

## **Peace and accountability in transitions from armed conflict**

An international seminar organised under the umbrella of the

### **Forum for International Criminal Justice and Conflict<sup>1</sup>**

by PRIO and the Vice Presidency of Colombia, as well as the National Commission for Reparation and Reconciliation of Colombia and Universidad del Rosario.

**Bogotá, 15-16 June 2007**

What roles does the law have and what roles should it have in civil war settlements and peace negotiations? The implementation of transitional justice in war settlements is conditioned to an important degree by the interplay of political forces, in particular but not exclusively by the bargaining power of the negotiating groups. While armed groups may have an interest in being immune to justice, there are also political actors with an interest in seeing justice done, notably movements of victims and domestic and international human rights activists. This conference will consider different ways in which law can constrain and limit actors in peace processes, as well as how legal incentives may be used to push peace negotiations forward. A basic premise is that the law has two central roles in peace processes, viz. there are prescriptive areas of law that constrain to some extent the space of political maneuver, but there are also discretionary areas of law which can work as instruments for peace actors. What types of constraints does the law tend to impose on settlements? How can the law be instrumental in facilitating negotiations? What can we learn from the political role played by legal institutions in cases of war settlement?

When considering the impact of law on political peace-making processes, we need to distinguish between different types of legal institutions. In transitional contexts, national courts often have an important role in assessing and narrowing the options available in negotiation processes; such has been the case of the Colombian Constitutional Court in the ongoing process with paramilitary groups. But in addition to domestic legal organs, international legal institutions can have an important role in shaping domestic peace negotiations. The possible effects of the International Criminal Court on peace negotiations have been discussed mostly in the context of the cases of Uganda and Sudan, but Colombia may also be a case in point. Moreover, the Inter-American Court of Human Rights has had a role in Latin American conflicts in the past, for example by limiting the application of amnesties and by prescribing the implementation of transitional measures directed to the protection of victims' rights. What role has the law had at these different levels in peace processes? What role has it had in the recent Colombian process?

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<sup>1</sup> A debate forum open to individuals interested in issues concerning international criminal justice and conflict, started as an informal initiative under the ENI Programme of PRIO (by its Senior Researcher Morten Bergsmo, in consultation with Dr. Jo Stigen, Department of Public and International Law, University of Oslo). The Forum aims to identify, and facilitate debate on, key issues in international criminal justice and conflict, including accountability-related measures other than criminal justice, and to bring together practitioners, government officials, NGO representatives, academics, students and others with an interest in this emerging field of practice and research. The Forum will not take positions on issues. Information about the Forum and its activities can be found at [www.prio.no/ficjc/](http://www.prio.no/ficjc/), and requests to be placed on the e-mail invitation list of the Forum can be sent to [ficjc@prio.no](mailto:ficjc@prio.no) (with name, functional title and e-mail address). Suggestions for topics and issues to be addressed by the Forum, feedback on its activities, or offers of assistance can be sent to the same e-mail address.

The conference will pay particular attention to two legal instruments, extradition or transfer and labelling as a criminal terrorist organization. In Colombia, given the entanglement of the war with drug trafficking and other criminal activities of transnational consequence, extradition requests of rebels and paramilitaries have not been rare; some have pointed out that the threat of extradition may keep rebels away from a negotiation table, but the offer to remove the threat has in fact had the contrary effect. On the other hand, the label “terrorist” has been given increasing weight worldwide, with the extensive national criminalisation of conduct linked to organisations declared as “terrorist”. The use of the label may limit the potential involvement of armed actors in peace negotiations. Some general themes we suggest for discussion at the conference are the interplay of transitional justice, law, and domestic politics in civil war settlements; the international political role of legal instruments in civil war settlements; and the effects of domestic and international legal constraints on the implementation of transitional justice measures in peace processes.

## Programme

### Friday 15 June 2007

09:00 Opening of the event: Hans Peter Knudsen (President Universidad del Rosario) and Morten Bergsmo

#### *Introductory remarks*

09:10 Jon Elster, Collège de France:  
*Historical and comparative overview of transitional justice mechanisms in civil war settlements*

#### Session 1

09:40 Claus Kress, Professor of Law, University of Cologne:  
*Overview of domestic and international law as legal constraints in peace negotiations*

10:30 David Cohen, Director, War Crimes Studies Center, University of California, Berkeley:  
*War crimes tribunals and the limits of accountability: aims, resources, and political will*

11:20 Aanund Hylland, Professor of Economics, University of Oslo  
*Post-conflict constitutional design: the trade-offs between short-term necessity and long-term optimality*

12:10 Discussion

12:30 Lunch

#### Session 2

14:00 Words by Vice President Francisco Santos

14:10 Monika Nalepa, Political Science, Rice University:  
*Skeletons in the closet: infiltration as insurance*

15:00 Francisco Gutierrez, Institute of Political Studies and International Relations (IEPRI), National University of Colombia:  
*The distribution of guilt in peace processes*

15:50 Break

16:10 Ana María Arjona, Political Science, Yale University:  
*Legal orders in civil wars: a local-level perspective*

16:50 Roger Petersen, Political Science, MIT:  
*Justice, anger, punishment, and reconciliation*

17:40 Discussion

### **Saturday 16 June 2007**

#### *Introductory remarks*

09:00 Morten Bergsmo, PRIO  
*The role of international legal instruments in civil war settlements*

#### **Session 3**

09:10 Marieke Wierda, Senior Associate, International Center for Transitional Justice:  
*The role international law and justice can play as incentives in peace processes*

10:00 Florence Hartmann, Journalist, former Spokesperson at the ICTY:  
*International politics and international criminal justice*

10:50 Break

11:00 Carsten Stahn, Associate Legal Adviser, ICC:  
*Transfers to the ICC and extradition*

11:50 Julieta Solano, Associate Trial Lawyer at the Prosecution Division, ICC:  
*On the use of the label of terrorist organization*

12:40 Discussion

13:00 Lunch

#### **Session 4**

14:00 Maria Paula Saffon, Researcher, DeJusticia:  
*Uses and abuses of the transitional justice discourse in Colombia*

14:50 Antanas Mockus, former Mayor of Bogotá:  
*Why forgiveness?*

15:40 Break

16:00 Roundtable on the Colombian Situation, moderated by Francisco Thoumi, Universidad del Rosario.

17:30 Closing remarks: Eduardo Pizarro, Chair, National Commission of Reparation and Reconciliation