

Kenneth Roth

Executive Director, Human Rights Watch

“Peace and Justice – Does Justice (Prosecution) Impair Peace?”

One frequently hears the opinion that pursuing legal justice in the course of peace negotiations to end a conflict will reduce the likelihood that peace will be attained. This rhetoric presumes that no war leader would come to the negotiating table already knowing that he himself would be subsequently prosecuted. Is it really the case, however, that peace and justice (prosecution) cannot be pursued and realized simultaneously? Analyzing conflicts in various regions over the past ten years has led me to the conclusions that the pursuit of justice in fact encourages the realization of peace and that there is a complementary relationship between peace and justice.

There have been numerous instances in the past in which leaders who have committed massacres or other serious crimes have been prosecuted. Milosevic in the former Yugoslavia, Pinochet in Chile, Kony (Lord's Resistance Army) in Uganda and Bashir in Sudan are among those prosecuted by domestic judicial authorities or by international judicial institutions. In none of these cases can it be shown that prosecution in a court of law hindered the resolution of the conflict. Indeed, prosecution brought atrocities to a halt in the former Yugoslavia, advanced the transition to a civilian government in Chile, and improved the situation in Darfur.

The prosecution of leaders who ordered atrocities in Bosnia and Liberia even gave impetus to peace negotiations because, fearing that they could be next in line for prosecution, the people surrounding these leaders adopted more moderate stances and one after the other turned against the leaders. Such minimization of the political power of leaders who have committed serious human rights violations can boost the momentum of peace efforts. These examples show that the pursuit of justice (prosecution) during a conflict does not necessarily make the chances for peace more remote.

There are many people who insist that leaders in conflicts who have committed atrocities should be granted clemency rather than prosecuted in order to entice them to the bargaining table so that a path to reconciliation can be sought. However, no approach to clemency that fails to inquire into past atrocities is a desirable option. If people who have committed serious human rights violations in the past are included in the new government after a peace agreement has been concluded, can this government in any way be called legitimate?

Many Afghan citizens regard the Karzai regime as a composite of the military factions that have caused them suffering for many years, and they question its legitimacy. The lack of trust in the new government has had no small impact on the sluggish pace of the country's recovery. Former Muslim residents have not been returning to Bosnia because the leaders during the conflict have not been investigated for crimes; indeed, they continue to occupy positions of power. Social reintegration can only proceed when the responsibility for past crimes is made clear.

Amnesty that overlooks past atrocities cannot help but generate further violence. If past violence is forgiven, then one can hardly be surprised at the emergence of new people willing to resort to violence. Indeed, reconciliation through pardon was tried in Sierra Leone, Angola, and the Democratic Republic of the Congo, but these conflicts only intensified. Believing that they need not pay for engaging in armed conflict, anti-government militants escalated their activities. Accordingly, a very high price must be paid, in both the short and the long term, for overlooking wartime responsibility.

We must halt the serious human rights violations being perpetrated by violence here and now. Previous instances show that amnesty is useless in restraining ongoing war crimes, and justice must be pursued to rectify the injustices caused by violence. In the same way that the presence of a justice system within a particular country deters crime, pursuing justice internationally can also bring serious violations of human rights to a halt.

Moves to clarify wartime responsibility in recent years have greatly changed people's attitudes toward peace. Since the 1980s the general public has come to demand peace with justice. A peace accord that overlooks wartime responsibilities can only hamper the reintegration of society and could ruin a hard-won peace. Peace with justice has been conclusively shown in many locales to last longer than peace without justice.

Finally, let me touch on the order in which realizing peace and pursuing justice (prosecution) are undertaken. Many think that peace should be achieved before prosecution, and I have no objection to this point. However, any large-scale massacres or other serious human rights violations that have been committed should unfailingly be prosecuted soon thereafter. Demonstrating that acts of violence will unquestionably be punished could help prevent the recurrence of conflicts.

As noted above, inquiring into the responsibility of leaders who have committed atrocities during wartime will not hinder the realization of peace. In fact, war criminals should be actively prosecuted for the sake of long-term stability in post-conflict societies. The pursuit of justice must be given further consideration as an important means of realizing peace.