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The Colombian Conundrum: Transitional Injustice and Beyond

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The fall of the [last major leftist insurgency](#) in Latin America might finally give the Colombians some cause for happiness. It seems that the [world's longest running civil war](#) will soon be brought to an end after a bilateral ceasefire was signed between President Juan Manuel Santos and the leader of the Revolutionary Armed Forces of Colombia (FARC) Timoleón Jiménez alias "Timochenko". This deal was signed with the presence of the United Nations (UN) Secretary General Ban-ki Moon, the Presidents of Cuba, Venezuela and Chile, and the Norwegian Foreign Minister. The accord has been hailed as a [tremendous milestone in the history of Colombia](#) and it is perceived by many Colombian citizens as the peaceful culmination of the era of strife and violence which they were born into. But a final peace deal is yet to be negotiated or put to a referendum. While pessimists have [written-off the current peace deal](#), some sections believe that [concrete steps beyond mere handshakes can and will be taken](#).

The Colombians continue to hold hope as former FARC leaders shift their gaze towards peace. While former FARC commander, Carlos Antonio Lozada, who is being touted as the potential leader of the upcoming political avatar of FARC, went so far as [publicly repenting past inhuman actions of FARC](#) – in a 180 degree shift from his position less than a year ago – the leader of FARC has also fuelled a peace rampage over world media through catchy statements like, ["let this be the last day of war"](#). Only time can reveal the true motivations behind them but historical precedents- as discussed below- are not in favour of Santos, as he [seeks to make history in Colombia](#) with this historic peace deal.

The situation in Colombia has huge humanitarian implications that resonate globally, from Nepal to Uganda. These situations of transition and change do not seem to be positioned to head in the direction of transitional justice, whether it is the [blanket amnesty provided by the Nepalese Truth and Reconciliation Ordinance, 2014](#) or the striking lack of implementation of the well-founded [draft transitional justice policy](#) of Uganda. The Colombian [peace deal](#) is hardly different and it falls short of expectations of transitional justice.

The International Center of Transitional Justice (ICTJ) has espoused an understanding of transitional justice as a crucial post-war process that contains the [core requirements of reparation, truth and reconciliation, criminal prosecution and institutional reform](#). It is premised upon the understanding that when grave crimes and atrocities have been committed en masse in any State, measures should be taken to bring past crimes to justice. This forms the essence of the peace-building process without which States tend to [relapse into conflict within a few years](#).

A positive example of transitional justice could be the [process](#) that the draft transitional justice policy in Uganda sought to set in motion. The policy acknowledges that reparations, among other measures, are needed to reintegrate victims back into society and to deal with issues common to post-conflict situations, such as land disputes and children born in captivity. Though the Uganda Amnesty Act was put in place, the perpetrators of serious war crimes like genocide were not to be entitled to amnesty, as [held by the Supreme Court of Uganda](#). Much to the anguish of Ugandans and the world community, the Government of Uganda (GoU) has yet to implement the policy.

FARC cease-fire deal: wounded peace

The ongoing peace process in Colombia has produced a series of peace agreements with FARC that aspire towards transitional justice amidst apprehensions about regress. The cease fire-deal signed on June 23 provides for surrender of arms, preparation of the guerrillas for entry into civilian life and their protection and security through the removal of deadly threats posed by paramilitary groups.

In terms of justice, a [special tribunal is to be constituted](#) to process war crime cases involving offenders from both sides. It has been mutually agreed that full confessions will be [rewarded with lighter sentences](#) of five to eight years during which the offenders will ["contribute to their re-socialization through work, training, or study."](#) Those who persist in denying responsibility for serious crimes will be tried and, if found guilty, sentenced to up to 20 years in regular prisons. This pardoning clause, inserted in the interest of compromise, has received mixed responses: while some have [perceived it as a throw-away](#) that has compromised the ideals of transitional justice and the values behind the peace struggle, certain others have justified it as an indispensable requirement to further the transitional justice process.

Colombian conundrum: an international insight

Optimism for the sake of optimism cannot be more dangerous than in present transitional Colombia. Similar occurrences in the Solomon Islands and Uganda do not suggest a positive future. Peace deals were struck in the archipelago and the African country with provisions for amnesty. In the former, the [judiciary contravened](#) the mutual agreement and punished the perpetrators for their war crimes. In the latter, [a blanket pardon was denounced and rejected](#) as the perpetrators sought to unsuccessfully escape the case instituted against them in the International Criminal Court (ICC). Though the justice process has evidently taken off, the common citizens of the two countries still live the distorted lives of violence.

It can be argued that international judicial intervention is a hope in this bleak situation but the fall-outs are incalculable. The Nepalese situation is a case in point. The [Enforced Disappearances Enquiry, Truth and Reconciliation Act, 2071 \(2014\)](#) of Nepal has been read so as to provide amnesty to perpetrators. This has been [deemed unconstitutional by the Supreme Court](#) and it has even alerted international organizations such as the International Commission of Jurists, Amnesty International and Human Rights Watch who have contended that the inclusion of the provision is a breach of [Nepal's obligation under international law and refused assistance](#) until an amendment is made.

The situation in Colombia is only just maturing; there is time to right the wrongs, punish the wrongdoers and do right to the victims. For example, the [UN Convention against Torture](#) internationally obliges Colombia to punish the perpetrators from both sides. Colombia made significant progress in this direction when it inserted a provision for "Special Jurisdiction for Peace" in the [agreement made in 2015](#). One hopes that the provision shall be restored and the victims reinstated through expedient trials held by mixed tribunals with [indirectly elected national and international judges](#).

Conclusion: the way forward

Mere hope cannot be its very own actualisation, though a larger part of the international community seems to have merged these two distinct entities, as it perceives the end of the world's longest civil war to be a harbinger of peace. Colombia has an obligation under international law to deny amnesty and punish the perpetrators of crimes against humanity, war crimes and genocide. This is not only a call for the Colombian State but also for the international community which should monitor the implementation of the agreements and pressure the state to comply. Moving forward is indeed important but not at the cost of unjustly ignoring the past sufferings of millions of civilians. The tragic pasts of countless Colombians must be reconciled with the present bilateral agreement to achieve sustainable peace, which has so far remained elusive.

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