Amnesty in the Peace Process:

Justice, Peacemaking, and the Challenges of Achieving Both

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When a nation aims to alleviate or terminate violent conflict, warring sides will come together to draft a peace agreement which addresses incompatibilities of the past and dictates how to move forward. The warring parties must decide on provisions that will grant the people resolve on incompatibilities and mechanisms for long term healing. That is what the hopes are, at least. One of the most contended provisions included in modern peace agreements is the idea of amnesty. On one hand, it is viewed as a plea to move forward, but others call it a betrayal of sorts to the victims of war crimes: their perpetrators are set free in the interests of peace, and in many cases, given power within transitional governments or permitted to run in elections. In the following sections, I will examine several agreements signed at the turn of the 21st century to explore the amnesty provision and frictions that arise out of simultaneous objectives of justice and peacemaking.

The United Nations High Commissioner for Human Rights defines amnesty as legal measures that have the effect of "prospectively barring criminal prosecution and, in some cases, civil actions against certain individuals or categories of individuals in respect of specified criminal conduct committed before the amnesty's adoption" (UNHCHR). In a post-conflict setting, amnesty provisions can take on numerous degrees of power. Partial or conditional amnesties apply to select offenses perpetrated during the warring period and may require the beneficiary to fulfill certain conditions. Blanket amnesties exempt a broad category of crimes during war without conditions for impunity. De facto amnesty is an implicit amnesty resulting from other legislative decisions, defectiveness of courts, etc. It is important to distinguish between these types of amnesties in order to understand their effects on the justice for the victims and peace process going forward.

There are several factors as to why amnesty gets included as a provision in the first place. If the actors themselves at the negotiation table played a large role in the criminal activity carried out during the warring period, they may be more likely to push for broader amnesty provisions. As human rights activist Priscilla Hayner describes, "The lack of strong justice components is sometimes due to the strength of the perpetrators at the negotiating table, and their insistence on impunity" (Hayner 331). The leverage of the negotiating parties has also been observed as a significant indicator of the extent of inclusion of amnesty or human rights provisions. In Sierra Leone, the timely proximity of negotiations to attacks by rebel forces caused the government to negotiate from a rather obviously inferior position. Thus, blanket amnesty was granted in the 1999 treaty, in one of the most controversial decisions in modern peacemaking. A final factor influencing the inclusion of amnesty provisions is type of crimes committed during the warring period; amnesty can be particularly problematic to reconcile if the crimes were particularly horrific or ethnically motivated. Incompatibilities of ethnic or religious origin—those deeply entrenched in the history of the warring state—are not likely to disappear within one generation of a peace settlement. In Rwanda, ethnic tensions between the Hutu and Tutsi remained after the genocide in 1994, despite amnesty contingent on confession.

Amnesty provisions are controversial because they inherently imply a lack of justice for victims to some degree. For crimes related to war politics, such as treason and sedition, amnesty is widely accepted as an appropriate conditional response. But for other crimes—those especially gruesome and evidently unnecessary for the advancement of war—such as mass rape, kidnapping, and arson, amnesty may seem like a concession of justice or accountability for the sake of moving forward. Luc Huyse describes accountability as "one of the instrumental

objectives of most transitional justice policies," and claims that "systematic prosecutions are the most direct way to establish guilt and punishment" (Huyse 186). For amnesty provisions to work in the interests of peace as designed, the negotiators must at least establish a cohesive idea of the difference between strategically fighting a war and blatant crimes against humanity; however, this can be particularly challenging as victims are not usually fully represented at the table. And with the absence of this reconciliation, post-conflict states may encounter the dangers of group resentment that could spoil lasting peace. Of the case in Northern Uganda, Huyse articulates this amnesty debate: "Full-scale trials may endanger a fragile peace or even make it impossible to put an end to a violent conflict… However, a blanket amnesty or an imposed silence is not an acceptable policy choice. It lacks legitimacy if it involves explicit impunity. Nor will a culture of denial lead to the repairing of broken relationships or heal the victims." (Huyse 186). This "culture of denial" has also been observed in México, as a result of de-facto amnesty policies during settlement with the PRI and transition into democracy in the early 2000s. The failure to establish timely truth commissions as promised slipped the government into a "culture of impunity" that has "continued to erode and trivialize the culture of human right and justice, which, in México, have become abused rhetorical concepts gradually emptied of political meaning" (Quezada 56).

As much as it is imperative to establish measures that enable justice for the victims of war crimes, there must also exist mechanisms in the peace agreement that afford combatants inclusion in the post-war society; there must be incentive to choose peace and cooperation in the long term. And despite its risky political implications, amnesties are recognized as measures that can fulfill this necessity towards some sort of resolve, at least in the short term. Amnesty

provisions may be approved with the intention of opening pathways to transitional power-sharing, which allows rebel leaders and ex-combatants to take up positions of power or participate in elections. This ensures any power distributions that might have sparked conflict predating the agreement are resolved; this offers some semblance that things will be different. But arrangements on paper sometimes have difficulty keeping; the incompatibilities that divided groups in the first place may still exist. It is difficult to discuss these frictions between amnesty provisions and peacemaking without bringing up Sierra Leone's Lomé Peace Accord. Following blanket amnesty in 1999, a transitional government was set up that granted 4 ministerial positions to rebels in the Revolutionary United Front (RUF), as well as appointed previous RUF leader Foday Sankoh—who had been on death row—Vice President status (Hayner 334). As a victim, how could you square this? Would a peace deal have even been possible without blanket amnesty? As it turns out, peace in Sierra Leone only really began with Sankoh's arrest one year later. A British diplomat would later reflect on the amnesty provision as "a very dirty deal but unfortunately the only one available" (Lewis 1). And while there "does appear to be a link between prosecutions and stable peace" (Hayner 335), it is important to observe the context in which amnesties are granted—namely, who holds a seat at the negotiation table, what their objectives are, and the nature of the crimes themselves.

It is this conflicting nature of the amnesty provision that has caused considerable attention amongst the international community and human rights groups. Following the Lomé Agreement, the United Nations has explicitly committed to "reject any endorsement of amnesty for genocide, war crimes, or crimes against humanity, including those relating to ethnic, gender and sexually based international crimes" and "ensure that no such amnesty previously granted is

a bar to prosecution before any United Nations-created or assisted court" (UNSC). And when the international community began putting pressure on Sierra Leone, the influence of foreign entities on provisional decisions and growing call for human rights norms became clear. Foreign governments had the capacity to challenge the amnesty and declare it to "not have any force outside of that country, leaving the beneficiaries of the amnesty at risk if they travel" (Hayner 330). Human rights-focused organizations like the UN and Human Rights Watch have encouraged and assisted the formation of truth and reconciliation commissions to collect information on crimes and suggest non-judicial means of moving forward. In Colombia's new constitution, it explicitly states that those FARC ex-combatants implicated of war crimes are prohibited to run for election, and explores alternative pathways of transitional justice.

Finally—do amnesty provisions hold a necessary or effective place in a peace process? It depends on the degrees of amnesty power granted in the provision and the context of the conflict itself; in the cases of Sierra Leone and México, blanket amnesty and de facto amnesty provisions led to considerable deterioration of justice and human rights standards, as well as public discontent. But in well-defined and well-intentioned provisions, amnesty has the power to liberate a nation from the binds of the burdens of war, and set the stage for a more inclusive post-war society.

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