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The do's and don't do's of Transitional Justice: Africa and Colombia compared Consensus

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The do's and don't do's of Transitional Justice: Africa and Colombia Compared

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Introduction

Conflict tends to be understood as a negative phenomenon associated with violence. However, it can also be understood as a multidimensional, natural phenomenon which usually indicates the occurrence of changes within a given society. In this sense, the processes of peace making and peace building will focus basically on the prevention of *violent conflict*, or the need to strengthen structures and mechanisms within society, which allow for a constructive handling of controversies aiming for a long-lasting peace between all actors involved in the conflict (Africa Peace Forum , 2004).

Conflicts occur when two or more actors believe their interests are incompatible, engage in hostile activities or act towards affecting the other actor's ability to achieve its goals. Conflicts become violent when the actors involved do not wish to satisfy their interests peacefully and, instead, engage in different forms of violence (Africa Peace Forum , 2004).

It is important to state that violent conflict is not inevitable nor does it happen overnight (Africa Peace Forum , 2004). Conflicts are dynamic processes which can take different forms and go through a large number of escalation and de-escalation stages. In fact, according to conflict theory, violent conflict is nothing more than a stage in the dynamic cycle of conflict (Faundes, 2005: 7). However, this cycle is not symmetric as escalating periods can last for decades – such as the Apartheid years in South Africa or the war in Colombia – while de-escalating phases may last only a couple of years –usually referring to cease-fires, negotiations and peace agreements.

Colombia has been suffering from an ongoing violent conflict that has threatened both its national security and the security of its people for the past four decades. Also, after the end of the conflicts in Peru, El Salvador, Nicaragua and Guatemala, the war in Colombia became a major threat to regional security in the Americas and the most serious foreign and security policy crisis in the Western Hemisphere (Martin, 2001).

During the past ten years, the confrontation between the two guerrilla movements – FARC (Revolutionary Armed Forces of Colombia) and ELN (National Liberation Army)–, the Paramilitaries and the Colombian Armed Forces has caused more than 300 thousand killings, 30 thousand kidnappings and more than one million internally displaced people. Attempting to define the current situation in Colombia as a *civil war*, a *drug war* or just *terrorism* would very likely lead to inaccurate results. Instead, a combination of all of the above descriptions would probably be more concise and allow for a better understanding of the reality of the Colombian conflict. However, if trying to come to terms with the nature of the conflict were not difficult enough, finding the best way to solve it is even more of a challenge (Delgado, 2002).

Confronted by conflicts either within their own territories or at their borders, African countries have had to face the need to develop mechanisms which enable them to achieve a sustainable and long-lasting peace. Therefore, out of the five continents, Africa has become – especially during the XX century – the scenario for the vast majority of conflict resolution experiences in the world and a region which must be taken into account when trying to address similar problems in other areas of the world.

Thus, the study of conflict resolution experiences and post-conflict reconciliation in Africa becomes of crucial importance for a country at war like Colombia. An analysis of these processes may turn them into a valid point of reference, as it allows for a better understanding of their experiences and serves as a guide for the peace process in Colombia.

The New Concept of "Security"

Nowadays, security is not only about defending national borders. The concept of "security" itself has been re-defined by the effects of the international globalised post- Cold War system and must be understood in a much wider sense. At this point, "Human Security" arises as a new definition of security: "[T]he security of individuals, not states, should be the main reference for security, and […] this would entail the provision of health, welfare, educational, and other services, as well as the provision of physical security" (Field, 2004: 30). From a different point of view, the Canadian Government describes *Human Security* as:

"[A commitment] to building a world where people can live in freedom from fear of threats such as terrorism, drug trafficking and the illicit trade of small arms. This new generation of threats shows no respect for national borders and inevitably becomes the source of our own insecurity. Human Security is a people-centred approach to [public and foreign] policy which recognizes that lasting stability cannot be achieved until people are protected from violent threats to their rights, safety or lives" (Canadian Human Security Programme, 2005).

Within this theoretical framework, it can be argued that without security, there cannot be peace or development. The opposite is equally true, without peace and development, there cannot be security. Many countries in Africa, as well as Colombia, have had many difficulties in achieving and maintaining peace, even after a cease fire. Therefore, one of the priorities when trying to reach and maintain a peace accord must be the re-establishment of a secure environment for the entire population, both in the cities as well as in the countryside.

Due to the fact that the individual becomes the centre point of this new definition of security, a new set of measures has to be undertaken by any government wishing to end a period of violent conflict; those are: (1) controlling the trafficking of small arms; (2) eradicating land mines; (3) creating de-mobilisation programmes for ex-combatants and their families; (4) assisting refugees and internally displaced persons who wish to return to their former lands; (5) judging those who committed serious violations to human rights and the international humanitarian law during the war period; (6) launching disarmament programmes; amongst others. The goal is, therefore, achieving a real national reconciliation not only by guaranteeing the security of the population, but also by involving the civil society as a whole in the process.

In compliance with the trends in conflict resolution during the Nineties and the first years of the 21st century, the Colombian government recognised the importance of justice in the process of achieving national reconciliation. That is, developing a legal and institutional framework which allows the country to apply justice to those who committed crimes during the conflict period. Nevertheless, it is important to remember that in war-torn societies the final objective cannot be the mere application of justice, but instead, using this justice as a tool to achieve a long-lasting national reconciliation.

Transitional Justice: an instrument for Peace

Justice has been used everywhere in the world as a tool to guarantee that its people comply with the different laws of their countries. Whether they are effective or not, judicial systems aim to enforce the law and punish those individuals who commit crimes either against the population or the State. Therefore, justice is used as the *normal* tool available to all states to guarantee an institutional order within their borders.

However, there are some periods of time when political and/or social turmoil can create particular conditions in a given country where the rule of law cannot be enforced by the State and its forces. These circumstances can often be seen as a state of *conflict* and generate, therefore, a stage of "exceptionality" within the country's borders. At this point, judging those who committed crimes is important, but achieving national reconciliation must be the main objective. Thus, keeping in mind that oftentimes, ordinary justice is not designed to promote national reconciliation but, instead, to judge crime perpetrators, a special legal regime must be developed in order to facilitate the elimination of the unrest and allow the country to go back to non-conflict dynamics.

Transitional Justice can, then, be the tool through which that special legal regime can be developed. It enables the State to create a special judicial framework that takes care of those who committed crimes during the exceptional period but, also, allows for a different way of handling these criminals as it considers amnesty and forgiveness for certain special cases. Transitional Justice can be regarded as a different judicial regime, parallel to ordinary justice, which is based on the premises of restoration and reconciliation as the ways to national reconciliation, and is only applicable to exceptional periods of extreme alterations to the national order and severe violations of human rights and the international humanitarian law.

When a conflict takes place, peace building instruments such as Transitional Justice acquire an exceptional importance in achieving a long-lasting peace and a successful construction of a new society. As stated by Lloyd Axworthy –Former Canadian Minister of Foreign Affairs and International Trade–:

"Peace-building cast[s] a lifeline to foundering societies struggling to end the cycle of violence, restore civility and get back on their feet. After the fighting has stopped and the immediate humanitarian needs have been addressed, there exists a brief critical period when a country sits balanced on a fulcrum. Tilted the wrong way, it retreats back into conflict. But with the right help, delivered during the brief, critical window of opportunity, it will move towards peace and stability" (Aning, 2004: 12).

Due to the *exceptional* nature of Transitional Justice, a few important characteristics must be taken into account at this point. First, it is not permanent. The period of time when Transitional Justice can be used has to be clearly specified; that is, establishing the starting and finishing points between which the political and/or social turmoil took place. Second, it must not be applied everywhere. Spatiality is then a key issue as it has to be determined where the State is going to apply Transitional Justice. It can be implemented in the whole country, in a certain region or, when international initiatives are being undertaken, it can include the territories of neighbouring countries or the whole of the international community. More about the spatiality of Transitional Justice will be discussed in the following paragraphs.

There are two different ways of applying Transitional Justice in a war-torn society: (1) punitive justice; and (2) restorative justice. Even though these options respond to the need of establishing the best way to achieve a long standing peace, their objectives are still the same: national reconstruction and reconciliation.

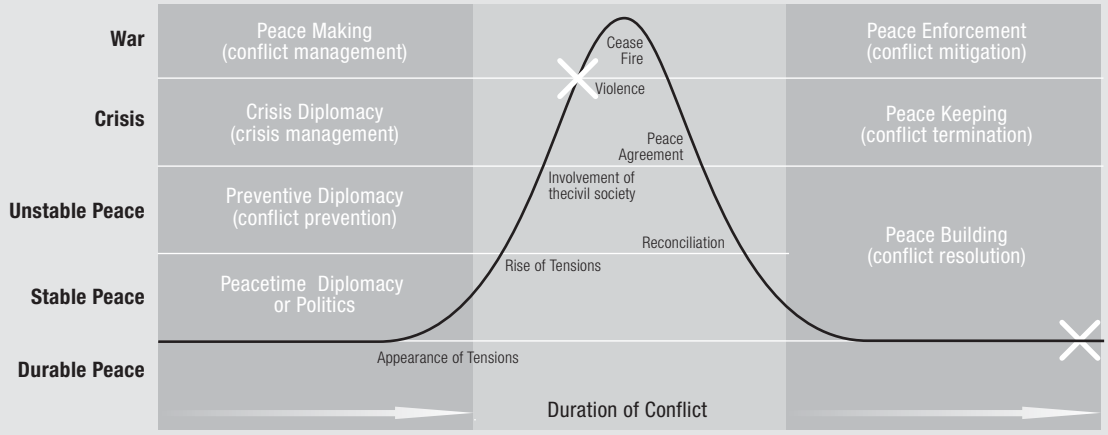
Punitive Justice

Punitive Transitional Justice becomes a viable option when the ordinary national justice system has collapsed or is unable to guarantee the neutral and impartial delivery of justice in the country. It aims to restore the victims through the *punishment* of those who committed serious crimes against humanity and the international humanitarian law, or those who planned, ordered, encouraged or helped in the process of committing them.

Usually, this type of justice is delivered by International Criminal Tribunals or Courts such as the ones established in Yugoslavia, Rwanda or Sierra Leone; however, national initiatives have also been or are being developed in countries such as East Timor, Cambodia or Afghanistan.

One of the main advantages of Punitive Transitional Justice is that it can be used at any point in the conflict cycle once violence has started. That is, for example, perpetrators can be punished either while a genocide is being committed or after the slaughter has taken place. According to Michael Lund's curve of conflict, the punishment of criminals may start in the *war* stage where armed conflict is the way adopted by the actors to solve their disputes and can continue all the way to the *peace building* stage, where a peace agreement has been signed and the objective is national reconciliation. In Graphic 1, this period of time can be found between the two purple crosses.

Graphic 1
Michael lund's curve of conflict



Source: Author's Design. Basic graphic at the United States Institute of Peace website: <www.usip.org/training/analysis/graphics>

Since Punitive Transitional Justice initiatives usually come from the international community and not from within the country, a common question that may arise is: "isn't International Justice a threat to State sovereignty?" It can be argued that indeed it is, but at the same time, it is important to take into consideration that in a war-torn society, one of the major challenges faced by governments is how to eliminate impunity within their territories; and since the national justice system is unable to do so, accepting the help of the international community might become a valid choice.

Another key issue is that, by judging criminals, Punitive Transitional Justice prevents the community to take justice into their own hands and, therefore, aggravate violence in the country. When the population realizes that perpetrators are

prosecuted and imprisoned, the perception of security in the country will arise and the possibilities of eliminating the turmoil and restoring rule of law become considerably higher. At the same time, when criminals are removed from the population, the society can start a new process of national reconciliation and reconstruction.

The previous paragraphs have only discussed *International* Punitive Transitional Justice, leaving national initiatives aside. However, if a country plans to use this tool on a national level, two points must be taken into consideration. First, a long time must go by before a national tribunal can address the serious violations of human rights committed during the exceptional period and the international humanitarian law. That is so because the justice system must regain credibility within the population, since the State is often seen as the one to blame for the crimes committed in the past. Cambodia can be cited as an example of this situation. The government is currently creating a national tribunal which will restore individuals and the society as a whole by prosecuting criminals during the Khmer Rouge government of Pol Pot.

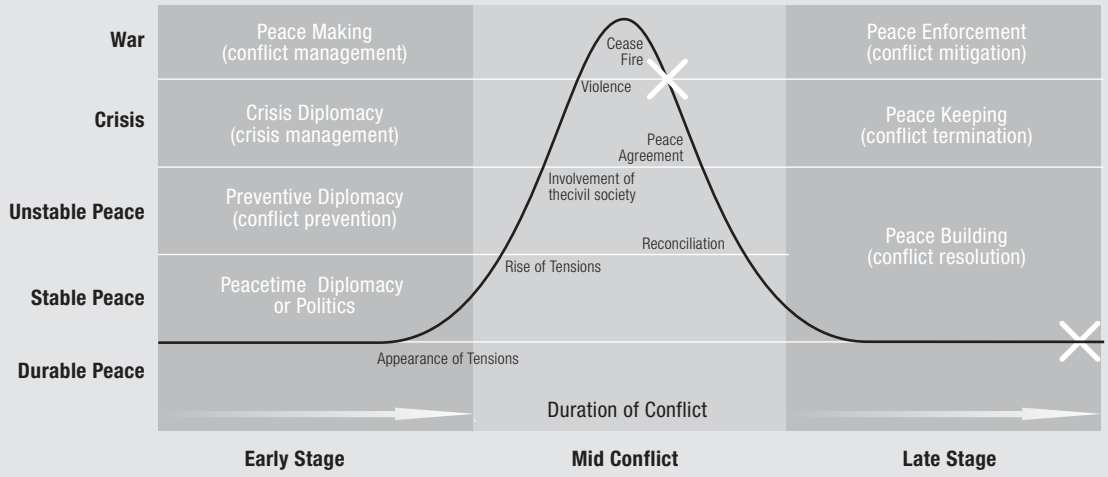
And second, if a national punitive transitional justice initiative is to be developed during or just after the hostilities, the government must make sure that it does not become a revenge tool. Allowing a transitional justice system to separate itself from proportionality and neutrality will only make the situation worse and the chances of increasing violence or going back to a *war* stage would be extremely high.

Restorative Justice

Restorative Transitional Justice differs highly from the punitive one as it aims for the reconciliation of the whole society, not by imprisoning criminals but by including them in the new dynamics of non-conflict in the country. It emphasises the need to rebuild social relations within the community and does not believe that punishment is the best way to achieve this objective.

Restorative Justice also includes new concepts not considered in the punitive approach, such as establishing the truth, granting amnesty, forgiveness and the reparation of victims. Because of that, restorative justice cannot be used during the conflict and is limited to the post-conflict stage, that is, after a cease fire has been reached and violence is no longer present in the society. Again, looking at Michael Lund's curve of conflict, restorative justice can be used between the two purple crosses in Graphic 2:

Graphic 2
Michael lund's curve of conflict



Source: Author's Design. Basic graphic at the United States Institute of Peace website: <www.usip.org/training/analysis/graphics>

But why can it not be applied during the conflict? For example, since knowing the truth about the crimes committed during the violent period is one of the key premises of restorative justice; if a combatant demobilises during the conflict and decides to tell the truth about a certain massacre, that information may be used by the government to judge other combatants who might have been involved in the same massacre and who have not demobilised. Also, because proofs are being given to the government, non-demobilised combatants might go after the one who told the truth and killed him for *betraying* the rebel group. Thus, the importance of establishing dynamics of non-conflict in the country before restorative transitional justice can be used is clearly stated.

After the breaking point in which a country goes from being in conflict to going back to peace, the government may chose to use the tools available under restorative transitional justice, but it is important to mention that it is the population itself who should forgive criminals. Forgiveness cannot be imposed on people; therefore, a national campaign targeting the population is needed if the government wants people to acknowledge that, at this point, the priority must be national reconciliation and not personal revenge.

Also, it is crucial that the initiatives and leadership come from within the country as this is a process that requires support from all social, economic, political, cultural and religious groups. If one of these groups does not work towards national reconciliation, restorative transitional justice will not work in the country. Likewise, if initiatives come from outside the country, foreign help might be useful, but if the whole process is being imposed by the international community, it is bound to fail because it will not include those who do need to forgive.

Amongst the various goals that restorative transitional justice aims to achieve are:

1. To achieve the final resolution of the conflict, not through punishing but, instead, through the joint participation of all the actors involved in the conflict, including the civil society.
2. To alleviate the victims' pain through knowing the truth. That incorporates a public forgiveness for those who committed crimes during the conflict and allows society to know what really happened

during that period. That way, in exchange for finding out the truth, the victims forgive those who attacked them. Also, it is important that perpetrators include all relevant information in their confessions, such as why, how, when, and where people were murdered, where the weapons are, where the corpses are, etcetera. Finally, a certain amount of money may be paid to the victims as a way to restore them and alleviate their suffering.

3. To prevent future aggressions in the country basing the whole process in the building of a new State, one with stronger institutions and an effective rule of the law for all citizens everywhere in the territory.

The instruments commonly used by governments to implement restorative transitional justice are *Truth and Reconciliation Commissions*, a body created temporarily to investigate and clarify what really happened in the country during the violent stage. The Commissions are non-judicial organs, therefore, instead of punishing,, they produce a final report which contains all the perpetrators' testimonies and some key recommendations for a lasting national reconciliation.

The different tasks that a Commission should fulfil include: (1) identifying the real causes of violence and the actors involved; (2) giving society accurate information about human rights violations in the country; (3) giving the victims a space where they can share their traumas, stories and experiences; (4) officially recognising crimes; (5) making recommendations with respect to the best way of preventing future violence, how to undertake an institutional reform, strengthen the judicial system and guarantee the protection of human rights and the international humanitarian law; and (6) granting amnesties and official forgiveness to perpetrators while victims are restored.

One of the most remarkable examples of Restorative Transitional Justice was the Truth and Reconciliation Commission in South Africa. This organ was responsible for creating a new society for all South Africans after the Apartheid regime was dismantled. The Commission became a space where blacks and whites could share their experiences as equals in a country where equality had not been present since the first years of the twentieth century.

Finally, a major role has to be played by a leader who should pave the way to national reconciliation. Without a leader, the process is bound to fail. He must focus all his efforts in preventing personal revenges, guiding the whole society to a new phase of non-conflict and being an example of honesty, clarity and forgiveness for the people.

Two Roads, the Same Objective: the Cases of Rwanda and South Africa

Rwanda and South Africa have probably become the most important examples of Transitional Justice in Africa. The first one used a punitive approach to rebuild the State after the genocide in 1994. The second, on the contrary, followed the path of restorative justice to facilitate the transition from the Apartheid regime to democracy, also in 1994.

Rwanda is an interesting example of the costs of assuming a policy based only on the application of Punitive Transitional Justice. In theory, at least, an International Court might have been the only way to overcome impunity in the country and guarantee a trial for genocide perpetrators. However, in practice, the incapacity of the International Criminal Tribunal for Rwanda (ICTR) to effectively administer justice in the whole territory, as well as the lack of the financial resources needed for the Tribunal to be successful, meant that the ICTR could not fulfil its mandate, and it is said to be a major and expensive failure. "By early 2002, with 800 employees and after having spent approximately USD 540 million, it had handed down eight convictions and one acquittal, with seven trials for seventeen accused in progress, two appeals pending, and fifty-five suspects

in the tribunal's custody" (Uvin and Mironko, 2003:220), rather small numbers compared to the approximately one million people killed during the three months of the genocide in 1994.

As a consequence of the low efficiency of the ICTR, Rwandese population started seeing this organ as a:

"blatantly biased and evil institution […]. It is seen as de facto, if not by design, supporting the current government by neglecting its crimes, by a priori accepting the existence of the genocide, by allowing shoddy legal procedures, by submitting too much to the pressures of the Rwandan government, by refusing to indict President Kagame and other Rwandan Patriotic Front (RPF) members, and so forth. In short, in this opinion, the ICTR is a deliberate farce that maintains an oppressive regime and silences the violence of which the Hutu were victims. This vociferously articulated position is held mainly by people living outside of Rwanda, but there is no reason to assume that it is not shared by at least part of the population" (Uvin and Mironko, 2003:222).

In effect, the inefficiency of the ICTR deepened the resentments between Hutus and Tutsis, and thus, troubled even more a true national reconciliation in Rwanda.

Due to the failure of the western proposal for transitional justice in Rwanda, *Gacaca Tribunals* were created by civil society as a local initiative which aimed at:

"establishing the truth about the genocide by compiling a list of perpetrators, victims, and damages in every jurisdiction; and to reconcile and promote unity among Rwandans by public acknowledgment of guilt and innocence. These aims represent a dramatic rethinking of the functions of justice in a post-conflict society, stressing community participation to over legal procedure and adding to degree of restorative justice" (Uvin and Mironko, 2003:226).

The Rwandese experience clearly shows that the legal framework for Punitive Transitional Justice may indeed give the required tools to achieve a long-lasting national reconciliation; however, if its implementation lacks political will or the necessary funds, it will contribute to the failure of the whole process. In this particular case, both problems were present; on one side, the ICTR was unwilling and unable to prosecute all the perpetrators, especially those with French and Belgian citizenships, and, on the other, the Rwandan government was not capable to afford the costs not covered by the international community.

As for South Africa, the chosen tool to create a new South African State was Restorative Transitional Justice. The government of the African National Congress (ANC) led by peace Nobel Prize winner Nelson Mandela acknowledged that the only way to effectively eliminate the political and economic consequences of Apartheid was through a joint effort of all South Africans working towards some common objectives: knowing the truth, building a new State, and putting the nation's interests over particular ones.

In words of Archbishop Desmond Tutu: "Restorative Justice does not have anything to do with revenge or punishment, but with the establishments of bridges and the reconstruction of imbalances and social relations highly affected by the conflict, in an effort to restore aggressors as well as the victims" (ALAADA, 2005: 2).

For South Africa, Restorative Transitional Justice meant that perpetrators of serious crimes against humanity would voluntarily go to the audiences and tell the truth about what really happened and how it happened to the government and the victims, and then apply for forgiveness on an individual basis, creating, thus, a social and moral reconnection in society as a way to overcome the painful past. Also, those aggressors who did not submit to the Truth and Reconciliation Commission were prosecuted and judged by the ordinary justice and imprisoned when applicable.

Another important issue in South Africa was political determination and leadership in the process. Whether it was because Apartheid was no longer sustainable in terms of economic development, or because of strong ideals of democracy, liberty and justice for all in a united South Africa, key leaders such as Archbishop Desmond Tutu, President Frederick DeKlerk or Nelson Mandela guided the negotiations, urged the people to participate in the process and led the reconciliation stage. Without them and their political will, the democratic transition in South Africa would have never been possible.

The Colombian Experience: what NOT to do with Transitional Justice

"If peace was possible in South Africa, it can also be possible in Colombia. It can be possible everywhere. But, if you want to end war and violence in your country, you have to sit down and negotiate. Keep in mind that there is no need to negotiate with friends. We must negotiate with our enemies, with those who we hate because conflicts occur after a disagreement" (Tutu, 2005).

In 2005, and ignoring Archbishop Tutu's words in Cali, the Colombian Government continued its so-called *peace process* with the paramilitaries, leaving the FARC and the ELN –the most important guerrilla groups in the country and definitely key actors in the conflict –out of the negotiations. That itself constitutes a reason for the whole process to fail.

At the same time, and to complement the peace process, a bill passed in Congress aimed to create a restorative transitional justice legal framework to facilitate the demobilisation of combatants and national reconciliation. The first draft of this bill included concepts such as *truth*, *justice*, *reparation* and *reconciliation*, that is, it considered the most important elements of restorative transitional justice. However, after deliberations, the final law that came out of Congress was called "Law for Justice and Peace" (Law 995, 2005) and it ignored three out of the four concepts mentioned before.

Within this legal framework and a peace process that excluded two of the main actors, let us go a bit deeper into the Colombian *conflict resolution* experience.

First: the political leadership of President Álvaro Uribe has been focused not on national reconciliation but, instead, on the escalation of the war. He deeply believes that he can win the war against the insurgent groups and, at the same, talk about peace with the paramilitaries. Accordingly, most of his efforts have been focused on strengthening his Democratic Security, a policy that aims at restoring security everywhere in the country, but with an extremely high military component and no real conflict resolution foundations.

Second; in Colombia, and opposed to the Transitional Justice principles and the South African experience, peace initiatives have been limited exclusively to a few of the illegal groups and the government. The civil population has not been involved in any of the different stages in the process nor has it had the opportunity to know what is being negotiated and what the effects of those negotiations are going to be. Subsequently, it has been the government who has granted amnesties and forgiveness forgetting that it is the population who has to forgive. In fact, if the people do not wish to forgive criminals, the whole process is bound to have a major fail.

Third: according to Restorative Transitional Justice, if a person that has committed crimes against human rights and the international humanitarian law does not wish to be judged and imprisoned, there is a need for him or her to give something back to society as a form or restoration. In South Africa, perpetrators told the truth to the government and the society in order to obtain forgiveness, and that was one of the key elements which made the whole process successful. In Colombia, on the contrary, amnesties and forgiveness to demobilised combatants are granted without them having to give anything in return. There is no real mechanism to guarantee that those who acted against

society effectively restore their victims in pro of a new society, based on reparation and reconciliation.

As an example, in February 2006, 20,134 paramilitaries demobilised in Santa Rosa del Sur, a small town in southern Bolívar (El Tiempo, 2005). The government granted them all the necessary benefits for them to withdraw from the armed groups, including a monthly allowance of approximately USD 220 for two years, without confessing their crimes. Thus, the victims did not have the opportunity to know the truth. Therefore, without truth there is no forgiveness, and without forgiveness, there is no reconciliation… And the cycle of violence keeps going

Fourth: as explained before, restorative justice requires a cease fire involving all actors in the conflict before the exceptional legal framework can start being implemented. In Colombia, the so-called peace process has taken place in a context where neither the paramilitaries nor the guerrillas have committed to a cease fire. Therefore, it would be interesting to wonder if it is possible to talk about peace and reconciliation when you are still killing Colombians every day.

Finally, and probably one of the most important issues to be taken into account: if you want to solve a conflict, you at least have to acknowledge that it indeed exists. President Álvaro Uribe has made it clear on a large number of occasions, during the past four years, that in Colombia there is no internal conflict but instead, a terrorist threat. That basically means that his government is negotiating with terrorists, and also, that the international community cannot really help in the process solving the conflict in the country, basically because there is not one.

South-South Cooperation: Africa, a new point of reference

Historically, for Colombian governments, international cooperation for conflict resolution has been understood in economic terms. However, it might be the time to start thinking that sometimes, money is not everything and relevant knowledge coming from other countries that went through similar situations might be more important. Africa becomes, then, a valid point of reference as it would allow Colombian decision makers to get in contact with foreign experiences that can be adapted to our own national situation.

The South African attempt to contribute with its experiences in order to facilitate the Colombian conflict resolution process is a clear example of this *South-South Cooperation*. Between February 9th and 12th, 2005, the Pontificia Universidad Javeriana organised the *International Symposium for Restorative Justice and Peace in Colombia* which took place in Cali. Among the various speakers, some key South African leaders and experts in conflict resolution were invited to participate: Archbishop Desmond Tutu –Peace Nobel Prize winner in 1984–, Tokyo Sexwale –former governor of the Province of Gauteng–, and Albie Sachs –member of the Constitutional Court of South Africa–, amongst others.

The main objectives of this Symposium were to generate a sense of consciousness in the general public and the public sector about the importance of implementing the concepts and procedures of Restorative Transitional Justice, to promote a bill that creates the necessary legal framework, and, in general, to learn from foreign experiences and train Colombians in issues of Restorative Justice.

During his intervention at the Symposium, Archbishop Tutu emphasised the need for the Colombian government to include the FARC and the ELN in the peace talks as the only way for hostilities to end. Also, he made the South African territory available for real and serious negotiations between all actors in the conflict, offered Nelson Mandela's mediation and facilitation in the process and mentioned South Africa was willing to share all its experiences and information with the Colombian government, in order to finally reach a peace agreement (Simposio Internacional Justicia Restaurativa y Paz en Colombia , 2006).

To this offer, President Álvaro Uribe responded that this solution was not viable because, while the guerrilla and paramilitary leaders were at the negotiating table in South Africa, other members of these organisations would keep on killing, burying land mines, kidnapping and trafficking with arms and drugs. After this statement, Tutu continued saying to Uribe that the situation becomes even more problematic when no real acts of leadership are undertaken and that, he, as the president of Colombia should take advantage of his position to lead the way to national reconciliation. As stated by Nelson Mandela, he said, "No one but a Colombian who has a plan and a deep love for his country can end this conflict" (ALAADA, 2005:3). A major opportunity to negotiate a peace agreement had been lost.

Final Considerations

Transitional Justice has proved to be effective as a peace building element in various areas of the world. For Colombia, there is no point in making the same mistakes made in other countries because we neither want to learn what they did and how they did it, nor hear what they have to say. Some African nations, as well as other countries in the Americas, Europe and Asia have made themselves available to mediate and facilitate our own peace process, but all the government is interested in is financial support.

It is true that solving the problem will not be possible until Colombians take on a more important role in the country's life and put pressure on the government and the rebel groups to negotiate. However, it is also true that international guidance might become crucial in the process, and the absence of it would only make things much more difficult for us.

If the Colombian Government is worried about war instead of peace, and the society is not really taking part in the negotiations, the outcome of the peace talks will be no other than the increase of violence to such an extent that the conflict becomes unbearable; in other words, the conflict will not be solved until the point in which the benefits of peace are greater than those of war. However, it is the Colombian civil population who has to bare the costs of new violence outbreaks in the country; therefore, for Colombia, peace is not only a right, it is a must because the millions of victims demand it.

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