rates, politicized appointments that affect the independence of justices and judges, and attacks on the independence of the justice system: “we now operate in a justice system where there is a lot of corruption, if not, influence-peddling.” In this regard, he advanced the idea of transitional justice “that targets the systemic flaws of our justice system.”

Atty. Laisa Masuhud Alamia, Member of the Bangsamoro Parliament and its Deputy Speaker, talked about the Bangsamoro experience and the need for healing and reconciliation for lasting peace. In the context of the Bangsamoro, transitional justice was an explicit part of the peace accords: address the legitimate grievances of the Bangsamoro people, historical injustice, human rights violations, and marginalization through land dispossession. Atty Alamia began with a timeline of the narrative of historical injustice of the Bangsamoro that dat-

ed since the colonial period that led to their marginalization and eventual move for armed secessionism from the Philippine state. Specifically, atrocity crimes and human rights violations consisted of “economic marginalization and destitution, political domination, physical insecurity, threatened Moro Islamic identity.” Mass atrocity crimes committed against the Bangsamoro involved the Ilaga campaign where they perpetrated the 1971 Manili Massacre (among others) and the Martial Law in Muslim Mindanao that fueled war in the region against the Muslim secessionist groups and involved state-sponsored atrocities like the Malisbong Massacre in 1974. There were also abuses noted on the side of the non-state armed groups such as the Patikul Massacre 1977. Certain vulnerabilities were also faced by specific Bangsamoro groups during the period, such as those experienced by women, children, and indigenous peoples (IPs). In light of transitional justice in the Bangsamoro, it is a large part of the broader peacebuilding effort in the region: “to promote reconciliation and to prevent the recurrence of these atrocities.”

During the open forum, one of the participants asked how to ensure that atrocity prevention and R2P do not become irrelevant in the Philippines. Atty. Carranza was quite critical of R2P and said that R2P may still be used to justify military intervention thus may potentially not be helpful at all. Transitional justice, on the other hand, can be a stand-alone strategy as what has been shown in the peace agreement in the Bangsamoro. Additionally, to further advance transitional justice in the country, there should be champions that would lead it. And along with seeking accountability for atrocities, there is a need to acknowledge the atrocities committed by various actors, including the left/insurgency movement. For Atty. Diokno, on the other hand, radical changes are necessary to address the problems in the justice system.

Session 3 focused on the link of transitional justice to R2P and atrocity prevention from a gender perspective, a lecture delivered by Dr. Lourdes Veneracion, Director

of the Philippine Office of the Asia Pacific Centre for the Responsibility to Protect. She discussed sexual and gender-based violence (SGBV) as the predominant form of atrocity crimes against women. She also noted instruments such as the United Nations Security Council Resolutions (UNSRs) on women, peace and security (WPS) as well as the Convention on the Elimination of all Forms of Discrimination Against Women General Recommendation (CEDAW GR) 30 that can be utilized to advance transitional justice measures for these crimes. During the open forum, current transitional justice initiatives linked to atrocity prevention were discussed such as the creation of the Martial Law Museum under the Republic Act 10368, the efforts of the Ministry of Public Safety and Order (MPOS) in BARMM to talk to communities that were victims of atrocities during Martial Law. On these initiatives, the imperative of women’s participation was reiterated.

Session 4 of the workshop focused on participants sharing their experiences on transitional justice that have the potential to contribute to atrocity prevention and promotion of R2P. Among the key points raised were the following:

- a. People’s organization leaders who are also holding political positions in local governments are ensuring that due process is observed in drug war operations.
- b. Advocacy for accountability of non-state armed groups (NSAGs) through participation in fora and inclusion in the formal peace process.
- c. Formulating a policy on transitional justice for victims of extra-judicial killings related to the war against illegal drugs and developing the discourse on the definition of extra-judicial killings.
- d. Educating indigenous women and Moro women on transitional justice.
- e. Memorialization and doing empowering work through research on individuals who, while strictly not victims of Marcos’s Martial Law, put their lives on the line

and struggled against atrocities.

f. Displacement prevention through the work of peace infrastructure (e.g. Ad Hoc Joint Action Group or AHJAG)

g. Reframe National Task Force to End Local Communist Armed Conflict (NTF-ELCAC) Retooled Community Support Program (RCSP) as a governance initiative that addresses community needs.

h. Normalization as transformation opportunity for MILF combatants: from combatants to productive citizens and conflict areas to productive areas and prevent future atrocities.

i. Indigenous Peoples Rights Act (IPRA) as a transitional justice framework for indigenous peoples but the implementation is problematic.

j. Given the historical experience of displacement and loss of IP communities, should there not be a reparations program for them?

k. Hold the BARMM experience up as an example to design differently the next peace process with the Communist Party of the Philippines (CPP).

l. Government action is important; civil society and other stakeholders can contribute but only up to a certain point.

Workshop

The workshop session divided the participants into four separate groups—government, civil society organizations, transitional justice advocates, and indigenous peoples (IPs)—to discuss the following questions:

1. Moving forward, what should be prioritized in the Philippines with regard to promoting atrocity prevention and the responsibility to protect?
2. How can transitional justice be advanced in connection with the identified priorities in atrocity prevention and R2P promotion? What specific initiatives or measures are recommended?
3. Should Philippine advocates of atrocity prevention and the

responsibility to protect and transitional justice to continue talking and working together? If yes, how?

Priorities in Atrocity Prevention and R2P

For the civil society group, a top priority issue is human rights violations and impunity. In the case of atrocities committed during the Martial Law period under President Ferdinand Marcos, Sr., they observed that there seems to be no space for perpetrators to be prosecuted given the current government is under President Ferdinand Marcos, Jr. Though there are different avenues and initiatives for transitional justice (e.g. national reparations law, creation of an autonomous region in Muslim Mindanao), the current justice system may not be open to prosecution at all. On the other hand, atrocities committed during the term of President Rodrigo Roa Duterte, such as those related with the state-sponsored war of drugs and related killings, should not be ignored, especially, if state actors themselves are the perpetrators of violence. There should be full documentation on who the victims of extra-judicial killings and red-tagging are and how violence have impacted on their lives. Of particular vulnerability are the indigenous peoples driven away from their ancestral domain and excluded in many political spaces. Second priority issue that the civil society group identified is the presence of political dynasties that drive warlordism, existence of private armies, and proliferation of firearms.

The government group, for their part, identified the following priorities under the theme of agenda setting: conceptually (and politically) connecting R2P, atrocity prevention, and transitional justice particularly, at the policy level; prioritization of vulnerable groups and sectors; strengthening of conflict resolution mechanisms and preventing the escalation of armed conflict situations; trust and confidence building among parties involved in peace processes; resource mobilization and capacity-building, including, continuous education and training on atrocity prevention, international

humanitarian law (IHL), international human rights law (IHRL), and international criminal law (ICL); creation of spaces for dialogues among various stakeholders; and formulating and strengthening ways to locally monitor and report ground situations. Under the theme operationalization of priorities, the government group identified the following points: strengthening and expanding ceasefire mechanisms and maintenance of peace process gains; successful reintegration of decommissioned combatants into civilian life or state security forces; upholding accountability through the realization of the transitional justice pillars and socio-economic assistance to affected communities.

For the transitional justice advocates, the identified priority issues were good governance, community interests, institutional instruments for human rights, internalization of atrocity prevention, and advocating for democracy as the sixth pillar of transitional justice (with emphasis on peoples' participation).

Finally, for the indigenous peoples group, priority issues are land dispossession and 'legalized' land grabbing, non-acknowledgment of their ancestral domains, non-inclusion in the peace negotiations, non-recognition of their right to self-determination (e.g. non-support of members of the Bangsamoro Parliament to bills on indigenous peoples rights). As one of the group members said, "indigenous peoples were displaced by war and killed by peace."



Atty Diokno

Advancing Transitional Justice: Priorities, Initiatives or Measures

The second workshop question focused on how transitional justice can be advanced in such a way that it contributes to the identified priorities in atrocity prevention and R2P promotion as well as on specific initiatives or measures are recommended by the different workshop groups.

The civil society group identified the need to create a mutual-learning and dialogic program for transformative leaders who will advance institutional reforms (e.g. electoral, constitutional, political). There are several institutional mechanisms that must be reviewed such as the NTF ELCAC and reframing Executive Order 70 to respond to addressing the root causes of armed conflict and strengthen accountability. They also suggested the repeal or amendment of the anti-terrorism law in the country as well as push for key legislative issues such as human rights defenders act, national transitional justice commission, human rights memorial commission for compensation, and freedom of information. The group also said that dialogue with relevant actors such as the security sector should be in place to foster understanding; they also recommended gender inclusiveness in the security sector. Specific to the issue of atrocities, including extra-judicial killings, transparency and accountability are of concern in light for the current flawed justice system in the country. As related to transitional justice, the group suggested alternative actions/memorialization efforts for victims of various human rights violations such as local campaigns for memorialization and community-based listening processes.

For the government group, the discussion revolved around the integration of transitional justice in good governance practices, especially, at the level of local government units (LGUs). For example, under the Normalization program in the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM), there may a need to localize normalization plans in the areas of livelihood and health and education and to



Workshop: TJ advocates

strengthen of conflict sensitivity and conflict promoting local development plans and involvement of communities in the generation of these plans. Efforts at memorialization should also have an implementation framework and infrastructure.

For their part, transitional justice advocates recommended the following strategies: 1) strengthening the Right to Truth as the basis for the other transitional justice pillars; 2) counteracting the weaponization of social media; 3) counteracting the weaponization of the rule of law; 4) using the institutional strength of agencies to pursue initiatives that advance the guarantee of non-recurrence and memorialization; and 5) incorporating human rights into the educational curriculum.

For the indigenous people's group, they discussed the importance of an independent investigation on violations of their human rights. Genuine inclusion of indigenous peoples in international, national, and local bodies should also be institutionalized and that they should be allowed to choose who would represent them in different bodies such

as the Bangsamoro Parliament. They also called on the government to stop 'red-tagging' them when all they are trying to do is to advance their rights as indigenous peoples.

Continuing Conversation between R2P, Atrocity Prevention, and Transitional Justice

For the civil society group, they acknowledged the importance of conversations on R2P, atrocity prevention, and transitional justice by various actors and provision for platforms for dialogues to continue. Affected communities should also be included and involved in these dialogue spaces. Second, they suggested concerted efforts towards the passage of relevant legislative bills such as those on the establishment of a National Transitional Justice Commission for the BARMM and a human rights defenders' charter along with the full implementation of Republic Act 10368 or the Martial Law reparations act. Legal avenues for the prosecution of perpetrators of atrocities should also be exhausted and systematic documentation of atrocity crimes pursued.



Government workshop

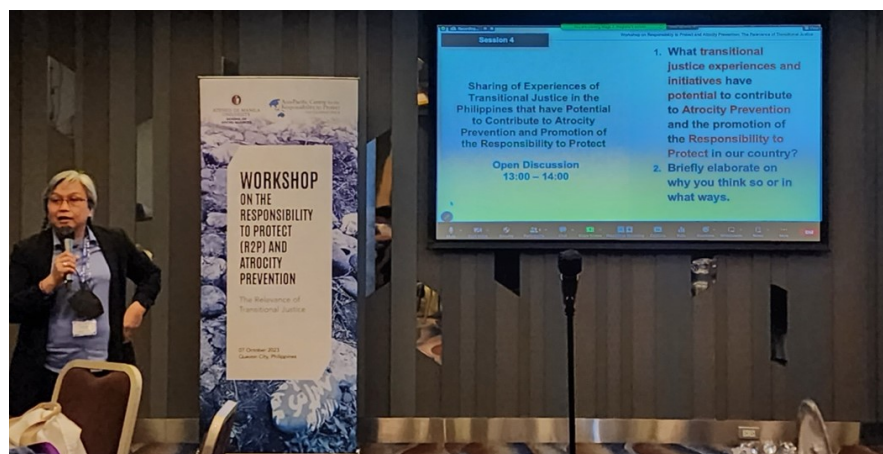
The government group suggested the need for collaboration and cooperation between different actors at different levels to advance atrocity prevention and transitional justice. For the transitional justice advocates, central focus should be on constituency-building by broadening the engagement in transitional justice advocacy to include stakeholders from all over the country in discussions, providing platforms for discussion of relevant issues both locally and internationally, and learning from each other's experiences on transitional justice to understand its gains and setbacks (especially in BARMM). For their part, the indigenous peoples group underscored the importance of inclusion as key to address their continued marginalization.

Concluding Observations

The activity barely scratched the surface on the intersection between R2P, atrocity prevention, and transitional justice. All these concepts are complex and must be given enough time to be fully understood by various stakeholders. Since most of the participants came from human rights, peace and transitional justice work, they noted the need to explicitly connect R2P and atrocity prevention in dialogues, seminar-workshops, and even in research. Some ideas on possible activities were: the initial scoping research on atrocity sites in the Philippines; collection of women's narratives on transitional justice; and exploring women-led community memorialization of atrocity experiences towards atrocity prevention



CSO workshop



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