

# ***Relationship Between Judicial Decisions and the Pursuit of Peace and Justice in International Law***

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**Abstract:** The issue of potential tensions between justice and peace has arisen in the context of the growth of institutions for international justice. It is easy to find details from Columbia, Uganda, South Africa, and so forth. It is an old controversial debate, in fact, which focuses on whether perpetrators should be given punishment or amnesty in the aftermath of war and how society emerging from political violence successfully and peacefully achieves post-conflict reconstruction. In fact, the international community has offered various strategies as a transitional mechanism that reflected peace and justice in different ways. However, there are still lots of problems. This article introduces and analyzes these problems behind them. This paper involved some reviews from the victims and dozens of records and data to reflect the situation. This paper aims to recognize the value of peace and justice by comparing three examples.

**Keywords:** peace and justice, transitional mechanism, Columbia, Uganda, South Africa

## **1. Introduction**

The idea of forgiving foes dates back to President Abraham Lincoln's 1863 amnesty decree, which was intended to promote peace between the North and the South during the American Civil War. The position of punishing the enemies is connected with the Nuremberg trials of Key Nazi leaders following the Second World War. Finally, both of them aim to achieve the goal of peace and justice, the way and implementation, however, are different.

In theory, the Nuremberg was conceptually intended to set a precedent for international criminal violence. In practice, however, judicial decisions usually involved formal or de facto amnesties concerning peace between the conclusion of World War II and the 1990s. UN peace operations in Namibia, Mozambique were good examples. In the 1990s, the case associated with the duty to bring cases of the worst human rights violations was practiced more. The Lome Peace Accord of 1999 marks a significant turning point in the development of international standards on the function of criminal justice in peace processes.

This all reflects the difficulties in applying peace and justice in specific cases. It is obvious that international criminal law has evolved in the direction of the "duty to prosecute" [1]. However, the variety of transitional techniques and the adaptability with which the accountability systems are implemented should be taken into account in international judicial rulings. The following report seeks to analyze three transitional mechanisms associated with the tension between justice and peace.

Different scopes of the interest of peace and justice animate the tension of them. Some say that peace is just the absence of armed conflict. Others think that peace is the return to justice and the application of the law to mediate and satisfy victim claims. Justice is usually regarded in two forms: retributive justice and restorative justice [1]. The former is built on accountability and punishment for perpetrators, which is supported by major Western countries. The latter aims to educate and rehabilitate an offender [2].

## **2. Analysis of Colombia**

### **2.1. Background**

For many years, Colombia has seen atrocious acts of violence. Political violence has always been a part of that nation's history, at least since the 1950s, during a time that became known as La Violencia [3]. Since 1982, at least five peace negotiations have been undertaken, which all failed. "Maximalist" and "minimalist" models have been tried as transitional mechanisms in this country [4]. The former means that all perpetrators were to be prosecuted and sentencing alternativity is allowed in exchange for demobilization and contribution to truth and reparation. The latter indicates that while not all offenders are prosecuted, those who are will actually serve the entirety of their sentence [5]. Meanwhile, major war criminals are usually the core head of the abuse regime.

### **2.2. The Analysis of Two Models of Transitional Justice**

#### **2.2.1. Maximalist**

Although the adoption of this paradigm would inevitably result in the lack of protection for victims' rights, it was universally acknowledged as being generous in protecting those rights. This model rests almost exclusively on the judiciary to achieve all goals, which could be a hidden danger to the peace process. This is proof that the Colombian government unexpectedly extradited fourteen leading paramilitaries to the United States on narcotics charges which lead to a huge hinder for persecuting higher ranks of paramilitary [6]. Finally, this model lead to a very weak result: over 4000 demobilized personnel. There have only been 14 sentences passed, with one being the last. That is because political considerations usually shadow effective accountability. For example, because the United States had placed its future Southeast Asia policy on Japan's stability and power, "Rape of Nanking" is not a single person has been arrested or tried for the heinous violation. Therefore, the United States tries its best to reduce Japanese accountability for war crimes. This political negotiation was established by Japan to become an ally of the United States.

#### **2.2.2. Minimalist**

It is important to note that making the transition successful required the participation of lawmakers involved in the abuses of the preceding government. It is difficult to practice this assumption, especially when the old regime still remains a strong power. That's because perpetrators would fight to the end in order to avoid accountability, which is likely to prolong the conflict. That is no doubt a block to the peace process. In addition, this model lacks popularity and support from the public and victims. According to a poll, 78% reject the notion that FARC leaders avoid prison, and 68% reject the notion that some FARC members would avoid incarceration as a result of the peace process [7].

### **3. Analysis of South Africa**

#### **3.1. Background**

The Apartheid regime separated white people from other colored people. There is a huge different treatment between the two groups regarding education, housing, healthcare, and so forth.

With the international sanctions diplomatically, economically, and militarily for the regime, there is a huge adverse impact on the legitimacy of the government. In addition, the strength of democracy is increasing. Nelson Mandela's release from jail and the 1990 lifting of the prohibition on opposition political parties and liberation movements by President F.W. de Klerk. However, the apartheid regime still has a strong power in politics. Truth and Reconciliation Commission, as a result, is regarded as a compromise to achieve the transition from dictatorship to deformity by giving amnesty to the abuses of crime in exchange for disclosure of political crimes.

#### **3.2. The Truth and Reconciliation Commission**

The Truth and Reconciliation Commission in South Africa was a typical example of conditional amnesty. This means the causes, contributing reasons, and context of such crimes; giving victims a chance to share their experiences; offering amnesty; creating a fair historical account of the past; and developing a reparations strategy. The most important feature is that the exposure of offenders did not lead to prosecution. To document wrongdoings and identify victims is the primary responsibility in many countries, nevertheless. The task of identifying wrongdoers is not included.

Although Truth and Reconciliation Commission in South Africa has developed in the process of international transitional justice, which is a way to achieve justice. They still arise some questions regarding post-conflict society. It is dangerous to disclose the information of wrongdoers as well. That's because they may suffer mentally and physically. One military captain in Argentina who was notorious for his cruel actions "suffered a dozen assaults by strangers on the street or people who claim he tortured them and their relatives" [8]. They also suffer social ostracism which could kill them. John Adams says that "the desire of esteem is as real a want of nature as hunger; and the neglect and contempt of the world as severe pain as gout and stone" [9].

However, this kind of truth-finding is usually reported by the media, which means that some of them are not accurate information. It is no doubt unfair for these people. Aside from that, even under accurate information, revenge is not amount to justice in a civilized society. If so, that is undoubtedly to admit the rationality of violence against violence.

Truth and Reconciliation Commission can be accepted because truth may serve as a substitute for justice for victims by disclosing the committed acts. However, justice aims to achieve the reasonable demand for victims as much as possible and criminals can be responsible for their actions but it does not mean letting the victims do anything arbitrary, which can be regarded as criminal, especially under violence. Therefore, it is in vain for choosing an amnesty as a compromise in exchange for long-term peace if we ignore the hidden trouble for peace society.

#### **3.3. The Level of Punishment**

Punishment was not a non-consequentialist desire for vengeance. It is an opportunity for perpetrators to pay for their wrong actions and a chance for victims to make up for a loss in a reasonable way. It is dangerous to use it at will. World War I was a typical example of punishment. Therefore, it is very vital to think about the forms and levels of punishment. The Treaty of Versailles gave Germany all the responsibility for launching the war, thus imposing extremely severe economic and military sanctions. In addition, too much consideration of the interests of the victorious countries, without any consideration of the interests of the defeated countries, coupled with the unprecedented severity of

the treaty and the nature of the plunder, made the German people have a strong resistance and aversion to the treaties imposed on them, which triggered the strong national vengeance sentiment of the German people. As a result, World War II was started.

## 4. Analysis of Uganda

### 4.1. Background

The Lord's Resistance Army (LRA) and the Ugandan government have been at war in the north of the country for almost 20 years. More than 1.8 million people, or more than 80% of the region's population, are now living in IDP camps as a result of the conflict [10]. Approximately 30,000 children are thought to have been kidnapped and forced to fight, while thousands of other kids, known as "night commuters", look for safety every night in town centers [11,12]. The most horrible crimes against their families and other people are committed by child soldiers under duress. Finally, amnesty was an alternative way to punishment to end the conflict and it allow dozens of combatants to return to their communities. It is worth mentioning that amnesty has been announced ahead of the end of the war, which is different from the amnesty in South Africa--which basis in exchange for testimony. It is just a way to end conflict and ignored the potential consequences of post-conflict.

### 4.2. Peace and Justice

There is no doubt that this amnesty has value. Prior studies have revealed overwhelming support for amnesty as a means of putting an end to the hostilities in the north [13]. Amnesty itself is regarded as a form of justice under certain situations in Uganda. That's because it can achieve the goals: saving lives and children can return home. "We are now desperate, these people should be forgiven, and if this process of forgiveness continues, then maybe one day the government will let us go home again", one elderly guy who lives in an IDP camp remarked [14].

They try to use this amnesty as a form of restorative justice which has a tendency in the current context but is unrecognized globally. However, western countries always recognize that justice is equal to punishment--retributive justice. Retributive justice should be a consideration in the transitional process. That's because bringing offenders back into peace with the community is one of the goals of justice itself, especially in the situation of Uganda where there are lots of child soldiers.

However, this point should be considered with caution. First, it is vital to evaluate the scare of war. It is unusual for people to kill inside their own families. According to a man who lives in the IDP camp, Kony has brought about killings where people kill within their own families and tribes. "I don't believe that this can be handled easily because it is so complicated [15]." Second, post-conflict society still should be considered. The reintegration process is not to be taken for granted, despite the general readiness to welcome back the bulk of former combatants. There is a good example from one young woman living in an IDP camp:

People in the neighborhood, especially those who are aware that this returnee killed their neighbors, feel resentment... There is an old man here: He was bringing two of his kids over for a visit. The rebels killed them. Recently, their rebels returned, and they arrived at the local elementary school. Then, when he discovered that they were wearing his sons' clothing, the old man went to them. Enraged and seeking revenge, he was acting like a maniac, and people were holding him. The rebels went and collected the bodies after he insisted they show him where they had buried his two boys [16].

Although these suggestions are in the minority, this situation truly reflected the inadequacies of the amnesty process. Thirdly, this amnesty is not involved in accountability. When these commanders come out, they never once own their misdeeds, as one informant put it. That only makes the suffering worse. The populace wants these commanders to acknowledge their errors. That is one aspect that

makes reconciliation difficult [17]. “These commanders, they now live better than we do,” a young woman who was living in an IDP camp remarked, “They come out and are so arrogant [18].”

## 5. Conclusions

There is no peace without justice even though conflict is an end. Peace is not limited to the ending of the war and post-conflict society should be taken into account as well. Trials are indispensable for rebuilding a broken society. Distributive justice in post-conflict society should be used properly to protect the rights of victims. However, it is a worthy note that peace is the precondition of justice since it is impossible to apply them in practice if the war is ongoing. It is difficult to balance peace and justice in one case and it is still impossible to find a rule which can address any case. On the condition of conducting peaceful consultations, the right of victims should be protected to the greatest extent.

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