

THE TOPIC OF THE ISSUE

Rushing over truth commissions won't aid justice

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If truth commissions are to do any good, their relationship to existing courts must be sorted out first.

As calls gather pace for the setting up of truth commissions in former Yugoslavia, those behind the idea must ensure their zeal does not undermine the region's existing judicial processes.

While it is evident that both truth commissions and trials have important roles to play in transitional justice in post-conflict countries, their uncoordinated concurrent operation could in fact damage the historical record they are both trying to establish.

Truth commissions, as national or regional institutions, are increasingly being mentioned in Bosnia and Herzegovina, Serbia and Croatia as models to help all three countries deal with the mass abuses committed in the Nineties.

In time, similar moves are likely in Kosovo and Macedonia, where their highly homogenised societies also harbour deep-rooted unresolved issues.

While previous attempts to create such institutions in the region failed, it is evident also that trials alone will not bring justice to all of the victims of abuse.

Indeed, to push for the creation of truth commissions without having first identified how they will relate to existing judicial mechanisms could minimise the end results of each.

In the Balkans, it is important to learn from the choices made by other post-conflict societies.

Without doubt, victims worldwide see criminal prosecution of war crimes and crimes against humanity as the most important element of transitional justice.

Establishing the accountability of individuals and punishing them is seen as the best way to prevent the growth of a culture of impunity. At the same time, the process establishes trust in the rule of law, which has often been a casualty of the conflict.

While the UN International Criminal Tribunal for the former Yugoslavia, ICTY, started the process of establishing individual criminal responsibility in the Balkans, the judicial systems of Bosnia and Herzegovina, Croatia and Serbia are now handling the issue responsibly.

However, trials alone will not bring about a much-needed catharsis in these young states whose first decade of life has been marred by atrocities. For one thing, the atrocities were too numerous for any number of prosecutions to deal with.

Even if an honest political will existed to prosecute all those responsible, lack of resources would prevent the courts from processing such a vast number of people.

This is where truth commissions can fill the void. Such institutions, appropriately set up and mandated, can establish the historical record of abuses, investigate causes and consequences and assign blame.

Truth commissions help also to bring about the mass social transformation that is needed to ensure there is no future repetition of the abuses.

Alone and separately, neither trials nor the truth commissions can satisfy victims' quest for justice. It is only together that they stand a chance.

Experts in transitional justice have realised this, which is why countries such as East Timor and Sierra Leone have operated both truth commissions and trials as concurrent mechanisms.

But in Sierra Leone, for example, the unresolved issue of coordination between the Special Court and the

Truth Commission threatened the success of both institutions.

Confusion that began from the start over communication between the two institutions may even have irreversibly limited the impact of both.

This is why legal considerations raised by the concurrent operation of the truth commissions and trials must be dealt with before they start work.

In the Balkans, where war crimes trials have already established their primacy, the mandate of possible truth commissions needs to be carved out with care, to ensure the two processes complement each other.

Draft legislation on truth commissions will have to address questions about information and resource sharing, the handling of evidence, witnesses and the sequencing of investigations.

As BIRN's Justice Report has discovered, this has not been the case with the latest draft law on setting up the Truth Commission for Bosnia and Herzegovina.

The fact that the same events, victims, perpetrators and witnesses will be relevant to both processes ought to serve as a warning to the regional and international experts currently discussing the setting up of truth commissions for the Balkans, to make sure these operations run smoothly.

If truth commissions of the Balkans were openly to share information with prosecutors, few perpetrators of crimes would come forward. The problem would be amplified if no amnesty were to be offered in exchange for testimony.

And without the testimony of the perpetrators the historical record established by the truth commissions would be incomplete.

Striking the right balance is a difficult task but saying outright "no" to the sharing of information is not the answer, either.

If the conflict between officials of the two institutions were to become public, matters could be even more dangerous.

Information exchange between the Truth and Reconciliation Commission and the Special Court for Sierra Leone, for example, became the subject of a heated public debate, which has only damaged results.

The fact that the courts in the Balkans face a much larger task than that of Sierra Leone is another issue to consider when it comes to establishing truth commissions.

In Sierra Leone, the Special Court has focused only on bringing the most responsible individuals to account and is expected to deal with just a few dozen cases. The rest was left to the Truth and Reconciliation Commission.

Balkans courts have already prosecuted more perpetrators than the Special Court for Sierra Leone will ever do. And the national judiciaries have only just embarked on their work.

As local courts in Balkan countries find their feet on the slippery ground of war crimes, their judiciaries are working to establish strategies for prosecutions. At the same time, forming a strategy for regional cooperation between the various judiciaries is on the cards.

No truth commission in the region should be established until the road map for war crimes prosecutions has been established. Only then can it be said what the work of the commissions should entail.

If commissions are established prematurely and confusion over their role and that of the courts becomes public, justice will be jeopardised - whether or not the bodies eventually come to an agreement.

Even then, each decision on the set-up of truth commissions and their coordination with the rule of law must be made with truth and justice in mind.

Only then will the concurrent operation of truth commissions and trials give fullest benefit to those who matter most - the victims.

Both institutions must operate in order to reach the truth. If they operate as adversaries, and the truth they reach conflicts, the contribution to lasting peace and reconciliation could be little short of disastrous.