

The Big Peace Picture: Justice and Human Rights in Humanitarian Aid Planning

By Sarah Garvey
IDHA 29 Nairobi

Justice and human rights have an important role to play in humanitarian aid planning. This paper explores questions that arise in determining what constitutes justice in a given context and in ascertaining how it should be integrated within the larger humanitarian scheme. The paper draws upon a number of sources but has a particular focus on Liberia, a country currently recovering from one of the most violent upheavals in Africa's history.

Conflict scenarios often require immediate needs-based assistance on a very basic level, but that is not all that is required for societal healing and recovery. A rights-based scheme consistent with "justice" and "human rights" also is necessary and must be included in the overall humanitarian aid planning process even if not immediately implemented. These are all constituent parts of the same process – that of nurturing the big peace picture.

Different Frameworks?

Justice and human rights, on one hand, and humanitarian assistance, on the other hand, at first glance seem to have different focuses and frameworks. The former are rights-based systems that value accountability, law and order, principles of fairness and equality, and the efficient functioning of civil society. Such rights apply at all times, in peace as well as in war.

Humanitarian assistance is a needs-based system, concerned above all with alleviating suffering caused by armed conflict in an immediate and effective way. Such assistance must be rendered in a neutral and impartial manner, but often is inherently contextual and nuanced. Humanitarian space must be construed according to what can be negotiated in a particular case at a particular time.

While principled, humanitarianism as a system is not necessarily predictable. As Dennis McNamara queries in his article “A Sense of Justice:” “How does the easy rhetoric of justice actually translate ‘on the ground’ or ‘in the field,’ where the environment is invariably chaotic and often rife with conflict?”

Accountability

In order for a society to heal from the kinds of atrocities witnessed during the past decades in Liberia, as in South Africa, Rwanda and the Balkans, the perpetrators of such atrocities (be they war crimes, ethnic cleansings and/or crimes against humanity) must be held accountable. In the absence of justice for victims, the fractured society cannot reconcile and rebuild. There must be a feeling that wrongs are being set right and, to the extent such wrongs involve breaches of human rights, as they did in Liberia and other places, people must have confidence the future will be different. No person, not even heads of state, should be immune lest a culture of impunity be created.

The best way to achieve such justice and reconciliation is a matter of debate. One model is the post-conflict criminal tribunal that focuses on individual accountability and punishment. This type of forum dates back to the Nuremberg Tribunals, in which Nazi officials were held accountable for war crimes. The model was subsequently used in the

Tokyo War Crimes Tribunal, the United Nations system ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda and the joint state/UN Special Court for Sierra Leone. In 1998, 120 states took the momentous step of creating the International Criminal Court located in The Hague, the first international criminal tribunal and what Amnesty International calls a “major breakthrough” in international justice.

Another model is the truth and reconciliation commission. This kind of forum has been established in more than 30 countries, including in South Africa in the wake of apartheid. The South African TRC gave victims the chance to testify about egregious human rights violations committed against them and violators the opportunity to disclose their unlawful conduct and request amnesty. It is the process of such “truth seeking,” and the forgiveness that may emerge, that encourages reconciliation under this construct. As David Owen writes in his article “Justice and Reconciliation: The Contribution of War Crimes Tribunals and Truth and Reconciliation Commissions:” “What the [TRC] established was collective responsibility, as distinct from the individual accountability that stems from the law courts.”

Owen in the above-referenced article takes a look at the relative effectiveness of the two models as seen through the lenses of the ICTY and the South African TRC. He observes that the tribunal model allows for justice vis-à-vis both victims and perpetrators but that such model lacks a significant deterrent effect (as evidenced by the occurrence of the Srebrenica massacre after the establishment of ICTY) and is costly. He also notes that any true reconciliation gained from atonement of perpetrators can fade over time and “is hard to achieve in less sophisticated communities where there is little awareness of the trial evidence in The Hague.”

Truth commissions appear better suited to circumstances where fighting has ceased, according to Owen, and where both (or all) sides of the conflict need to participate in reconstruction. Victor's justice may not translate to universal justice. While such forums can result in the forgiveness critical for true societal repair, such forgiveness may fade in absence of more binding individual accountability represented by, say, imprisonment.

Law and Civil Society

The role for justice and human rights does not stop with post-atrocity accountability and reconciliation, however achieved. A critical component of the larger process is the rebuilding of civil society in a way that ensures fair governance. The people of a society need to know the parameters of acceptable conduct and be assured that breaches will be handled fairly but certainly. A culture of impunity does not lead to stability. Human rights for all must be ensured so that individuals feel secure in the most basic ways.

This idea of proactive societal rehabilitation as part of, or at least in addition to, relief has gained momentum with the “new humanitarianism” movement, emphasized during the 2005 World Summit. The idea is premised on the concept of human security protection, which involves addressing root causes of conflicts and crises in an attempt to end cycles of suffering. Just as UN-Habitat uses relief opportunities to “build back better,” the International Center for Transitional Justice – whose mission in part is to “seek holistic solutions to promote accountability and create just and peaceful societies”

– can assist with the reconstruction of civil institutions in a way that makes those institutions less likely to topple in the future.

Henry Dunant’s third humanitarian principle, that of the “space for contract,” can thus be seen as a space in which overall peace can be negotiated and provided for as well as a space in which immediate conflict cessation can be achieved. In any event, whether or not “humanitarian assistance” is deemed to directly include such proactive efforts humanitarian actors can and should begin to lay the groundwork for this bigger peace picture as early as possible.

Liberia

All of these concepts are in play today in Liberia, a country that according to the International Federation of the Red Cross is one of the “poorest and least developed” in the world and which is struggling to recover from a crushingly violent period of civil war lasting from 1989 to 2003. The brutality resulted in at least 250,000 deaths as well as maimings, rapes and mass population displacements requiring extensive and continuing humanitarian attention.

Under the leadership of President Ellen Johnson-Sirleaf, and with the help of the international community, Liberians are grappling with how to best repair the damage, preserve the fragile peace and move on. In a 2005 briefing paper Human Rights Watch observed that the country is at a crossroads, transitioning from a “near-failed state that routinely violated the human rights of its citizens and was a source of regional instability to a democratic state governed by the rule of law.”

Liberia's Truth and Reconciliation Commission recently issued a report that cited a "lack of human rights culture" and found that the "root causes" of the conflict involved social, civil and political inequities. The Liberian TRC found perpetrators responsible for "egregious" violations of law, including international civil law, international human rights law and international humanitarian law. It determined that individual and community reparation, as well as prosecution, would be best suited to fight impunity and promote "justice and genuine reconciliation." After dialogues with the public, the TRC recommended that a hybrid UN/Liberia war crimes tribunal be convened to ensure full accountability of violators for heinous crimes.

In the meantime, consequential events are unfolding in The Netherlands and in Monrovia. Charles Taylor, the leader of one of the numerous factions involved in the bloodshed, is currently standing trial for war crimes in the Special Court for Sierra Leone in The Hague (for activities not directly related to Liberia). Back in Liberia, the ICTJ and other organizations are helping to institute rule of law projects. ICTJ has focused on police vetting while the American Bar Association along with the Carter Center just finished training twenty public defenders. The United Nations Mission in Liberia is working on promoting domestic legislation that incorporates human rights standards.

But systems change slowly and sometimes transitional situations benefit from transitional efforts. The United States Institute of Peace has just completed an investigation into Liberia's traditional legal system. According to USIP's website: "While long-term reform efforts are needed to strengthen the capacity of formal legal institutions, these efforts have a limited role in the resolution of the most immediate

problems in the aftermath of conflict....Justice sector reform must take into account a realistic assessment of current practices of justice at the local level.”

Geoff Loane, Lois Austin and Pat Gibbons put forth similar sentiments in their article “Protecting Societies in Transition” in *The Pulse of Humanitarian Assistance*. The authors explain that “external actors cannot force change” and note: “Most analysts would regard social engineering as highly problematic and question the existence of a normative framework for democratization and a neoliberal agenda.”

Conclusions

Time and observation will reveal whether the tribunal or truth-seeking model works better for the creation of lasting justice, reconciliation and peace in a post-conflict scenario. But it seems clear that for societies to recover from atrocities there must be some kind of reckoning. Countries also must reconstitute in ways that are stronger in fundamental aspects such as human rights protection in order to be less susceptible to violent conflicts stemming from inequality and instability. Hopefully Liberia can benefit from the painful and admittedly imperfect experiences gained in other contexts in its quest for a brighter future.