Peace vs. Justice
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The question whether peace or justice should be prioritized in a post-conflict situation is one which has created substantial tensions between peacemakers and justice practitioners across the globe. If, for example, a conflict could be ended by offering aggressors positions in the resulting political settlement and impunity for their crimes, should the compromise be considered acceptable in the interests of peace? Or should full accountability and criminal procedures against aggressors be a non-negotiable outcome of the situation— even if this means prolonging the violence and killing, allowing more human rights abuses?

Societies which have been through a conflict should not be forced to choose between peace and justice. Immediately following a conflict, stopping the killings and human rights abuses and establishing peace as soon as possible is a clear priority. The prosecution of senior perpetrators may not be possible immediately, for example, in part because national judicial systems are politically compromised or in disarray. However, as the conditions change over time, fair, functioning systems that uphold the rule of law and hold officials accountable must be built to ensure a stable, lasting peace. Indeed, to contribute to the peace-building, justice initiatives must move beyond focusing on the prosecution of high-level actors charged with human rights violations, and should concentrate on the building of rule-of-law institutions.

It is my firm believe that peace and justice cannot, and should not, be separated if the peace to be created is to be a lasting one. Indeed, the debate about peace versus justice is fundamentally flawed. The pursuit of justice, whether through national or international prosecutions, and the pursuit of peace, through peace and truth negotiations, must work together. As stated by Fatou Bensouda, Prosecutor of the International Criminal Court speaking at the Forum for New Diplomacy in 2013, “Peace and Justice are two sides of the same coin. The road to peace should be seen as running via justice, and thus peace and justice can be pursued simultaneously.”

What are “Serious Violations of International Humanitarian Law”?

‘Serious violations of international humanitarian law’, also called ‘war crimes,’ can take place in international or national armed conflicts. Violations are serious, and are war crimes, if they endanger protected persons (including civilians, prisoners of war, the wounded and sick) or objects (e.g. civilian objects or infrastructure) or if they breach important values. The majority of war crimes involve death, injury, destruction or unlawful taking of property.

Acts can amount to war crimes because they breach important universal values, even without physically endangering persons or objects directly. These include, for example, abusing dead bodies and recruiting children under 15 years of age into the armed forces.

Under the law, serious violations of international humanitarian law are:

- grave breaches as specified under the four Geneva Conventions of 1949 (Articles 50, 51, 130, 147 of Conventions I, II, III and IV respectively), which are applicable in international armed conflicts
- grave breaches as specified under Additional Protocol I of 1977 (Articles 11 and 85), again applicable in international conflicts
- war crimes as specified under Article 8 of the Rome Statute of the International Criminal Court, applicable to both international and non-international conflicts

- other war crimes in international and non-international armed conflicts in customary international humanitarian law.

Amnesty for Serious Violations of International Law

It is increasingly considered prohibited by international law to provide amnesty for so-called “international crimes” - crimes against humanity, war crimes and genocide. While international law is constantly evolving, this understanding is drawn from the obligations set out in human rights treaties (signed by most states), the decisions of international and regional courts and the law emerging from long-standing state practice (customary international law), as outlined above. In many countries there may also be legal prohibitions of such amnesties. International, regional and national courts have increasingly overturned general amnesties, and the United Nations has established explicit guidelines prohibiting its representatives from supporting amnesty for international crimes. The Rome Statute establishing the ICC, to which 108 states are party, requires prosecution of these core crimes.

Since becoming operational in 2002, the International Criminal Court has clearly played a key role in ensuring that perpetrators of mass human rights abuses in conflict situations are brought to justice. The Court has been involved in investigations in a number of countries, including Uganda, Democratic Republic of Congo, Central African Republic, Darfur, Kenya, Libya, Ivory Coast and Mali. However, there are still those who suggest that justice should be sacrificed in the interests of peace-building processes - that, indeed, the involvement of the ICC can prove to be an obstacle to peace. However, justice can have a positive impact on peace-building: this is what the U.N. secretary general, Ban Ki-moon, calls the “Shadow of the Court” - its preventative role, and its capacity to diffuse potentially tense situations that could lead to violence by setting a clear line of accountability.

This so-called “Shadow of the Court” has also been seen to help isolate individuals wanted by the ICC and start peace negotiations, as was seen in the case of the Lord’s Resistance Army (L.R.A) in Uganda. When the ICC issued arrest warrants for five leaders of the L.R.A, there were originally fears as to whether the threat of arrest would hinder peacemaking. However, these warrants have been widely acknowledged to have played a key part in forcing rebels to negotiate regarding the Juba Peace Process in 2008, as they forced the negotiators to grapple directly with the question of justice. While this peace process sadly did not last, it raises interesting questions about how, far from hindering peacemaking efforts, justice mechanisms can serve to spur such processes along.

A Case Study: Colombia

A country whose story clearly demonstrates the tensions between building a lasting peace and ensuring that human rights abuses do not remain unpunished is Colombia. Sadly, Colombia continues to endure the longest internal armed conflict in the Western hemisphere. During this conflict, numerous amnesties have been used to address the demobilization of guerrilla members and some paramilitary groups, in an attempt to create lasting peace.
Between 2003 and 2006, a political pact initiated by former President Alvaro Uribe led to the demobilization of more than 35,000 members of the United Self-Defense Forces of Colombia (AUC) (according to Government figures). In announcing their strategy for the paramilitary negotiations, in a clear display of sacrificing justice in the sake for the sake of peace, the administration of the President stated that there would be “As much justice as possible, and as much impunity as necessary.” (“El as bajo la manga de los Uribistas,” El Tiempo, Feb. 13, 2005.) In the same year, Law 975 was enacted to facilitate the reincorporation of these demobilized former combatants into civilian life, giving rise to the Justice and Peace process. This law contemplates a special prosecution model that includes alternative sentencing for those demobilized former AUC that contribute to clarification of the truth and reparations to victims. By June 2013, approximately 2,000 former paramilitaries had passed through the Justice and Peace tribunals, but only 14 had been sentenced.

Public opinion shows strong support for justice proceedings. In a 2008 survey carried out in four regional departments, the vast majority of affected communities supported criminal processes; 89 percent believed that guerillas should be tried and sentenced, and 88 percent believed the same about paramilitaries. Although public confidence in state institutions was low, national prosecutors continued to be the most trusted option for criminal justice proceedings (62 percent), followed by the president (47 percent), and international justice (38 percent). (Los Reto de la Justicia Transicional en Colombia: Percepciones, Opiniones y Experiencias, Fundación Social & Union Europea 152 (2008))

One of the main components of a lasting peace agreement is ensuring that grievances following the conflict are resolved- if this is not the case, then victims and their families are left without legal remedies, creating resentment and distorting the transition process. Justice processes bring stability and encourage citizens to respect the law. To this day in Colombia, critics still suggest as part of the still ongoing peacebuilding process that the parties are allowed to “get away with murder”, thanks to the amnesty offer for those willing to confess their crimes. Such statements serve as a clear indication that justice processes are still necessary to heal the wounds created during the conflict, to cement a lasting peace agreement.