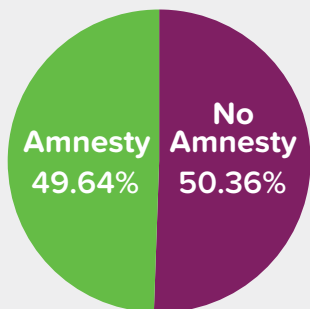


Amnesties

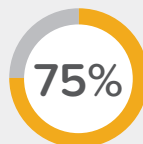
There is no internationally accepted definition of amnesty laws. A working definition:

Amnesties are legal measures which remove liability for criminal conviction, prior to conviction.

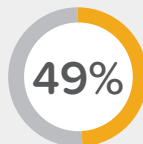
Between 1990-2016, just under half of peace processes include agreements that refer to amnesties



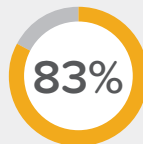
Amnesties are widely used in peace agreements and peace negotiations to enable armed actors to participate in a new political settlement. They are conducive to peace because they enable all groups to be included in the political settlement.



75 per cent of amnesties adopted since 1990 related to conflict



49 per cent of comprehensive peace agreements adopted in the same period provided for amnesty



83 per cent of peace agreement amnesty commitments were implemented

Amnesties, including for serious crimes, are included in peace agreements, despite international law and human rights principles which limit their use. However, often amnesties are provided alongside measures for accountability, rather than in opposition to them.

Legal obligations of the state:

- 1 the obligation to investigate what happened and who was responsible
- 2 the obligation to prosecute those responsible
- 3 the obligation to provide remedies for victims
- 4 the obligation to prevent the recurrence of the crimes and abuses
- 5 the obligation to ensure the effective protection of human rights for the future

208 peace agreements provide for various forms of amnesty.

55 agreements provide for amnesty alongside provision for judicial and/or non-judicial accountability mechanisms.



Members of non-state armed groups are most likely to benefit from conflict-related amnesties. This points to their use as a tool of inclusion, in a context where state actors are often less likely to have been imprisoned by the state during conflict.

This trend holds true for all phases from conflict to peace. In contrast, state actors benefited from 72 (25%) of the 289 conflict-related amnesties and of these only 14 (5%) applied exclusively to state actors.



State groups benefited from 72 out of 289 amnesties

25%



Non-state groups benefited from

75%

of amnesties in the dataset

Amnesties given to rebel groups to induce them to end conflict are most often conditional on matters such as truth-telling, or remaining committed to non-violence.

Case study

For example, in Timor-Leste, UNTAET Regulation 2001/10, which established of the Commission for Reception, Truth and Reconciliation created a Community Reconciliation Process (CRP), which could recommend amnesty for less serious offences provided that the amnesty applicant complied with the following provisions:

The Commission may undertake a Community Reconciliation Process only in cases where a person has made an admission of responsibility based on a full appreciation of the nature and consequences of such admission and has voluntarily requested to participate in a Community Reconciliation Process (Section 22.4, emphasis added).

Under Secion 23.1, the person requesting to participate in the Community Reconciliation Process is required to submit a written statement describing and admitting responsibility for their acts, explaining how the acts were connected to the political conflicts in Timor Leste, and renouncing ‘the use of violence to achieve political objectives’.

If the truth commission determines that the person is eligible to take part in a CRP, provided that the person participates fully and no credible evidence of their involvement in serious crimes comes to light, according to Section 27.7, after the hearing

the CRP Panel shall deliberate upon the act of reconciliation which it considers most appropriate for the Deponent and inform the Deponent of the outcome of their deliberations. The act of reconciliation may include:

- (a) community service,
- (b) reparation;
- (c) public apology; and/or
- (d) other act of contrition.

The participant in the process then has to agree in writing to undertake the act of reconciliation. Prosecution for the acts disclosed in the CRP will then be stayed, unless the person does not comply with the terms of the reconciliation agreement.

Amnesties can be limited by: limiting crimes covered, making them conditional (for example on supporting peace), and in their legal effects.

Recommendations

Rather than viewing amnesties as ‘good’ or ‘bad’, they should be assessed on their scope, their legality, their democratic legitimacy and their feasibility.

Amnesty should be based on a range of features such as which categories of persons and crimes are covered by an amnesty; the types of conditions attached to an amnesty; and an amnesty’s legal effects.



Broad illegitimate amnesties are most often enacted after the peace agreement has been signed and outside its framework: post-agreement vigilance should be exercised.

Amnesties enacted in this period are among those offering the broadest impunity. Similarly, the risk of broader impunity rises when amnesty benefits state actors.



Post-agreement vigilance

See publications at: www.politicalsettlements.org/publications-database

In particular Mallinder, L. (2018). *Amnesties and Inclusive Political Settlements* (PA-X Report, Transitional Justice Series). Edinburgh: Global Justice Academy, The University of Edinburgh.

www.politicalsettlements.org/wp-content/uploads/2018/12/2018_Mallinder_Amnesties-Report.pdf