Amnesties and Inclusive Political Settlements

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About the Author

Louise Mallinder is a Professor of Law at Queen's University Belfast. Professor Mallinder has conducted extensive research on amnesty laws, including fieldwork in Northern Ireland, Uganda, South Africa, Bosnia-Herzegovina, Uruguay, and Argentina and leading the expert group that produced The Belfast Guidelines on Amnesty and Accountability.

Her monograph, Amnesties, Human Rights, and Political Transitions was awarded the 2009 Hart SLSA Early Career Award and was jointly awarded the 2009 British Society of Criminology Book Prize. She is a member of the Institute for Integrated Transition's Law and Peace Practice Group and Chair of the Committee on the Administration of Justice, a human rights non-governmental organization in Northern Ireland.

Abstract

This report draws on the new Amnesties, Conflict, and Peace Agreement (ACPA) dataset, developed through the Political Settlement Research Programme, to explore when and how amnesties are used during conflict and peace. In particular, it uses the empirical data from its large-scale comparative of analysis of amnesty practice to examine how the context in which amnesties are adopted can shape decisions on the scope, conditionality, and legal effects of amnesties. The report argues that these aspects of amnesty design can have significant implications for the extent to which amnesty can contribute to inclusive political settlements or conversely to excluding some individuals or groups from the post-conflict political contract.

Executive Summary

This research report explores when and how amnesties are used during conflict and transitions towards peace. In particular, it examines how the context in which amnesties are adopted can shape decisions on whether to limit the material or personal scope of amnesties or to attach conditions to the grant of amnesty; or on their range of legal effects.

The report argues that these aspects of amnesty design can have significant implications for the extent to which amnesty can contribute to inclusive political settlements or conversely to excluding some individuals or groups from the post-conflict political contract. The report draws on the new Amnesties, Conflict, and Peace Agreement (ACPA) dataset to conduct a large-scale comparative analysis of trends in state practice on conflict and peace-related amnesties. The findings of this report contribute significantly to the fledgling literature on the role of amnesties in resolving armed conflicts by documenting and analysing the specific forms and functions of amnesties enacted during conflict and peace and exploring how they are tied to the negotiation and implementation of peace processes.

Findings

▶ Amnesties are widely used in response to conflict and peace negotiations. For example, over 75 per cent of amnesties adopted since 1990 related to conflict. In addition, over 49 per cent of comprehensive peace agreements adopted in the same period provided for amnesty, and 83 per cent of peace agreement amnesty commitments were implemented.

▶ There is a consensus in existing literature drawn from large-N comparative studies that amnesties introduced as part of negotiated peace settlements are likely to have a positive effect on the sustainability of peace. However, within this broad consensus, there are different views on the extent that context and amnesty design shape the ability of the amnesty to contribute to peace.

▶ Context matters: the phase of the state's journey from the conflict to peace and the nature of the governing regime affect the likelihood that an amnesty will be introduced. For example, fewer amnesties are granted in democratic states than mixed or authoritarian regimes. In addition, amnesties are used most often during ongoing armed conflicts, when no negotiations are in sight. Amnesties are used less often in pre-negotiation stages of a peace process before increasing in frequency as a peace process advances.

► There is considerable diversity in the design of amnesties during conflict and peace, which may affect an amnesty's legality, legitimacy and capacity to contribute to sustainable peace. This diversity reflects decisions on whether the amnesty should be limited or broad, conditional or unconditional, and generous or punitive in its legal effects. However, previous database research on amnesties has only made tentative steps towards exploring diversity in amnesty design. In particular, although the legal effects of an amnesty can shape the extent to which it is intended to foster greater inclusion, no previous study has systematically explored this aspect of amnesty design.

► 22 per cent of amnesties included in the dataset grant immunity for international crimes (i.e. genocide, war crimes, crimes against humanity and serious human rights violations). In contrast, 23 per cent of amnesties identified exclude international crimes. Taken together, less than half of the amnesties in the dataset relate to international crimes. Political offences are by far the most commonly amnestied category of crime. This suggests that although much of the literature on amnesties focuses on whether amnesties can cover international crimes, the issue is not relevant for almost half of the amnesties in the sample.

► The context in which an amnesty is introduced may affect whether it is limited to exclude international crimes. Amnesties for international crimes are included in higher proportions in pre-negotiation and post-agreement phases. In the pre-negotiation phase, states may grant such amnesties where they need incentives to persuade non-state actors to enter into negotiations. In contrast, in the post-agreement phase, they may reflect a backlash against the onset of criminal investigations and trials. In contrast, amnesties that exclude international crimes are less prevalent during ongoing conflict than in comprehensive peace agreements. In addition, the report found that free and partly free states are more likely to exclude international crimes than include them, whereas authoritarian states are more likely to grant amnesties for international crimes.

► **Members of non-state armed groups are most likely to benefit from conflict-related amnesties.** This trend holds true for all phases from conflict to peace. In contrast, state actors benefited from 72 of the 289 amnesties in the dataset and of these only 14 applied exclusively to state actors. State actors are included in a greater proportion of amnesties when a peace agreement has been reached and they are included in 43 per cent of amnesties in the post-agreement period. This perhaps reflects that during the conflict, state actors faced little prospect of criminal accountability; however, as the former regime is forced to share power with or even relinquish power to its opponents, state actors may begin to feel more exposed to criminal liability and may demand amnesty to protect themselves.

► **Conditional amnesties are most often used to ensure that rebels end their insurgency.** The most commonly occurring conditions are those that seek to ensure that combatants disarm, renounce violence, and refrain from recidivism. Less common are conditions that offer direct benefit to victims, such as, requirements that combatants disclose the truth about their actions, contribute to reparations, or participate in alternative justice mechanisms. This could be because the state's ability to attach conditions may reflect the balance of power in the negotiations. Conditions that impose greater costs on amnesty beneficiaries in terms of potential tarnishing of individual reputations and/or the legitimacy of their armed struggle are more likely to be resisted by the intended beneficiaries of the amnesty.

► **Only 37 per cent of the amnesties in the dataset were unconditional, but state actors are more likely to benefit from unconditional amnesties than non-state armed groups.** Unconditional amnesties are more likely as a peace process becomes established, with 56 per cent of amnesties that result from peace agreements and 61 per cent of post-conflict amnesties being unconditional. They are more likely to be introduced by partly free or unfree regimes than democracies. Unconditional amnesties are also more likely when the amnesty benefits state actors. Given that unconditional amnesties for combatants are likely to result in greater impunity, than amnesties that require beneficiaries to engage with the peace process and contribute to truth and reparations, this data suggests that risk of impunity increases where amnesties extend to state actors.

► **The legal effects of amnesties tend to become more generous to amnesty beneficiaries in the later stages of the negotiations and peace process.** In particular, prisoner releases and sentence reductions become more likely after the pre-negotiation phase. This incremental growth in generosity could be due to multiple factors including state unwillingness to appear weak while conflict is ongoing or a growth in trust between the parties as the negotiations develop. It is unsurprising that in the post-conflict period, stopping ongoing trials is the most common legal effect of an amnesty given that it is the onset or expansion of criminal trials at these points that most often triggers amnesties in these contexts. Amnesties that expunge criminal records are also most prevalent in the post-conflict period; this could reflect that during this period, the ways in which criminal records can create barriers to integration become more visible.

► **Amnesty design can shape the extent to which an amnesty can foster inclusion and exclusion.** This is a complex relationship and one amnesty process can simultaneously seek to include some groups within the political settlement, whilst excluding others. Key design choices with respect to inclusion relate to limitations in the crimes covered by the amnesty, conditionality, and legal effects.

Recommendations

Policymakers, international donors, and conflict mediators should:

1. Move away from assessing amnesties solely on their material scope and instead, base assessments of the legality, legitimacy and feasibility of amnesty based on the full range of amnesty design features reviewed in this report, 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.

2. Ensure, as far as possible, that where amnesties are granted to combatants that they are not standalone measures but are instead tied into broader peace processes.

3. Exercise vigilance in the post-conflict period as amnesties enacted in this period are among those offering the broadest impunity. Similarly, the risk of broader impunity rises when amnesty benefits state actors.

The report further recommends that researchers should:

1. Investigate further the impact of amnesties during conflict and peace. In doing so, they should ensure that measures of impact used are appropriate to the context and form of amnesties being assessed. As this report has made clear, amnesties introduced during conflict and peace are not homogenous and therefore using one measure of impact, such as conflict termination, for all forms of amnesty is not appropriate. In addition, assessments of the impact of amnesties should seek to explore how amnesty design choices support or undermine reductions in conflict intensity, conflict termination, or sustainable peace.

2. Explore some of the gaps in knowledge that this report has highlighted, for example:
   ▶ The role and impact of amnesties for less serious offences;
   ▶ The higher rates of amnesties for state actors in mixed or partly free regimes; and
   ▶ The linkages between amnesties for state actors and the lower rate of conditions that are attached.

Introduction

Amnesties are widely used in response to conflict and peace negotiations. For example, over 75 per cent of amnesties adopted since 1990 related to conflict (see Section 4 below for a discussion of these trends) and over 49 per cent of comprehensive peace agreements adopted in the same period provided for amnesty.[1] Their prevalence indicates that states and other actors view amnesties as useful in getting opposing factions to the table, brokering compromises in agreements, and encouraging combatants to lay down their weapons.

Despite the frequency with which amnesties are used, since the late 1990s, an accountability norm has developed within international law and policy that seeks to prohibit amnesties for international crimes and serious human rights violations. However, this should not be interpreted as a complete rejection of amnesties. For example, the UN continues to recognize the importance of amnesties for resolving civil wars, as shown in its 2012 Guidance for Effective Mediation, which states that although UN mediators:

> ...cannot endorse peace agreements that provide for amnesties for genocide, crimes against humanity, war crimes or gross violations of human rights, including sexual and gender-based violence; amnesties for other crimes and for political offences, such as treason or rebellion, *may be considered – and are often encouraged – in situations of non-international armed conflict. (UN Mediation Support Unit, 2012, p. 17, emphasis added).*

This passage speaks to the tensions that exist in the use of amnesties today. On the one hand, their legality is contested when they seek to cover international crimes and serious human rights violations. On the other hand, international actors such as the UN and many states around the world continue to enact and support at least certain forms of amnesties as part of conflict resolution. Furthermore, international human rights courts have indicated that they might be inclined to look favourably on amnesties emerging from negotiated agreements, even where they extend to serious violations, provided that the amnesty is part of a broader process to achieve peace and reconciliation and is conditional on some form of sanctions being applied to the beneficiaries.[2]

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[1] This figure has been obtained from the PA-X Peace Agreements Database, available at https://www.peaceagreements.org/ (accessed 19 June 2018). In contrast, only 15 per cent of comprehensive agreements had provisions relating to judicial accountability before national or international courts.

[2] See, for example, the Concurring Opinion of Judge García-Sayán, I/A Court H.R., in the case of the Massacres of El Mozote and nearby places v El Salvador. Merits, Reparations and Costs. Judgment of 25 October 2012. Series C No 252. See also Ould Dah v France App no 13113/03 (ECtHR, 17 March 2009); Margus v Croatia [GC] App no 4455/10 (ECtHR, 27 May 2014), para. 139.

As a result of these tensions and the legal ambiguity on amnesties, they have been described as a 'flash point' between conflict mediators and human rights advocates (Licklider, 2008, p. 382). Such critiques argue that these communities of scholars and practitioners have diverging positions on whether amnesties for international crimes are legally permissible and/or politically expedient. However, as this report demonstrates, less than half of the amnesties used during conflict and peace relate to international crimes.

Conflict-related amnesties that are unrelated to international crimes are less likely to conflict with states' international legal obligations, and as such, are less likely to be a 'flash point' between mediation and human rights communities. As much of the existing academic and policy literature on amnesty asks when amnesties are illegal, the low prevalence of amnesties for international crimes points to the value in now identifying points of convergence on the forms of amnesties that are legally permissible and likely to have a positive impact on transitions from conflict. As Section 2 below explores, this issue is particularly timely given that recent research indicates that amnesties may be more successful in resolving armed conflict, where they are limited to exclude international crimes and serious human rights violations (Dancy, 2018).

Most existing academic writing amnesties focuses on whether amnesties breach states' international obligations to prosecute and punish. There has been limited academic literature on the role of amnesties in resolving armed conflicts. As a result, there are considerable gaps in existing knowledge. In particular, as Section 2 explores, existing database research on amnesties has only made tentative steps towards exploring diversity in amnesty design. The Amnesty, Conflict and Peace Agreement (ACPA) dataset [3] that provides the underpinning data for this report, significantly advances our understandings of when and how different forms of amnesty are used through a coding and analysing rich comparative data on amnesty design. The design of the dataset enables the data to be disaggregated so that, for example, the prevalence of particular types of amnesty conditions can be explored.

[3] The ACPA dataset is a subset of data from the Amnesty Law Database. The Amnesty Law Database, created by Mallinder, currently contains detailed profiles of 651 amnesties enacted between 1945 and 2016. For more information on this database, see Section 3 and Mallinder (2008).

It also contains information on aspects of amnesty design that have not previously been subjected to academic scrutiny such as their range of potential legal effects and the mechanisms for implementing amnesties. In addition, the data captured paints a richer picture of how amnesties are used in response to conflict, as it is not limited to solely gathering data on amnesties for non-state armed groups. Finally, as the data extends up to 2016, it provides a much more up-to-date analysis than previous studies.

Through reviewing the findings of the ACPA dataset, this report reveals that considerable diversity exists in the design of amnesties during conflict and transitions towards peace, which it is inferred, may affect an amnesty's legitimacy and capacity to contribute to sustainable peace, as well as its legality. The descriptive data provided in this report is useful for casting light on the range of design choices that may be available to those involved in mediating negotiations on amnesty or drafting amnesty legislation. Furthermore, this data can provide an empirical grounding for future research to conduct more finely grained analyses of the impact of different types of amnesty at different stages from conflict to peace.

The report begins in Section 2 by reviewing and summarising the findings of existing cross-national studies on the use and effects of amnesties during conflict and peace. Section 3 presents the dataset underpinning this report and explains how it differs in conceptualization, scope and forms of data collection from existing research. This dataset is used in Section 4 to present general trends on when and where amnesties are used in response to conflict, before Section 5 provides an overview of findings relating to specific aspects of amnesty design. Section 6 uses these findings, together with case study examples, to explore the complex relationship between amnesties and inclusive political settlements. Section 7 concludes by summarising the main findings and recommendations.

Part I:
What do existing cross-national studies tell us about the use and effects of amnesties during conflict and peace?

Although states undergoing or moving away from conflict have, for centuries, routinely used amnesties, it is only in the last decade that a small body of scholarship has emerged to systematically investigate, using large-N cross-national studies, why states introduce amnesties and to assess whether they can help conflicted states move towards sustainable peace. These studies consistently show that amnesties are widely used as responses to armed conflict. In addition, they point to numerous issues that require further investigation such as how the timing of amnesty, the balance of power, and the prevalent system of government, can shape the use and forms of amnesty. The studies further make some observations on how aspects of amnesty design can shape their impact. However, for the most part, research has only made tentative steps towards unpacking these issues. The later sections of this report build on this existing literature by providing a more finely grained analysis of the different forms that amnesty can take at different temporal stages and exploring the implications that this can have for the achievement of inclusive peace. The remainder of this section briefly summarizes key themes and findings from the literature with respect to amnesty design, timing and context, and the impacts of amnesty on peace.

Amnesty design

How datasets approach differences in amnesty design can significantly shape cases they include in the sample, their approach to coding amnesty data, and consequently, the findings they produce. In existing research, the issue of amnesty design arises predominantly, but often rather superficially, in how the concept of amnesty is understood for selecting cases for inclusion in the dataset. Considerable variation exists in how existing studies do this. These differences arise in part because there is no internationally accepted definition of amnesty laws and the practice of states on amnesties varies considerably (Mallinder, 2012, p.75). As a result, some studies conflate amnesties (i.e. measures granted pre-conviction) with pardons and sentence releases (i.e. measures granted post-conviction) (e.g. Reiter, 2014). Other studies base their analysis solely on peace agreement amnesty commitments regardless of whether these commitments were honoured (Melander, 2009), and others include amnesty offers in their sample regardless of whether the offer was ever implemented (Dancy, 2018). One study fails to offer any definition (Lie, Binningsbø and Gates, 2007).

There are also considerable differences in how existing studies set criteria for including amnesties within the datasets based on specific elements of amnesty design. Often these criteria relate to the research questions the dataset is intended to answer. For example, in her analysis of the extent to which amnesties offer an incentive for rebels to disarm, Daniels (2016) only includes amnesties that extend to rebel leaders. Dancy's (2018, p. 390) sample is similarly limited as he develops a bargaining theory of conflict and peace and as such he only includes amnesties if they protected members of rebel groups.[4] In contrast, Loyle and Binningsbø's (2016, p. 448) dataset captures data on amnesties for '(alleged) violators of human rights or domestic laws', with no inclusion criteria relating to the affiliation of the amnesty beneficiaries; although, it should be noted that this dataset also contains a variable to disaggregate whether the amnesty benefitted state and/or non-state actors. These differences in conceptualization and operationalization, among others, mean that the existing large-N studies on amnesties are working from very different samples.

There are also differences in how far existing datasets are structured to capture and analyse disaggregated information on specific aspects of amnesty design. These differences can affect the extent to which existing datasets can produce findings on how particular design features result from specific contexts or can contribute to particular outcomes. Several studies treat amnesties or peace agreement amnesty commitments as homogeneous by coding simply for the presence or absence of amnesty, without taking into account the diverse forms that amnesties can take. Other studies disaggregate their data but do so merely by coding amnesties into broad categories. For example, rather than examining the different conditions that can be attached to amnesties, some existing studies code an amnesty as simply conditional or unconditional (see e.g. Loyle and Binningsbø, 2016; Daniels, 2016; Binningsbø, Loyle, Gates and Elster, 2012).

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[4] However, the author later observes that 'of the 297 conflict amnesties since 1946, only seventy-seven (26%) [cover serious violations]. Far more amnesties release political prisoners of conscience, forgive rebels for crimes against the state, or aim to repatriate displaced individuals' (p. 394). As not all political prisoners or displaced members would be members of rebel groups, it seems his sample may be broader than initially defined.

Even relatively light touch disaggregation of data to reflect differences in amnesty design produces interesting findings. For example, the dataset used by Binningsbø, Loyle, Gates and Elster found that 'most amnesties are granted unconditionally, particularly general amnesties granted as parts of peace agreements' (2012, p. 735). They further found that 'post-conflict amnesties are frequently granted conditional on rebels giving up the armed fight' (2012, p. 735). As section 5 explores, ACPA data does not agree with the specific observation made by Binningsbø, Loyle, Gates and Elster; however, it does agree that the timing of an amnesty can shape the extent to which conditions are attached.

Other scholars have found that amnesty design may also matter for the impact of an amnesty. In particular, Dancy significantly advances the literature by disaggregating amnesty data to explore how the material scope of an amnesty, together with contextual factors, can affect the impact of amnesties. He assesses impact based on (1) whether a conflict terminated within two years of the amnesty being granted (relying on data sets produced by the Uppsala Conflict to identify when a conflict terminates as a result of political negotiations) and (2) whether a conflict reoccurred following its termination. In his research, Dancy distinguished amnesties that offered immunity for atrocity crimes and serious human rights violations from other conflict-related amnesties (2018, p. 394).[4] He found that 'Amnesties' post-termination pacifying effects are strong when they accompany a formal peace agreement, but absent in instances where the offer exculpates combatants for atrocity crimes and other serious violations of human rights' (Dancy, 2018, p. 388). This finding indicates how more finely grained analysis of differences in amnesty design can help us to understand better the impact of amnesties.

[5] In Dancy's study, 'An amnesty is then coded as having immunities for serious violations if (1) it explicitly provided immunity for any of the acts listed here; (2) the amnesty provided a blanket immunity for all crimes committed during conflict; (3) the amnesty did not contain an exception for acts considered to be in violation of international law; or (4) the amnesty was worded in a legally ambivalent way that allowed groups to escape criminal prosecution for serious violations' (2018, p. 394).

Notwithstanding these interesting findings, the literature to date has only made tentative efforts to understand the diversity of options in amnesty design, to explore how amnesty design is used differently at different points in the journey from conflict to peace, and to measure the extent to which particular design features can shape the impact of amnesty. As a result, several notable aspects of amnesty design, such as the range of possible of legal effects, have not previously been subject to academic scrutiny. The dataset that forms the basis of the analysis in the later sections of report is markedly different in that provides a much more detailed exploration of multiple aspects of amnesty design including the crimes and beneficiaries covered by the amnesty, the conditions that are attached, and the amnesty's legal effects.

Timing, regime type, and balance of power

Amnesties are used during ongoing armed conflicts, as part of peace negotiations and agreements, and in post-conflict periods. At each of these temporal points, the amnesties may be used for differing objectives and consequently may be designed in different ways. Existing datasets have taken different approaches to the question of temporality. Some studies look only at amnesties enacted during ongoing armed conflicts, others only include post-conflict amnesties, and others analyse data on amnesties enacted during and after armed conflict. For each temporal stage, existing research has sought to use contextual factors such as the level of democratization or the balance of power to explain approaches to amnesty.

Within respect to the level of democratization, in a study on 'during conflict justice', which included amnesties, Loyle and Binningsbø observed that

> Regardless of how a country is ruled, all types of governments turn to pardoning crimes at some point during an internal armed conflict. Together with purges, however, amnesties are initiated more often in mixed regimes than in democracies. (Loyle and Binningsbø, 2016, p. 453).

The system of government was also emphasized by Daniels, who found that democracies are less likely than authoritarian societies to offer unconditional/unlimited amnesties, which the author attributes to the reputational costs relating to such amnesties (2016, p. 45). As Section 5 explores, the ACPA dataset supports Daniels' finding

On the balance of power in ongoing conflict, Loyle and Binningsbø found that 'where the balance of power favors the rebels, governments are more likely to use conciliatory strategies, such as amnesties, potentially in an attempt to signal a willingness to negotiate' (2016, p. 458). Daniels went further in arguing that the balance of power may shape not just the decision to grant amnesty, but also the form that it takes: '[s]omewhat less strong rebels still have the leverage to get generous amnesties, but weaker groups receive strict amnesties' (2016, p. 45).

Similar themes are evident in research findings relating to post-conflict amnesties. For example, Lie, Binningsbø and Gates found that 'in those cases where conflicts end with victory, … amnesty and exile are not offered as a policy options in the majority of cases.' (2007, p. 9). Binningsbø, Loyle, Gates and Elster took a different approach by observing that although amnesties are more common after bargained solutions to armed conflicts, 'High levels of amnesty after victories could be the result of the new leadership wanting to maintain the economic and political support of the old opposition' (2012, p. 738). These authors furthered noted that 'Civil wars … lead to more amnesties than less severe conflicts. These patterns seem to indicate that those in power after civil wars often forgo accountability processes to secure conflict termination' (Binningsbø, Loyle, Gates and Elster, 2012, p. 737).

The ACPA dataset explores timing and regime type issues by disaggregating the amnesties in the sample based on the timing of the introduction of the amnesty with respect to the conflict and peace process and by the type of regime that introduces the amnesty. Almost all of the cases in the sample relate to non-international armed conflicts.[6] The dataset does not currently categorise the amnesty processes based on attributes of the conflict, such as their intensity, the level of internationalization of the fighting, or whether the conflict had other cross-border dimensions, or on the balance of power during the negotiations.

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[6] Although, exceptions to this are amnesties resulting from the wars in the Balkans in the 1990s that at different points were international armed conflicts and non-international armed conflicts and contexts like South Africa where the amnesty covered the actions of members of the South African Defence Force within South Africa as well as their actions during conflicts in the wider southern Africa region.

Impact of amnesty on peace

Within the transitional justice field, there is an emerging literature on measuring the impact of transitional justice processes. The literature includes studies that explored the impact of amnesties on democratic consolidation and the promotion of human rights (see e.g. Olson, Payne and Reiter, 2010). However, such studies were not focused exclusively on amnesties related to conflict and peace – they instead included amnesties enacted as part of transitions from dictatorship. Where academic writings and policy papers have sought to measure the impact of amnesties introduced in response to armed conflict, they have done so only with respect to their impact on peace. To measure the impact on peace, existing studies used different measures, including shifts in the intensity of violence, whether an armed conflict ended, and for how long peace endured following the amnesty.

Overall, most studies found that amnesties introduced as part of negotiated peace settlements are likely to have a positive effect on peace. However, some scholars delved deeper to argue that the positive effects of peace agreement amnesties may depend on the nature of the political regime or whether the amnesty extends to atrocity crimes. There were contrasting results relating to the impact of amnesties during ongoing conflict, but this may be due to what measures were used. For example, studies that sought to measure whether an amnesty could lead to a reduction in violence during ongoing conflict produced more positive results than studies that sought to measure whether amnesties during conflict could lead to the signing of a peace agreement or enduring peace. Given that not all amnesties during conflict are explicitly intended to lead to peace negotiations, the former seems like a more appropriate measure. Differences in the results may also arise depending on the sample population because, as noted above, some datasets include amnesty offers that may never have been implemented. The remainder of this section summarizes the findings from this literature.

An early and somewhat outlier study produced by Lie, Binningsbø and Gates for the World Bank found that '[a]mnesty tends to be de-stabilizing and generally associated with shorter peace duration' (2007, abstract). In a later passage, they stated, 'Amnesty … does in most models significantly increase the risk of peace failure' (2007, p. 17). However, the authors emphasized that their findings were not very robust and were to be viewed only as preliminary (2007, p. 3).

A couple of years later, Melander published a working paper that examined the statistical relationship between amnesty provisions in peace agreements and the likelihood that a peace agreement will last at least two years. Overall, Melander's findings contrasted with Lie, Binningsbø and Gates' as he argued that 'the inclusion of amnesty provisions in peace agreements significantly reduces the risk that a peace agreement will fail in the sense that there is a return to fighting within the first two years' (2009, p. 4). However, he added a caveat that this only applied if 'the political institutions are authoritarian' (Melander, 2009, p. 15). He argued that in contrast

> In democracies, and in regimes in flux, amnesty provisions have no pacifying effect. Instead, peace agreements with amnesty provisions are less likely to last over the crucial two year period if the institutional setting is democratic or in flux than if the setting is an authoritarian regime (Melander, 2009, p. 4).

However, the terms 'authoritarian regime', 'democracy,' and 'regime in flux' are not operationalized in his paper, nor is the source his coding of regime type specified. As a result, it is difficult to gauge the reliability of these findings.

In a 2014 article, Reiter took a different approach to measuring impact. He relied on a large-N dataset to identify amnesties enacted between 1970 and 2008 during internal armed conflict, as part of peace processes or post-conflict (2014, p. 141). Within each temporal category, Reiter relied on secondary sources to distinguish between amnesties that were introduced for different purposes and to qualitatively assess their impact. In his conclusion, he noted that his findings were 'preliminary' (2014, p. 147). With respect to the impact of amnesties introduced during conflict, Reiter explored amnesties extended to encourage non-state actors to voluntarily surrender or demobilize. Moreover, he further observed that amnesties may be used during conflict to release prisoners or as self-amnesties for state agents; reflecting on the potential purposes of such amnesties but not reaching any findings about their impact (and so they are not discussed here). However, he acknowledged that 'it is difficult to assess the effectiveness of this type of amnesty; if only a few individuals surrender, the event is likely to go unreported' (2014, p. 142). However, he found that of the 28 amnesties of this type in his sample, only four led to sizeable surrenders by rebel fights. As a result, he concluded that amnesties 'granted during conflict, for the most part, have no significant impact on peace, although in some cases they lead to a minor reduction in violence and the reintegration of armed actors' (2014, p. 142).

With respect to amnesties extended as part of peace processes, Reiter judged the impact of an amnesty on whether it led to lasting peace.[7] Here, his findings are more positive than for the amnesties introduced during conflict, as he found that 'When extended as part of a peace process - granted during negotiations, as part of an actual peace agreement, or passed shortly after a comprehensive agreement is signed - amnesties correlate highly with lasting peace' (2014, p. 147). With respect to post-conflict amnesties, Reiter focused on 'amnesties categorised as efforts towards post-conflict reconciliation', which he interpreted as 'broad amnesties extended without conditions after the conflict is over' (Reiter, 2014, p. 146), and further included self-amnesties such as the 1978 Chilean amnesty in this category - even though it was granted 12 years before the end of the Pinochet regime - and noted that post-conflict amnesties may provide for prisoner releases; again, he did not make any observations on the impact of these amnesties. He noted that 'there is no case in the dataset in which a post-conflict reconciliation amnesty was extended and war restarted' (2014, p. 146). On this basis, his conclusion shared the same positive tone as his observations on peace process amnesties, stating that 'amnesty ... appears to have the potential to play an important role in maintaining peace and striving towards reconciliation in the post-conflict environment' (2014, p. 147). As a result, he finds that overall, there is a 'high correlation between amnesties and lasting peace' (2014, p. 147).

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[7] It is inferred that he relies on the Uppsala/PRIO Armed Conflict Dataset to identify amnesties related to conflict and to code conflict termination (Reiter, 2010, p. 140).

With respect to the impact of amnesties introduced during ongoing conflict, Daniels explores the reduction in violence in two ways: by changes in the intensity of the conflict[8] and by the likelihood of conflict termination[9] (2016, p. 58). Daniels presented a more positive picture than Reiter of the role that amnesties can play during conflict in reducing violence. She found that generous amnesties can reduce fighting when given directly to rebels to encourage them to surrender (Daniels, 2016, pp. 74-75). She further found such amnesties can have indirect effects on other rebel groups, which might in due course encourage them to surrender and accept amnesty (Daniels, 2016, p. 74-75). In addition, Daniels argued that her data indicates that amnesties during conflict increase the government's military advantage 'by allowing the government to be stronger in attacking other groups' (2016, p. 75). She further argued that amnesties granted during a negotiation process 'have a greater impact, and can even support conflict termination' (Daniels, 2016, p. 75).

More recently, Dancy (2018, p. 394) presented findings from a dataset of amnesties introduced during ongoing conflict, in peace negotiations, or post-conflict. The analysis, The which made use of the Uppsala/PRIO Armed Conflict Dataset to code conflict termination and recurrence, focused on determining the impact of amnesties on (1) conflict termination and (2) whether conflict resumed within two years following a peace agreement (Dancy, 2018, p. 388). Dancy found mixed results for amnesties depending on timing. When the amnesty was passed or offered during conflict in the absence of peace negotiations, it does 'not appear to increase the probability of conflict termination' (Dancy, 2018, p. 388) and 'rebels will most likely continue hostilities' (Dancy, 2018, p. 411). This finding should not be surprising given that many amnesties introduced during ongoing conflict are not intended to terminate conflict or even encourage entire rebel groups to disarm.

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[8] To measure shifts in the intensity of the conflict, Daniels relied on 'the UCDP coding of high (1,000+ deaths per year) and low (25-999 deaths per year) intensity' (2016, p. 58).

[9] The measure of conflict termination 'is taken from the UCDP dataset and is included if the ending is followed by one or more years of conflict inactivity' (Daniels, 2016, p. 59).

In contrast, Dancy observed that amnesties 'do decrease the risk of conflict recurrence when offered during negotiations at the end of fighting' (2018, p. 388). This finding echoes the conclusions reached by Reiter and Daniels. In exploring this point further, Dancy noted that

> amnesties are also more effective when they are embedded within larger processes of peace. If amnesties are disembodied from a larger framework, or haphazardly offered by governments in high-pressure moments, it might do little to produce trust on the other side. The offer simply will not be perceived as credible. However, when they are passed following lengthy and iterated processes of negotiation - often as part of larger postconflict deals to release political prisoners, forgive former soldiers of crimes against the state, or to help demobilize the opposition - they are sometimes successful (Dancy, 2018, p. 417).

However, as noted above, Dancy cautioned that amnesties post-termination pacifying effects are 'absent in instances where the offer exculpates combatants for atrocity crimes and other serious violations of human rights' (2018, p. 388).

Unlike the datasets reviewed in this section, the ACPA dataset does not seek to evaluate the impact of amnesties. However, through its greater disaggregation of data depending on context, beneficiaries, crimes, conditionality and legal effects, it can provide a basis for future work to explore in greater detail how amnesties can impact on reducing the intensity of conflict, the likelihood of a peace agreements being signed, and the sustainability of peace.

Part II:
Introducing the Amnesties, Conflict and Peace Agreements (ACPA) Dataset

The Amnesties, Conflict and Peace Agreements (ACPA) dataset contains data on amnesties that are introduced during ongoing conflict, as part of peace negotiations, or in post-conflict periods from 1990-2016 in all world regions. This dataset is a subset of a larger Amnesty Law Database that contains information on amnesties that have occurred since the Second World War and which relate to a wider range of political crises, such as civil unrest, military coups, or authoritarian government, as well as international and internal armed conflict. To be included in the Amnesty Law Database, and its ACPA subset, amnesties must meet some criteria:

► They must allow for the removal of criminal liability pre-conviction. Amnesties included the database may have additional legal effects with respect to persons who have already been convicted at the time of the law's enactment. However, unlike some of the existing research reviewed in Section 2, the Amnesty Law Database does not include any forms of leniency that only apply post-conviction (even where such measures are termed 'amnesty').

► There must be evidence that the amnesty was implemented, for example, through the enactment of legislation or executive decrees, through administrative processes, or through the creation of truth commissions with the power to grant or recommend amnesty. The database does not capture information on peace agreements that proclaim amnesty, but where the amnesty was not subsequently enacted; peace agreements with amnesty commitments where the peace agreement was not signed by all the parties or implemented; amnesty offers made by government figures that are not subsequently enacted or implemented; or peace agreement provisions that call upon the parties to refrain from prosecution, rather than calling on them to actively grant amnesty.

► They must be granted by official institutions, including regional governments; amnesties proclaimed by non-state actors are excluded.

Individual amnesty processes in the larger Amnesty Law Database are identified for inclusion in the ACPA sample, where they are related to conflict or peace agreements:

▶   For an amnesty to be deemed to be related to conflict, it must be introduced (a) while a conflict is ongoing, (b) as part of a negotiated settlement to end conflict, or (c) following the end of a conflict where the amnesty relates to crimes committed during the conflict. The existence of a conflict is identified using the Uppsala/PRIO Armed Conflict Dataset. [10]

▶   To determine whether an amnesty is related to a peace agreement, the ACPA sample relies predominantly on the Peace Agreement Access Tool (PA-X),[11] which enables users to retrieve excerpts from peace agreement texts. In a small number of instances where PA-X was not able to obtain the primary text of a peace agreement, the ACPA dataset relies on secondary sources such as academic writings or media reports to determine if an amnesty is linked to peace negotiation. This approach allows for the implementation of peace agreement amnesty commitments to be charted through national legislation and supporting regulations on a comparative scale that has not been undertaken in any previous research.

Where an amnesty process fits within the inclusion criteria, detailed qualitative information is compiled on the:

▶   Enactment process;
▶   Categories of beneficiaries;
▶   Crimes covered;
▶   Conditions attached to the amnesty;
▶   Amnesty's legal effects; and
▶   Implementation process.

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[10] Uppsala/PRIO Armed Conflict Dataset uses the following definition of armed conflict: 'An armed conflict is a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in one calendar year.' See UCDP, 'Definitions'. Available at: http://pcr.uu.se/research/ucdp/definitions/#Ceasefire_agreements [accessed 6 June 2018].

[11] PA-X Peace Agreements Database. Available at: https://www.peaceagreements.org/ [accessed 6 June 2018].

As far as possible, this qualitative data consists of excerpts from primary legal sources (amnesty legislation, legislative amendments, implementing regulations etc) coded in relation to specific variables within the database. On occasion, the primary legal texts are supplemented with analysis from secondary sources such as national and international judicial decisions and reports by international human rights organizations. Where amnesty legislation is not available, the descriptions of individual amnesty processes are developed using as wide a range of secondary sources as possible, including judicial decisions, truth commission reports, academic writings, reports by intergovernmental human rights organizations, reports by national and international human rights organizations, and media reports.

Part III:
General Trends in the ACPA Data

The ACPA dataset contains detailed qualitative data on 289 amnesties introduced between 1 January 1990 and 31 August 2016 (note however that several amnesties have since been introduced since August 2016) in response to armed conflict. The total number of amnesties listed in the Amnesty Law Database as being enacted or introduced from 1 January 1990 is 380. This indicates that about 76 per cent over amnesties introduced over this period relate to armed conflict and/or peace agreements. Conflicted-related amnesties are therefore far more common than amnesties enacted as part of transitions from authoritarianism or in response to other political crises which have not reached conflict thresholds.

The amnesties listed in the ACPA dataset were introduced in 75 countries plus two amnesties enacted jointly by two countries. This makes clear that for the vast majority of cases, countries enacted multiple amnesties during conflict and/or the peace process; among the highest rates of amnesty use are in Afghanistan and Sudan with 11 amnesties, Chad with 13 and Sri Lanka with 32. At times, one country repeatedly used amnesties for the same purpose with respect to the same groups of beneficiaries. However, in some instances, the same countries used amnesties in a number of different ways. This section will set out some of the broad trends emerging from the dataset regarding when and where amnesties are introduced.

Implementation of peace agreement amnesty commitments

The dataset contains information on 115 amnesties that were introduced to fulfil peace agreement amnesty commitments. In contrast, there were only 23 peace agreement amnesty commitments for which no evidence of implementation could be found. This suggests that 83 per cent of peace agreement amnesty commitments were implemented to some degree. Where peace agreement amnesty commitments were not implemented, this was generally due to either the violence reigniting or political contestation over legislative proposals to enact the amnesty.

Amnesty introduction over time

Figure 1 provides a timeline of when the amnesties in the ACPA dataset were introduced:

Figure 1: New conflict/peace agreement amnesties announced/enacted per year (1990-2015)
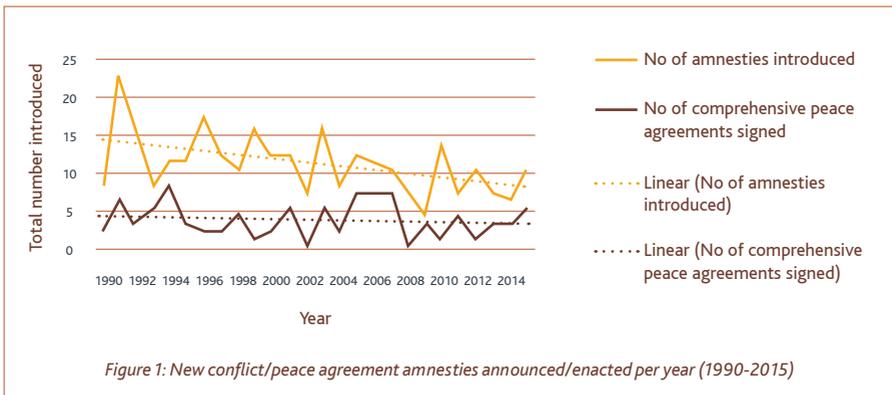
Figure 1 indicates that there has been a pronounced downward trend in the number of new conflicted-related amnesties introduced per year from 1990 to 2015. This drop has happened even though, according to the Uppsala Conflict Data Program, the number of conflicts in the world has increased between 2010 and 2016.[12] Although the amnesties in the ACPA dataset cover ongoing conflict, peace negotiations and post-conflict periods, to get a sense of whether trends in amnesty enactment are tied to trends in peace agreements more broadly, data taken from the PA-X Peace Agreement Database on number of comprehensive peace agreements signed each year have been added to Figure 1.[13] The orange trend line indicates that there has only be a slight decline in the number of comprehensive agreements signed annually. Cumulatively, this suggests that a downward trend in the introduction of amnesties does not correlate with reductions in the number of armed conflicts globally or a decline in peace agreements. For human rights advocates, this could be interpreted as a consequence of the development of a global accountability norm.

[12] Uppsala Conflict Data Program, 'Armed Conflict by Region, 1946-2016'. Available at: http://pcr.uu.se/research/ucdp/charts-graphs-and-maps [accessed 27 June 2018].

[13] PA-X Peace Agreements Database. Available at: https://www.peaceagreements.org/ [accessed 6 June 2018].

Figure 2 illustrates the number of amnesties enacted each year to implement peace agreement amnesty commitments:

Figure 2: Implementation of peace agreement amnesty commitments by year (1990-2016)
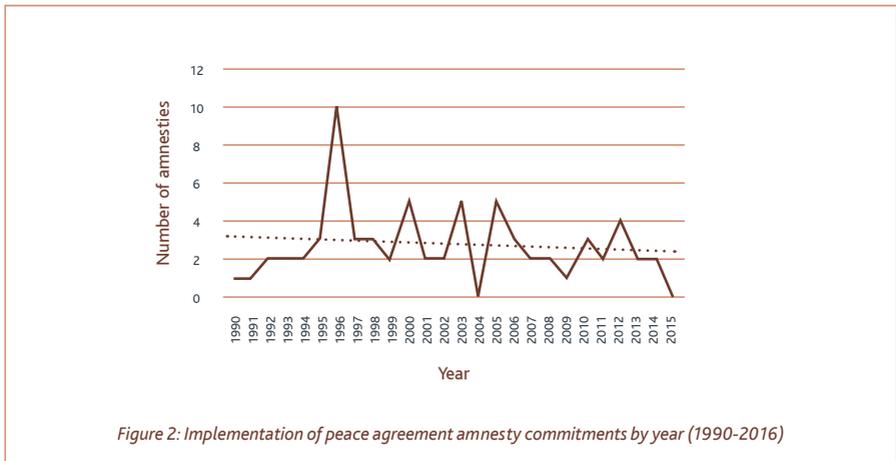
The dotted trend line in this chart makes clear that the number of amnesties introduced each year to implement peace agreement amnesty commitments has undergone only a slight decline over the last few decades. This decline is less pronounced than the trend illustrated in Figure 1 for all amnesties in the ACPA dataset. Furthermore, unsurprisingly, the trend in Figure 2 aligns more closely with trend in comprehensive peace agreements illustrated in Figure 1.

Amnesty introduction across world regions

Figure 3 illustrates regional trends in the introduction of amnesties for conflict and peace, the regions being coded using the list of geographic regions produced by the UN Statistical Department.

Africa
Americas
Asia
Europe
Oceania
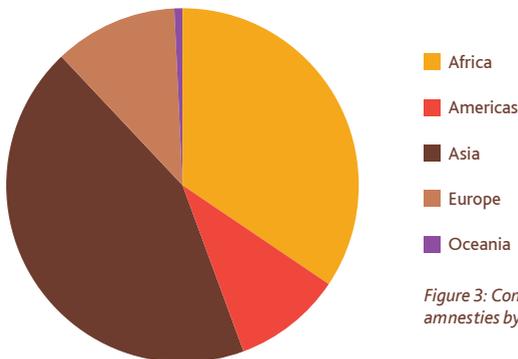
Figure 3: Conflict/peace agreement amnesties by region (1990-2016)

Figure 3 shows that amnesties were used in all world regions since 1990. It also demonstrates that considerably more amnesties were introduced by countries in Africa and Asia since 1990 than in other world regions. This corresponds to Uppsala/PRIO Armed Conflict Dataset, which shows that these two regions had higher rates of conflict than other regions over this period.[14] However, according to the Uppsala/PRIO Armed Conflict Dataset, the rates of conflict in these two regions were largely similar across this period, but as Figure 3 illustrates, Asia has had more amnesties (n=125) than Africa (n=100). This could in part be because Sri Lanka had 32 amnesties (including 28 amnesties for draft evaders and deserters), which is a much more frequent rate of amnesty repetition than any other country in the dataset.

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[14] Uppsala Conflict Data Program, 'Armed Conflict by Region, 1946-2016' Available at: http://pcr.uu.se/digitalAssets/667/c_667494-l_1-k_armed-conflict-by-region--1946-2016.pdf [accessed 6 June 2018].

Political regimes and amnesty introduction

As explored in Section 2, existing literature has found that although all types of government use amnesties, democracies are less likely to grant amnesty than 'mixed regimes' or dictatorial regimes (Loyle and Binningsbø, 2016; Daniels, 2016). Furthermore, Melander (2009) argued that amnesties are more likely to reduce the risk that a peace agreement will fail where the amnesty is introduced by an authoritarian regime. Figure 4 uses Freedom House's Freedom in the World data to illustrate the distribution of amnesties within the ACPA dataset across regime type. Freedom House codes regime type as free (generally considered to be both electoral and liberal democracies), partly free (countries that tend to carry out elections but do not necessarily ensure their citizens' enjoyment of civil liberties), and not free (countries with severely constrained civil liberties and flawed or non-existent electoral processes).[15]

■ Free

■ Not Free

■ Partly Free

Figure 4: Amnesty trends by regime type (1990-2016)
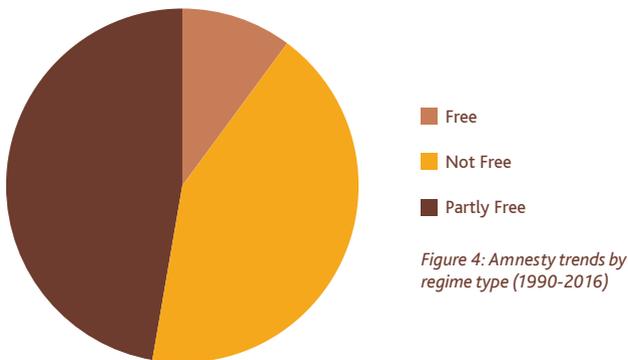
This figure supports the findings of the earlier studies by showing that fewer amnesties are granted in democratic states, even though Polity IV data indicates that throughout the period from 1990 to 2016, the number of democratic states has exceeded the number of mixed or authoritarian regimes (Polity Project, 2018).

[15] Freedom House, Freedom in the World: 2018 – Methodology. Available at https://freedomhouse.org/report/methodology-freedom-world-2018 [accessed 6 June 2018]. The author notes that Freedom House's methodological and ideological underpinnings have subject to extensive academic criticism. See eg Giannone, 2010; Bogaards, 2011; Steiner, 2014.

Timing of amnesties during conflict and peace

The ACPA dataset captures data on the use of amnesties at three different stages: during armed conflict; as part of political negotiations; and post-conflict. This longer-time frame is useful as it exposes the extent to which states repeatedly use amnesties during and post-conflict and it recognizes that peace processes are long-term processes and commitments made on amnesty and accountability in a peace agreement may be subject to renegotiation or amendment as the transition unfolds. For example, amnesties can be enacted in the post-conflict period, even where no amnesty was envisaged in an earlier peace agreement.

To facilitate this analysis of the relationship between amnesty design and context, the amnesties in the ACPA dataset were assigned to the following temporal phases:

CONTEXT	DESCRIPTION
Conflict in absence of negotiations	Amnesty is granted during ongoing conflict and available sources describing its introduction do not link it to ongoing negotiations or hopes that it would lead to political negotiations. Often these amnesties are linked instead to strengthening the state's military objectives.
Pre-negotiations	Government grants amnesty with the publicly stated objective of using the amnesty to pave the way for political negotiations.
Mid-negotiations	Amnesty is granted while political negotiations are taking place. This can include amnesties granted after an initial ceasefire or other preliminary agreements, but before the signing of a comprehensive agreement.

CONTEXT	DESCRIPTION
Comprehensive agreement	Amnesty results from commitments in comprehensive peace agreements.
Post-agreement	Amnesties enacted after a peace agreement, where the agreement made no explicit mention of amnesty. Post-agreement amnesties can be enacted soon after the peace agreement or several years later. This category also includes new amnesties introduced to extend the scope of earlier amnesties that were enacted as part of a comprehensive agreement.
UN Interim administration or occupying power	Amnesty is granted by a UN interim administration following the end of a conflict or an occupying power.

Table 1: Coding of amnesty by context

Figure 5 shows the proportion of amnesties enacted at each phase of conflict and peace between 1990 and 2016:

- ■ Conflict, no negotiations
- ■ Pre-negotiations
- ■ Mid-negotiations
- ■ Comprehensive agreement
- ■ Post-agreement
- ■ UN interim administration/ foreign occupation
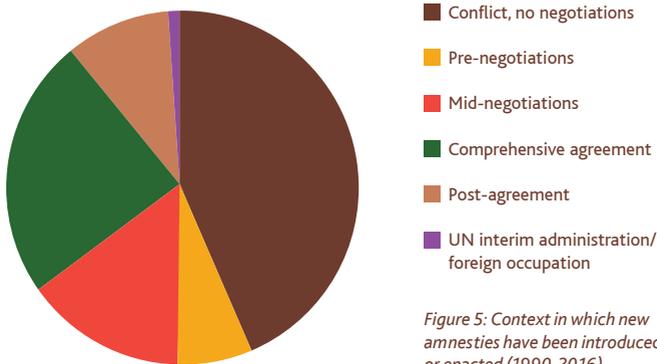
*Figure 5: Context in which new amnesties have been introduced or enacted (1990-2016)*

Figure 5 shows that 44 per cent of amnesties in the dataset were introduced during ongoing armed conflicts, when no negotiations were in sight. In such settings, it does not seem appropriate to measure the impact of the amnesty on whether a peace agreement was reached or endured for a designated period. As such, some of the existing research on amnesty impact reviewed above may be using inappropriate measures of impact for amnesties in these settings. Indicators that are more appropriate could be to consider the numbers of individual combatants who took part in the amnesty process or whether there was a reduction in the intensity of violence following the amnesty.

Figure 5 also indicates that once warring parties begin to move towards negotiations, the frequency with which amnesties are used increases. Twenty-four per cent of amnesties were granted in the comprehensive agreement phase compared to only seven per cent during pre-negotiations. A further ten per cent of amnesties were granted in the post-agreement phase. The following sections of this report explore the extent to which amnesty design differs across these various stages.

Part IV:
Amnesty Design during Conflict and Peace

This section illustrates patterns in amnesty design with respect to the crimes covered by the amnesty, amnesty beneficiaries, the conditions attached to amnesties, and the range of legal effects that can result from an amnesty. It demonstrates that there is considerable diversity among amnesties granted during conflict and peace and in particular, there are discernible differences in amnesties depending upon the context in which they are introduced. The range of approaches to amnesty design is a product of the different purposes for which amnesties are used and may have substantial implications on the impact of an amnesty on sustainable peace.

Which crimes are amnestied?

A central and often controversial feature of amnesty design is which crimes are covered by the amnesty. The ACPA dataset codes data on crimes into the categories listed in Table 2:

CATEGORY OF CRIME	DESCRIPTION
International crimes	This includes atrocity crimes (i.e. genocide, war crimes, crimes against humanity) as well as serious violations of human rights (i.e. summary, arbitrary and extrajudicial executions, torture, enforced disappearances, and sexual violence). Determining whether international crimes are covered by an amnesty can be complex given that states rarely explicitly state this in amnesty legislation. This dataset enters data relating on whether an amnesty includes or excludes international crimes only when: [cont'd]

CATEGORY OF CRIME	DESCRIPTION
International crimes	a) international crimes are explicitly mentioned in the text of the amnesty, which generally only occurs where those crimes are being excluded from its scope; b) when national or international case law indicates that the amnesty included or excluded these crimes; and/or c) when there is credible evidence (eg in reports by the UN or international human rights organizations) that (i) crimes under international law took place and (ii) that the group(s) benefitting from the amnesty were responsible for those crimes.
Political crimes	This includes crimes such as treason, sedition, subversive, rebellion, using false documents, forgery, propaganda, possessing illegal weapons, espionage, membership of banned political or religious organizations, desertion, and defamation. It may also include broader approaches that grant amnesty for political crimes and related common crimes or for all offences related to the conflict.
Economic crimes	This covers crimes such as theft of public resources by state officials; theft or extortion against civilians; smuggling; black market trading, trading with the enemy; crimes committed for personal enrichment; and drug trafficking.

CATEGORY OF CRIME	DESCRIPTION
Crimes against individuals	This covers a broad range of offences under domestic law that may not reach the threshold of international crimes including murder, sexual violence, assault, and kidnapping.
Sexual violence	This covers a range of violent offences of a sexual nature including rape, sexual violence, enforced prostitution, incest, and crimes known as 'crimes against honour'. It may include sexual violence against men and women.
Draft evasion and desertion	This covers offences related to draft evasion and desertion.

Table 2: Categories of crimes

With the exception of international crimes, for which as discussed in Table 2, separate analytical steps are taken to determine the material scope of amnesties, for all other categories of crimes, the coding of an amnesty's material scope is based on the primary legislation (or, where that is unavailable, secondary sources reporting its scope). Figure 6 illustrates the prevalence of each category of crime included or excluded from amnesties:

Figure 6: Material scope of amnesty laws (1990-2016)
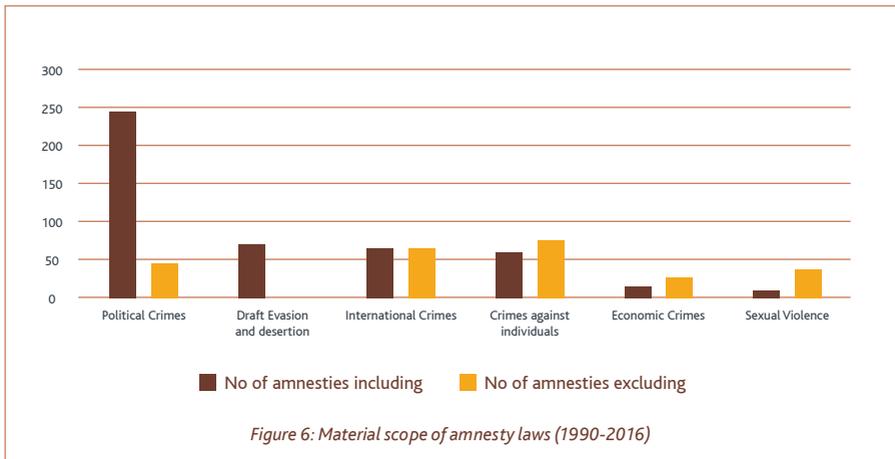
Figure 6 shows us, perhaps unsurprisingly, that political offences are by far the most commonly amnestied category of crime. It also shows that slightly more amnesties were granted for draft evasion and desertion than for international crimes. In addition, Figure 6 illustrates that roughly equal numbers of amnesties included and excluded international crimes. The dataset records international crimes as being included or excluded in 151 of the 289 amnesty processes in the sample. As the issue is not relevant for almost half of the amnesties in the sample, the focus of much of the literature on amnesties on whether amnesties can cover international crimes, seems somewhat misplaced.

If we look at the breakdown of crimes that are amnestied by context in Table 3, unsurprisingly, we can see that in all conflict and peace phases, there are high rates of amnesties for political offences. In addition, we can see that crimes related to draft evasion and desertion are included in a higher proportion of amnesties while armed conflicts are ongoing. States often introduce such amnesties where high rates of desertion undermine their military capacity. In addition, amnesties for international crimes are included in higher proportions in pre-negotiation and post-agreement phases. In the pre-negotiation phase, states may grant such amnesties where they need incentives to persuade non-state actors to enter into negotiations. In contrast, in the post-agreement phase, they may reflect a backlash against the onset of criminal investigations and trials.

	Conflict, no negotiations (n=126)	Pre-negotiation (n=19)	Mid-negotiations (n=43)	Comprehensive Agreement (n=70)	Post-Agreement (n=28)	UN / occupier (n=3)
Political crimes	90 (71%)	19 (100%)	37 (86%)	70 (100%)	26 (93%)	3 (100%)
Draft evasion and desertion	41 (33%)	2 (11%)	11 (26%)	10 (14%)	4 (14%)	0
International crimes	17 (13%)	11 (58%)	0	24 (34%)	13 (46%)	0
Crimes against individuals	22 (17%)	2 (11%)	8 (19%)	20 (29%)	10 (36%)	1 (33%)
Economic crimes	3 (2%)	1 (5%)	2 (5%)	5 (7%)	2 (7%)	0
Sexual violence	2 (2%)	0	1 (2%)	7 (10%)	0	0

*Table 3: Crimes covered by amnesties by context (1990-2016)*

Table 4 illustrates the categories of crimes that are excluded from amnesty in different contexts (Note that there are no amnesties in the dataset that exclude crimes relating to draft evasion and desertion. Therefore, that category is omitted from Table 4.)

	Conflict, no negotiations (n=126)	Pre-negotiation (n=19)	Mid-negotiations (n=43)	Comprehensive Agreement (n=70)	Post-Agreement (n=28)	UN / occupier (n=3)
Political crimes	18 (14%)	4 (21%)	7 (16%)	12 (17%)	5 (18%)	1 (33%)
International crimes	15 (12%)	6 (32%)	10 (23%)	23 (33%)	9 (32%)	3 (100%)
Crimes against individuals	24 (19%)	5 (26%)	13 (30%)	25 (36%)	6 (21%)	2 (67%)
Economic crimes	7 (6%)	3 (16%)	6 (14%)	6 (9%)	3 (11%)	0
Sexual violence	7 (6%)	4 (21%)	7 (16%)	8 (11%)	4 (14%)	1 (33%)

Table 4: Crimes excluded from amnesties by context (1990-2016)

We can see amnesties that exclude international crimes are less prevalent during ongoing conflict than in comprehensive peace agreements. In addition, comparing Tables 3 and 4 reveals that sexual violence and economic crimes are more likely to be excluded from amnesties in all contexts than included. In addition, crimes against individuals are excluded from amnesties at higher rates than they are included for all contexts, except the post-agreement phase.

As amnesties for international crimes are the most controversial part of amnesty design, the final part of this section focuses on trends in conflict- and peace-related amnesties covering these crimes. Figure 7 shows the numbers of amnesties that include and exclude these crimes for each year in the data sample.

Figure 7: Peace agreements, amnesties, and international crimes (1990-2015)
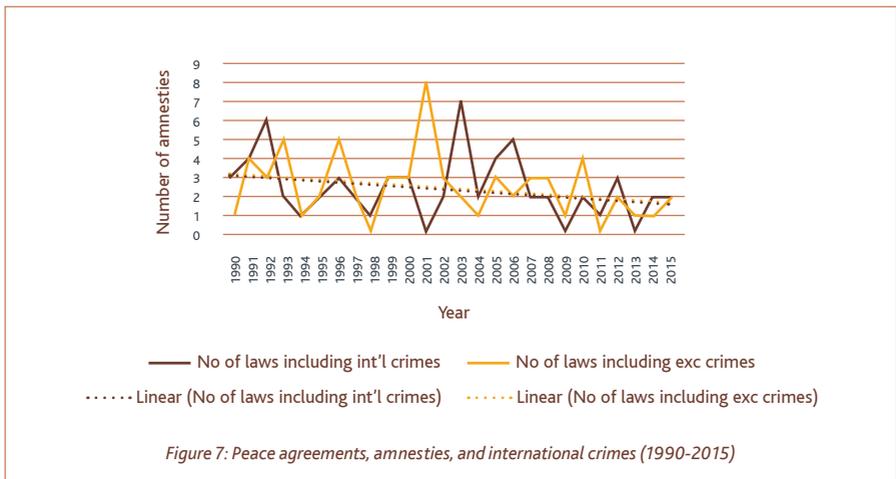
It is striking that the trend lines for amnesties that include and exclude international crimes (shown by the dotted lines) closely overlap. This shows that overall states are as likely to include these crimes in amnesties related to conflict and peace, as they are to exclude them. This finding is significant for debates regarding whether customary international law has evolved to prohibit amnesties for war crimes committed in non-international armed conflict, particularly since the vast majority of amnesties in this data sample relate to this type of conflict.

Finally, Figures 8 and 9 explore whether regime type is related to whether amnesties include or exclude international crimes:
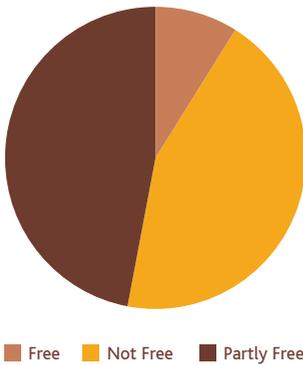
Free   Not Free   Partly Free

Figure 8: Amnesties for international crimes by regime type

Free   Not Free   Partly Free
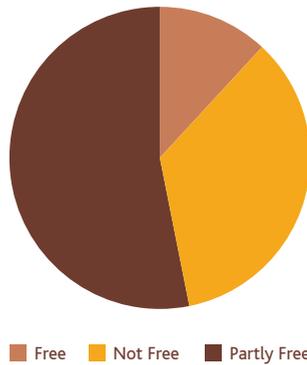
Figure 9: Amnesties that exclude international crimes by regime type

The comparison reveals that free and partly free states are more likely to exclude international crimes than include them, whereas not free states are more likely to grant amnesties for international crimes. In all instances, however, the differences in the numbers of amnesties involved are not large.

Who is granted amnesty?

In discussions on the role of amnesties in peace agreements, attention often focuses on whether the amnesty extends to combatants, both state actors and members of non-state armed groups. This attention is not misplaced as (former) combatants are often responsible for serious crimes and violations, may pose the most significant threat to peace, and are most likely to benefit from conflict- and peace-related amnesties.

However, amnesties during conflict and peace may also benefit other groups, who may or may not overlap with the combatant factions. These groups are summarized in Table 5:

| CATEGORY OF RECIPIENT	DESCRIPTION
Members of non-state armed groups	Amnesties that are described as applying to: a) members of specified non-state armed groups (eg where the organizations are identified by name, where the amnesty applies to organizations that have signed ceasefire agreements or peace agreements); b) rebel fighters, guerrillas or other similar terms; and c) crimes committed during the conflict, without specifying any form of personal affiliation etc. This can include where the amnesty applies to specific conflict-related offences including aggression, rebellion, violations of state security. For many amnesties, this category includes not just combatants but also sympathisers of and collaborators with armed groups.

CATEGORY OF RECIPIENT	DESCRIPTION
State actors	Amnesties for those who worked for or on behalf of the state in an official capacity when they committed their crimes, such as in the military, police, prison services, intelligence agencies, civil service, and politicians. This can include retired state personnel.
Draft evasion and desertion	This category draws on the data contained the amnesties granted for crimes related to draft evasion and desertion.
Nationals outside the borders	Amnesties that are granted for nationals who are living outside the territory, including a) Those who fled the violence or conscription b) Political dissidents c) Members of an insurgency group operating outside the borders
Security detainees	This can include amnesties for a) protestors and demonstrators; b) other political detainees (who have been held without trial); c) persons accused of security offences or crimes against the state where secondary sources do not clearly identify such persons as being part of non-state armed groups or where credible secondary sources argue that that anti-terrorism legislation etc is being used to detain large numbers of people who were not involved in violence (e.g. Syria and Iraq). [cont'd]

CATEGORY OF RECIPIENT	DESCRIPTION
Security detainees	Note that to be included in the sample for this study, these forms of amnesties are only included where they are enacted within a context where the violence exceeds 25 battle related deaths within one year as per the Uppsala Conflict Data Program definition of ponflict discussed in Section 3.
Coup participants	Amnesties for coup participants.
Foreign nationals	Amnesties that benefit foreign nationals who have committed crimes within the territory of the state granting the amnesty.

Table 5: Categories of amnesty recipients (1990-2016)

These distinctions are important as they have implications for the extent to which the amnesty can contribute to an inclusive peace process as well as for the legitimacy of the amnesty. For example, a report published by the UN High Commissioner for Refugees described the enactment of amnesties and other legal guarantees for refugees as a 'core component' (2004, s. 1.4) for voluntary repatriation and it states that part of its role should be to encourage the enactment of such amnesties prior to a peace agreement (2004, s. 4.18). Furthermore, the inclusion of nationals who are outside the borders of the enacting state as well as foreign nationals within its borders speaks to the cross-border dynamics of contemporary conflicts and is a subject of increasing international interest in the context of the global events to combat terrorism and political extremism.

Figure 10 shows the proportion of amnesties granted to these different categories of beneficiaries.

Figure 10: Amnesties by Recipient (1990-2016)
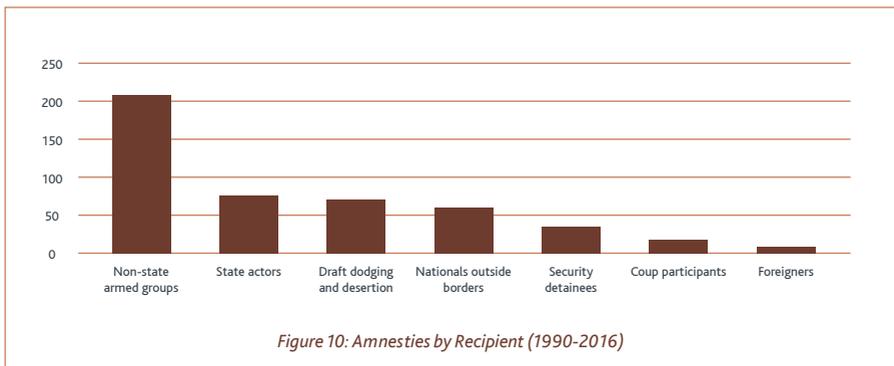
This chart shows, unsurprisingly, that members of non-state armed groups are the greatest beneficiaries of conflict-related amnesties. They benefited from 207 of the 289 amnesties included in this sample. In contrast, only 72 amnesties covered state actors and of these only 14 applied exclusively to state actors. Of the 14 amnesties exclusively for state actors, only five granted amnesty to international crimes. There were 58 amnesties for both state actors and members of non-state armed groups and of these 28 covered international crimes. Finally, 149 amnesties covered only members of non-state armed groups, of these 31 were granted for international crimes.

Table 6 shows the breakdown of this data by context:

	Conflict, no negotiations (n=126)	Pre-negotiation (n=19)	Mid-negotiations (n=43)	Comprehensive Agreement (n=70)	Post-Agreement (n=28)	UN / occupier (n=3)
Non-state armed groups	75 (56%)	17 (89%)	31 (72%)	58 (83%)	24 (86%)	2 (67%)
State agents	19 (15%)	6 (32%)	7 (16%)	27 (39%)	12 (43%)	1 (33%)
Draft evaders and deserters	41 (33%)	2 (11%)	11 (26%)	10 (14%)	4 (14%)	0
Nationals outside borders	26 (21%)	2 (11%)	9 (21%)	16 (23%)	5 (18%)	0
Security detainees	14 (11%)	2 (11%)	5 (12%)	4 (6%)	2 (7%)	1 (33%)
Participants in coups d'état	5 (4%)	0	2 (5%)	7 (10%)	1 (6%)	0
Foreigners	4 (3%)	1 (5%)	1 (2%)	2 (3%)	1 (6%)	0

Table 6: Amnesty recipients by context (1990-2016)

Table 6 indicates that at all stages between conflict and peace, non-state armed groups are included in a majority of amnesties introduced. Interestingly, this data shows that state actors are included in a greater proportion of amnesties when a peace agreement has been reached and they are included in 43 per cent of amnesties in the post-agreement period. This perhaps reflects that during the conflict, state actors faced little prospect of criminal accountability; however, as the former regime is forced to share power with or even relinquish power to its opponents, state actors may begin to feel more exposed to criminal liability and may demand amnesty to protect themselves.

Finally, Figures 11 and 12 focus on combatant groups in conflicts to explore the relationship between regime type and amnesty beneficiaries.
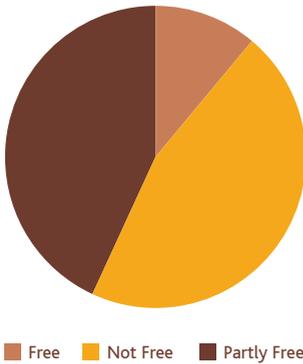
Free   Not Free   Partly Free

Figure 8: Amnesties for international crimes by regime type

Free   Not Free   Partly Free
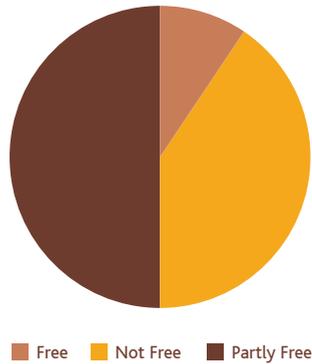
Figure 9: Amnesties that exclude international crimes by regime type

These figures show that roughly equal proportions of partly free and not free states grant amnesty to non-state armed groups. In contrast, 50 per cent of amnesties for state actors are granted by partly free states, whereas only 40 per cent are granted by not free states. These figures are intriguing given that to the limited extent that existing literature has explored amnesties for state actors, it has mostly focused on self-amnesties granted by illegitimate regimes to benefit their agents who have carried out serious human rights violations (see eg Olson 2006; Ludwin King 2010). Less attention has been paid to why and with what effect partly free regimes use amnesties for state actors.

What conditions are attached?

Some amnesty beneficiaries can be required to comply with conditions to obtain or retain amnesty, and this 'amnesty conditionality' is an important element of amnesty design. Conditionality can shape the ability of an amnesty to contribute to reducing security threats and consolidating sustainable peace. Where the amnesty is conditioned on former combatants telling the truth about their actions, contributing to reparations, or participating in non-criminal justice initiatives, this can enhance the amnesty's compatibility with states' international legal obligations to investigate serious violations of human rights and to provide remedies where violations have been breached. However, with the exception of detailed examinations of individual amnesty processes, there has been little academic examination of when and how conditions are attached to amnesties.

Two of the studies in Section 2 coded amnesties as conditional or unconditional, which enabled them to report findings on the relationship between context and conditionality. Binningsbø, Loyle, Gates and Elster (2012, p. 735) stated that most amnesties are unconditional, particularly where they result from a peace agreement. Daniels (2016, p. 45) stated that democracies are less likely than authoritarian regimes to offer unconditional amnesties. Neither study disaggregated the data by the type of condition attached, although Binningsbø, Loyle, Gates and Elster (2012, p. 735) observed that post-conflict amnesties are generally conditional on rebels giving up fighting. The remainder of this section uses the ACPA dataset to interrogate and expand on these findings by exploring trends in the different type of conditions that are attached to amnesty as well as analysing when unconditional amnesties are used.

CONDITION	DESCRIPTION
Deadlines to surrender and/or apply for amnesty	Deadlines that amnesty beneficiaries must meet to benefit from an amnesty process (including any extensions) and the process for surrendering by this deadline.
Participate in disarmament, demobilization, and reintegration (DDR)	The process for former combatants to surrender and hand over weapons to the authorities as well as subsequent stages of the DDR process where that is discussed in the amnesty or related legal texts.
Renounce violence	Requirements for amnesty beneficiaries to a) make a statement pledging allegiance, repenting past actions or beliefs, and/or promising not to re-offend. Such statements can be public or in camera statements to public officials; b) adhere to national laws, respect the constitution and the rule of law; c) pledge to quit militant groups; d) release hostages; and/or e) apologize or express remorse
Non-recidivism	Amnesties that a) remove of the benefits of the amnesty for persons who re-offend; and/or b) exclude beneficiaries of previous amnesties who pe-offended.

CONDITION	DESCRIPTION
Tell truth	Amnesties that require individuals to disclose the truth about their own criminal actions. This includes information on the manner in which the truth must be told (written process, oral testimony); criteria for determining if the truth has been told; and processes for assessing the veracity of information disclosed.
Inform on comrades	Amnesties that require applicants to provide the state with information on their former comrades, leaders, and organizations that would provide the state with a military advantage and/or enable it to arrest opponents.
Contribute to reparations	Amnesties that require beneficiaries to make material contributions to reparations (symbolic forms of reparations are coded under 'renounce violence'). The state can also be required to pay reparations for pmnestied offences.
Participate in alternative justice programmes	Amnesties that require beneficiaries to take part in traditional/informal/restorative justice processes.

Table 7: Conditions attached to amnesties

Figure 13 illustrates the number of amnesties within the sample that contained each of these forms of conditions:

Figure 13: Conditional amnesties (1990-2016)
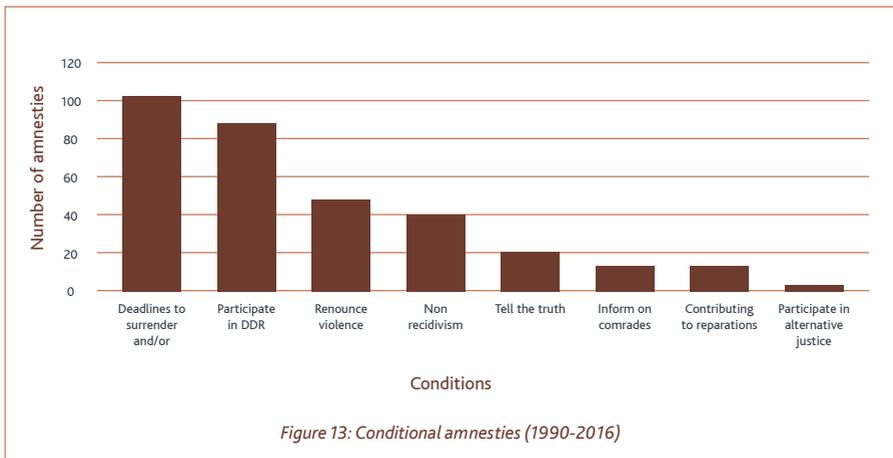
This illustrates that the most commonly occurring conditions are those that seek to ensure that combatants disarm, renounce violence, and refrain from recidivism. This is unsurprising as these conditions are beneficial for the state in ensuring that in exchange for amnesty, rebels end their insurgency. It is also common practice for deadlines to be imposed to encourage potential amnesty beneficiaries to come forward and participate in the process. Less common are conditions that offer direct benefit to victims, such as, requirements that combatants disclose the truth about their actions, contribute to reparations, or participate in alternative justice mechanisms. The lack of such conditions could reflect the state's inability to attach conditions in cases where there is a delicate balance of power in the negotiations. Conditions that impose greater costs on amnesty beneficiaries in terms of potential damage to individual reputations and/or perceptions of the legitimacy of their armed struggle are more likely to be resisted by the intended beneficiaries of the amnesty.

However, the absence of more victim-centred conditions in the grant of an amnesty does not automatically equate to the absence of truth recovery or reparations, as such mechanisms can be implemented separately to amnesties as part of the wider peace process. In addition, (and not reflected in Figure 13), some amnesties in the ACPA sample were granted to those who have had their rights violated, including political prisoners, and refugees and exiles.

If we turn now to when conditional amnesties are introduced, Table 8 sets out conditional amnesties by context:

	Conflict, no negotiations (n=126)	Pre-negotiation (n=19)	Mid-negotiations (n=43)	Comprehensive Agreement (n=70)	Post-Agreement (n=28)	UN / occupier (n=3)
Deadlines to surrender and/or apply	59 (47%)	5 (26%)	17 (40%)	17 (24%)	4 (14%)	1 (33%)
Participate in DDR	40 (32%)	8 (42%)	13 (30%)	18 (26%)	7 (25%)	1 (33%)
Renounce violence	20 (16%)	4 (21%)	10 (23%)	9 (13%)	3 (11%)	2 (67%)
Non-recidivism	15 (12%)	3 (16%)	8 (19%)	9 (13%)	5 (18%)	1 (33%)
Tell the truth	7 (6%)	1 (5%)	4 (9%)	6 (9%)	2 (7%)	1 (33%)
Inform on comrades	9 (7%)	0	3 (7%)	1 (1%)	0	0
Contributing to reparations	3 (2%)	0	3 (7%)	5 (7%)	0	1 (33%)
Participate in alternative justice mechanism	0	0	1 (2%)	1 (1%)	0	1 (33%)

Table 8: Conditional Amnesties by Context (1990-2016)

This table reveals that some forms of conditionality, such as the requirement to engage with DDR processes, are used in all contexts. However, contrary to Binningsbø, Loyle, Gates and Elster's (2012, p. 735, emphasis added) findings, it is does not seem that 'post-conflict amnesties are generally conditional on rebels giving up fighting' as only a quarter of the amnesties in the post-conflict phase included this condition. Instead, it seems much more likely that conditions requiring rebels to surrender and disarm are applied to amnesties granted pre- or mid-negotiations as ACPA data helps to explain.

Within the ACPA sample, 107 of the 289 amnesties were unconditional. This finding contrasts with Binningsbø, Loyle, Gates and Elster's observation that most amnesties are unconditional. Table 9 illustrates the prevalence of unconditional amnesties by context. Similar to Binningsbø, Loyle, Gates and Elster (2012), it finds that unconditional amnesties are more likely as a peace process becomes established, with 56 per cent amnesties resulting from peace agreements being unconditional and 61 per cent of post-agreement amnesties having no conditions attached.

	Conflict, no negotiations (n=126)	Pre-negotiation (n=19)	Mid-negotiations (n=43)	Comprehensive Agreement (n=70)	Post-Agreement (n=28)	UN / occupier (n=3)
No of unconditional amnesties	34 (27%)	6 (32%)	11 (26%)	39 (56%)	17 (61%)	0

Table 9: Unconditional amnesties by context (1990-2016)

The ACPA dataset also allows us to explore whether the type of government introducing the amnesty affects the amnesty's conditionality. The findings displayed in Figure 14 and Figure 15 support Daniels' findings by demonstrating that democracies (shown in light brown) are less likely than authoritarian regimes (shown in yellow) to offer unconditional amnesties. However, this data also shows that fewer democracies offer conditional amnesties. In addition, the data shows that conditional amnesties are most often offered by partly free states (shown in dark brown), whereas roughly equally numbers of partly free (46 per cent) and unfree states (44 per cent) offer unconditional amnesties.
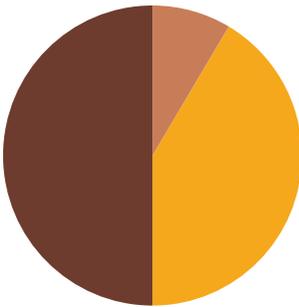

Figure 14: Conditional amnesties by regime type (1990-2016)
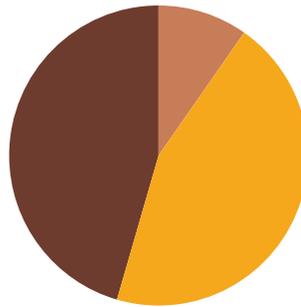
Figure 15: Unconditional amnesties by regime type (1990-2016)

One final issue to consider with respect to trends in the use of conditional amnesties is the relationship between amnesty beneficiaries and the types of conditions that are attached.

Figure 16 summarizes this data:

Figure 16: Conditional amnesties by beneficiary
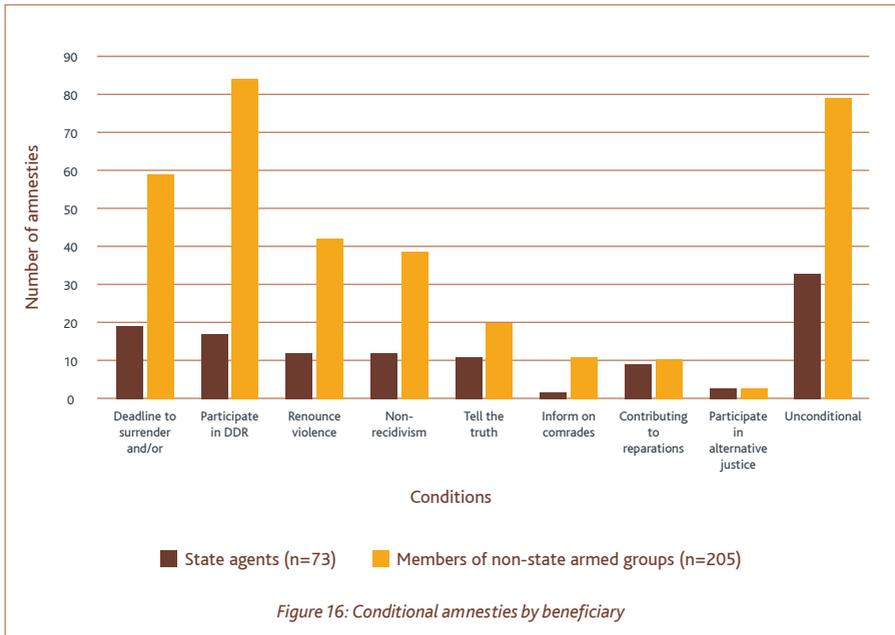
This chart illustrates that across all categories of conditions, greater numbers of conditional amnesties apply to non-state armed groups, than to state actors. This is unsurprising given that considerably more amnesties in the sample benefit not-state armed groups. However, this figure also shows that greater numbers of unconditional amnesties apply to persons who have engaged in violence against the state.

This data suggests that for some forms of conditionality, such as non-recidivism requirements, there are equal proportions of amnesty applying this condition to both categories of beneficiary. In contrast, 38 per cent of amnesties for non-state armed groups are unconditional, whereas 47 per cent of amnesties for state actors are unconditional. Given that unconditional amnesties for combatants are likely to result in greater impunity, than amnesties that require beneficiaries to engage with the peace process and contribute to truth and reparations, this data suggests that risk of impunity increases where amnesties extend to state actors.

Overall, this section demonstrates that multiple, distinct forms of conditions can be attached to the grant of amnesty. By documenting the use of conditional and unconditional amnesties across different contexts, we can see how different types of conditions may be used at different moments in the move from conflict to peace. Section 6 draws on case study examples to explore in greater depth what this might mean for the extent to which a peace process is inclusive. This data explored in this section also demonstrates that the number of amnesties that are granted unconditionally increases as a peace process progresses. Such unconditionality may be unproblematic for certain groups of amnesty recipients; however, for those who have been involved in more serious offences, conditionality is desirable to enhance the legitimacy and legality of an amnesty processes. It therefore may necessary to exercise vigilance over the implementation of peace agreement amnesty commitments or amnesties introduced in the post-conflict period.

What are the legal effects of the amnesty?

The legal effects of amnesties are an important aspect of their design and can have profound implications on the extent to which amnesties promote inclusive political settlements. However, this issue has largely been ignored in existing scholarship. Indeed, as explored in Section 2, some existing literature conflates amnesties with pardons or other forms of post-conviction sentence releases. The ACPA dataset uses the categories of legal effects that are identified in The Belfast Guidelines on Amnesty and Accountability (2013),[16] which drew from existing state practice. Data is gathered on the effects listed in Table 10:

| LEGAL EFFECT	DESCRIPTION
Barring new criminal investigations	Amnesties that prevent criminal investigations being launched in relation to eligible crimes/persons after the amnesty is granted.
Stopping ongoing investigations and trials	Amnesties that end criminal proceedings for eligible crimes/persons before a verdict has been proclaimed or a sentence issued.
Releasing convicted prisoners and sentence reductions	Amnesties that in addition to applying pre-conviction also include post-conviction legal effects including pardons, reduced sentences, mitigation of sentences, conditional suspension of the execution of sentences, and probation arrangements (It is not unusual for prisoners to be released during political negotiations by other mechanisms that are separate from and additional to amnesties).

[16] The Belfast Guidelines on Amnesty and Accountability (2013) were collectively authored by an expert group of independent, interdisciplinary scholars and practitioners from different world regions and areas with recent experience of dealing with gross human rights violations. The Guidelines aim to assist those seeking to make or evaluate decisions on amnesties and accountability in the midst or wake of conflict or repression. The Guidelines are available in multiple languages at https://www.ulster.ac.uk/research/institutes/transitional-justice-institute/research/current-projects/belfast-guidelines-on-amnesty-and-accountability accessed 7 October 2018.

LEGAL EFFECT	DESCRIPTION
Immunity from administrative sanctions	Amnesties that prevent criminal investigations being launched in relation to eligible crimes/persons after the amnesty is granted.
Stopping ongoing investigations and trials	Amnesties that contain provisions that erase criminal records and preclude magistrates and civil servants from recalling or leaving in any judicial or police file or other official document information relating to the amnestied offence.
Removing administrative penalties	Amnesties that overturn or end non-penal or disciplinary sanctions. This can include a) restoring civil and political rights which may have been suspended due to a criminal conviction b) establishing processes that may lead to the reinstatement of rights, enabling amnesty beneficiaries to be reinstated or integrated into government jobs or the armed forces; restoring pensions; commitments that provide refugees with a legal right to re-enter the territory; and commitments that would enable returning refugees to enjoy their full human rights or enable to access other measures to support their reintegration.

LEGAL EFFECT	DESCRIPTION
Imposing administrative or alternative sanctions	Amnesties that a) impose restrictions on beneficiaries' civil and political rights; b) impose restrictions on beneficiaries' personal behaviour (eg owning weapons or consuming alcohol); c) remove benefits to which the amnesty beneficiary would authorize be entitled (eg pensions); d) state that fines that have already been paid or goods that had been confiscated would not be reimbursed. e) For draft evaders and deserters, this category includes requirements to return to the armed forces. f) statements that the amnesty does not prevent disciplinary proceedings.
Barring civil liability	Amnesty provisions that remove the civil liability of amnesty beneficiaries (In some civil law countries, amnesties that bar criminal proceedings may indirectly bar civil proceedings, where the opening of civil proceedings is dependent on the existence of a prior criminal conviction. This indirect effect of the amnesty is not captured in this data).

Table 10: Legal effects of amnesties

Figure 17 shows the number of amnesties that offer each of these legal effects.

Figure 17: Legal effects of amnesties for conflict and peace
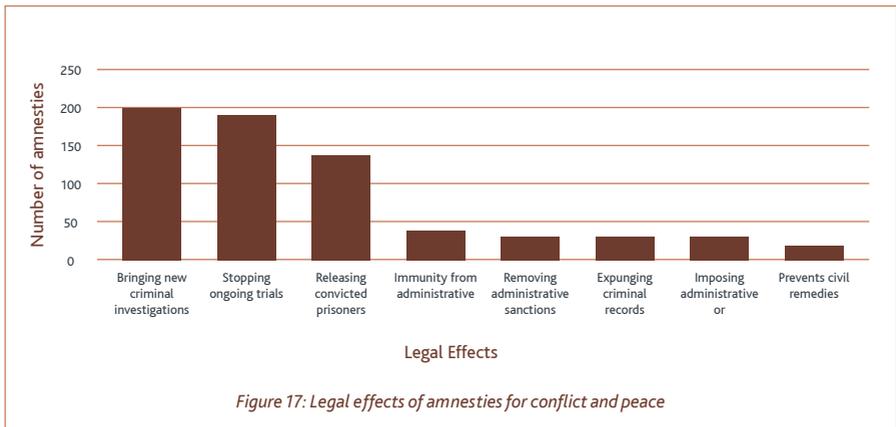
To be included in the ACPA dataset (and the wider Amnesty Law Database), an amnesty's legal effects must include barring new criminal investigations and/or closing ongoing investigations before a verdict is reached. As a result, these forms of legal effects are the most frequently occurring in the sample. However, Figure 17 shows that in addition to these core characteristics, amnesties can have a wide range of additional legal effects.

Table 11 illustrates the frequency with which different legal effects are included in amnesties in different contexts:

	Conflict, no negotiations (n=126)	Pre-negotiation (n=19)	Mid-negotiations (n=43)	Comprehensive Agreement (n=70)	Post-Agreement (n=28)	UN / occupier (n=3)
Barring new criminal investigations	90 (71%)	13 (68%)	25 (58%)	56 (80%)	17 (61%)	1 (33%)
Stopping ongoing trials	64 (51%)	16 (84%)	32 (74%)	54 (77%)	24 (86%)	1 (33%)
Releasing convicted prisoners	47 (37%)	7 (37%)	24 (56%)	42 (60%)	16 (57%)	0
Immunity from administrative sanctions	28 (22%)	0	0	5 (7%)	2 (7%)	0
Removing administrative sanctions	8 (6%)	4 (21%)	4 (9%)	8 (11%)	3 (11%)	0
Expunging criminal records	9 (7%)	1 (5%)	4 (9%)	7 (10%)	5 (17%)	0
Imposing administrative or alternative sanctions	7 (6%)	0	9 (21%)	5 (7%)	3 (11%)	0
Prevents civil remedies	3 (2%)	2 (11%)	1 (2%)	4 (6%)	5 (7%)	1 (33%)

Table 11: Legal effects by context (1990-2016

This table illustrates that the legal effects of amnesties tend to become more generous to amnesty beneficiaries in the later stages of the negotiations and peace process. This is particularly apparent in the rise in the proportion of amnesties that provide for prisoner releases and sentence reductions after the pre-negotiation phase. This incremental growth in generosity could be due to multiple factors, including state unwillingness to appear weak while conflict is ongoing, or a growth in trust between the parties as the negotiations develop, or that the prize of a comprehensive peace package induces greater state concessions. It is unsurprising that in the post-conflict period, stopping ongoing trials is the most common legal effect of an amnesty given that it is the onset or expansion of criminal trials at these points that most often triggers amnesties in these contexts. Amnesties that expunge criminal records are also most prevalent in the post-conflict period; this could reflect that during this period, the ways in which criminal records can create barriers to integration become more visible and contested.

At first glance, the trend of generosity increasing in the later stages of the peace process would appear to conflict with the finding that amnesties most commonly offer immunity for administrative sanctions (which is interpreted as a generous legal effect) during ongoing conflicts. However, this legal effect predominantly relates to amnesties for draft evaders and deserters. As such, it does not demonstrate generosity towards persons who are alleged to have committed serious violations. Finally, amnesties that impose administrative sanctions on beneficiaries are intended to be more punitive. These occur at lower rates and peak during the mid-negotiation period – of the nine amnesties that impose administrative sanctions during mid-negotiation period, three are of draft evasion and desertion and three are for international crimes. In addition, two are for state actors and eight are for non-state armed groups.

Section 5 analyzes how these legal effects can shape the inclusive nature of political settlements.

Part V:
Amnesties and Inclusive
Political Settlements

In recent years, an 'inclusion norm' has developed as a political and legal norm, and as a pragmatic necessity that political settlements be inclusive. The norm reflects a growing consensus among scholars and practitioners that although elite pacts are crucial to achieving peace, a broader social contract is necessary to sustaining it (Department for International Development, 2010. In particular see objective 2: 'Exclusionary settlements are more likely to lead to instability'). Thus, academic literature on political settlements increasingly examines horizontal 'elite' inclusion meaning the involvement of the main political and military groups who have been fighting for power in both the peace negotiations and in the post-agreement governance structures. However, alongside this is the promotion of vertical inclusion between the groups that hold power and broader social and marginalized groups, 'who seek to influence decisions that affect them' (Bell, 2017, p. 14). Proponents of vertical inclusion seek to ensure that the main national/ethnic groups in society, women, and sectoral groups such as of victims and refugees/internally displaced people are included in determinations of how political and economic power is to be organized in post-conflict societies.

The inclusion norm has emerged alongside the accountability norm, which is increasingly understood to regulate peace negotiations and impose obligations on parties to the conflict to investigate, prosecute, and punish international crimes and serious human rights violations. The accountability norm seemingly precludes amnesty for those who are responsible for atrocious acts, and through calling for the imposition of criminal justice sanctions, it seeks to exclude perpetrators of the worst offences from participating in public life in the post-conflict period. However, often those who have been at the heart of the conflict and are most responsible for the worst violations, sit at the negotiating table and seek to be included in new governmental arrangements. Thus, the inclusion norm may be in tension with the accountability or exclusion norm.

As this section explores, the relationship of amnesties to inclusion and exclusion in political settlements is complex. At the most straight-forward level, amnesties that are broad in scope, limited in conditionality and generous in their legal effects may seek to foster greater inclusion in the new political settlement. In contrast, amnesties that impose more extensive conditions or more onerous legal effects on the beneficiaries may seek to ensure that specific groups of individuals are excluded from the political process. In some cases, these more limited amnesties may complement the accountability norm through the exclusion of perpetrators of international crimes and serious human rights violations from the amnesties' benefits. However, design complexities may mean that a single amnesty law may seek to include certain groups of individuals in the political settlement, while simultaneously excluding others. This section draws on the data presented in Section 5 as well as examples of state practice to show how amnesty design may contribute to horizontal and vertical inclusion, or conversely, exclusion.

Can amnesties foster horizontal inclusion?

Amnesties can operate to foster horizontal inclusion of political and military leaders who had been fighting to gain or retain power in different ways depending on the moment in the transition from conflict that the amnesty is introduced.

Amnesties are used less frequently during the pre-negotiation phase of peace talks, than in later stages. However, where they are used at this moment, they are generally intended to get the negotiating parties to the table. Where members of non-state armed groups may be at risk of being subjected to criminal justice processes if they appear in person to take part in talks, amnesty may be used to remove this barrier to participation. Often amnesties granted in this phase offer broad protection for political offences.

For example, Article 1(1) of Angola's 2002 Lei de Amnistia, Lei No. 4/02 provided:

> Amnesty applies to all crimes against the security of the State committed in the context of the Angolan armed conflict, committed before the entry into force of the present Law.

However, as indicated in Section 5, one-third of amnesties enacted in the pre-negotiation phase exclude serious crimes. In the case of Angola's 2002 amnesty, Article 1(3) excluded serious crimes committed by the military:

> Amnesty also applies to all military crimes committed before the date of entry into force of the present Law, except for violent crimes that result in death included in section 3 of article 18 and in section 3 of article 19 of Law 4/94 of 28 January (emphasis added).

This amnesty was introduced in compliance with the Angolan Government's unilateral 2002 peace plan, which stated that 'the aim of this measure being to ensure the requisite legal and political guarantees for promoting and achieving the process of national reconciliation.'

In addition to removing the prospect of future criminal liability, ensuring that non-state armed groups can participate in talks may also require (a) stopping ongoing criminal proceedings, which happens in 84 per cent of pre-negotiation amnesties; and (b) releasing persons have been convicted. Where opposition leaders are imprisoned, these forms of amnesty may be necessary to release them so that they can engage fully in the talks.

For example, Proclamation No. 1377 of 2007 in the Philippines granted amnesty to members of the Communist Party of the Philippines-New People's Army-National Democratic Front (CPP-NPA-NDF) and other communist rebel groups. Section 3(1) states

> Any member of the CPP-NPA-NDF and other communist rebel groups who has committed any act or omission in pursuit of political belief, referred to in Section 2, including those detained, charged or convicted for such acts or omission, may file an application for amnesty (emphasis added).

The preamble to this Proclamation stated that the amnesty was 'an integral component of the Government's comprehensive peace efforts'.

Finally, South Africa's use of Indemnity Acts in 1990 and 1992 show how amnesty and other immunity measures can be used incrementally as practical steps to facilitate inclusive dialogue, while also being a form of confidence-building measure to show the non-state armed groups who may be wary of the state's intentions that the state is serious about the negotiations. Under these Acts, the Government used a series of Government Notices to gradually extend the range of criminal acts that could benefit from temporary and permanent indemnity. These measures applied to members of non-state armed groups who were operating outside of South Africa's territory as well as those who had been imprisoned. These measures were important for enabling leaders of the ANC to engage in the political negotiations to end apartheid (Mallinder 2009a)

As negotiations progress, leaders of combatant factions may seek amnesty guarantees in comprehensive peace agreements to ensure they as individuals or other representatives of their groups can be included in post-agreement power structures. These concerns may be particularly pronounced for non-state armed groups that wish to transition to being a political party in the post-conflict period (see e.g. Campbell and Connelly, 2012).

For these groups, demands for amnesty may spring from a recognition that if they were to face criminal prosecution and conviction this could obstruct engagement in formal political activities. For example, there may be bars under domestic law against persons who are accused or have been convicted of criminal offences from standing for office. In addition, they may be concerned that convictions for conflict-related offences or war crimes may harm their chances at the ballot box. An amnesty can alleviate these concerns, where it removes the prospect of criminal liability, erases criminal records, and/or removes administrative punishment such as bans on individuals participating in political activity or standing for elected office. Thus, in these instances, the amnesty is about removing obstacles to inclusion in the new political dispensation.

For example, in the 2005 Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement, the rebel group agreed to drop their demands that Aceh become independent from Indonesia in exchange for the opportunity to participate in the political process. To facilitate this transformation, Article 2 of Presidential Decree N° 22/2005 that granted amnesty 'Every Person Involved in the Free Aceh Movement' provided

(1) By granting general amnesty, then all implications derived from the criminal law upon person referred by the FIRST DICTUM were cleared.

(2) By granting Abolition, thus all charges upon person referred by the FIRST DICTUM were dropped.

(3) By granting general amnesty and abolition, thus all social, political, economic and every rights for person referred by the FIRST DICTUM were repaired.

Thus, this provision provided for the erasure of criminal records and the removal any impingement of political and other rights that had applied to persons benefitting from the amnesty.

Can amnesties foster vertical inclusion?

When it comes to the inclusion of non-state armed groups, we should not only think in terms of elite actors. In post-conflict societies, former combatants can become marginalized in different ways following the disbandment of their non-state armed groups or restructuring of the armed forces. In particular, intersectional theories point to how marginalization of former combatants may be compounded by other aspects of their identity as women, young people, or members of ethnic groups. As with horizontal inclusion, the data in this study highlights ways that amnesties can remove obstacles to these groups engaging in the peace process through removing criminal liability, erasing criminal records, providing guarantees that administrative sanctions will not be imposed or removing sanctions that have previously been imposed.

To illustrate there is the 1991 Mauritanian Ordonnance n. 91/025, that during an ongoing conflict granted amnesty to persons accused or convicted of security offences, including members of the African Liberation Forces of Mauritania (FLAM) rebel group, included its legal effects the erasure of criminal records (Article 2) and Article 4 stated:

> Any person who has been removed from the voters' lists and who has benefited from the amnesty may, from the moment of the promulgation of this order, claim his or her registration on the lists of the electoral district where he / she is entitled to exercise his / her civic rights.

In addition, amnesties often remove restrictions on certain individuals working within public institutions.

For example, the 2000 Ugandan Amnesty Act created an Amnesty Commission that was tasked with overseeing the disarmament, demobilization and reintegration of rebel fighters who surrendered under the amnesty programme. This commission created a DDR programme, under which ex-combatants who were identified by the commission as eligible for assistance were given reinsertion packages. It was intended that each package would include cash and physical items such as a mattress, blanket, cup, pots and pans, jerry can, ten kilograms of seeds, and farming tools. The commission was also tasked with promoting community sensitization towards returning combatants and reconciliation, which it did through distributing materials, organizing community meetings, workshops and cultural events, and promoting community reconciliation rituals (Mallinder, 2009b).

In addition to legal obstacles to inclusion, for some post-conflict societies, former combatants may face social and cultural obstacles that inhibit their reintegration into their own community and their acceptance within society by other communities. Where such obstacles exist, they can undermine inclusion by imposing political costs for elite actors in engaging with these groups. An amnesty could help to foster reintegration where it is conditioned on offenders contributing to reconciliation through participation in transitional justice programmes.

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 Section 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 these 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 also remove obstacles to inclusion of groups other than combatants. In particular, as recognized by the UN High Commissioner for Refugees' report cited in Section 5, they may be important to facilitate the repatriation of refugees. Refugee populations generally have distinctive experiences of the conflict and different needs from the post-conflict period. Using amnesties to enable their return would make it easier to express these needs in an inclusive political settlement.

Afghanistan's 1997 Declaration of Amnesties and Invitation to Afghan Refugees to Repatriate, which was issued by the Supreme Court of Afghanistan during an ongoing conflict, provides how an amnesty law can include provisions to support the inclusion of returning refugees. Paragraph 2 stated that

> No returnee shall suffer any form of harassment, discrimination, persecution or any other form of punitive action on account of having fled Afghanistan and having sought and found refuge in Pakistan, the Islamic Republic of Iran or any other country.

It continued in paragraph 3 by stating:
> No returnee shall be subject to harassment, intimidation, discrimination or persecution for reasons of race, religion, nationality, membership of a particular social group, political opinion or gender.

Paragraph 5 provided:
> In common with all other citizens, the human rights and fundamental freedoms of returnees will be accorded full respect.

And paragraphs 7, 8 and 9 set out measures to support the returnees' reintegration:
> Returnees will have access to land for settlement and agricultural use in accordance with Afghanistan laws.

[cont'd]

All measures will be taken to facilitate, to the extent possible, the recovery and restitution to the returnees of their land or other immovable property that they may have lost or left behind. Failing this, returnees will be assisted to obtain reparation for loss of such property.

In order to support their reintegration, returnees will be exempted from any outstanding military services or other obligatory service for the period of one year. Positive consideration will be given to requests for a complete exemption from military or other service obligations.

Can amnesties result in exclusion from peace processes?

Amnesties may in some instances be intended precisely to exclude certain individuals or groups from post-agreement political settlements. In a similar manner to amnesty provisions designed to facilitate inclusion, exclusion provisions can operate in vertical and horizontal manners. These exclusions may reflect the balance of power between the negotiating parties, public opinion on including former combatants in the political life of the nation, or because those who are excluded are viewed as potential or actual spoilers in the peace process.

With respect to vertical exclusion, there are numerous examples where outgoing dictators have been granted some form of amnesty to smooth their departure from office, and occasionally from the territory of the country (Scharf, 2005; Sadat, 2006). This form of exclusion is not always apparent in the text of the amnesty itself but rather has to be inferred from trade-offs in the broader political settlement. However, the ousting of former Yemeni president Ali Abdullah Saleh provides a recent example where this kind of exclusion deal was made explicit.

In the Agreement of 21 Apr 2011, set out that the President would be granted amnesty (paragraph 3) and would then resign from office the following day (paragraph 4):

> On the 29th day after the Agreement enters into force, Parliament, including the opposition, shall adopt laws granting immunity from legal and judicial prosecution to the President and those who worked with him during his time in office.

> On the 30th day after the Agreement enters into force, once Parliament, including the opposition, has adopted the law on safeguards, the President of the Republic shall tender his resignation to Parliament. When Parliament has accepted his resignation, the Vice-President shall become the legitimate President by appointment.

On 21 January 2012, Law No. 1 Of 2012 'Concerning the Granting of Immunity from Legal and Judicial Prosecution' was adopted. Article 1 provided 'Brother Ali Abdullah Saleh, President of the Republic, shall hereby be granted complete immunity from legal and judicial prosecution'. Article 2 granted public officials amnesty for political-motivated acts carried out in the course of their official duties. Acts of terrorism were explicitly excluded from the scope of the amnesty for public officials. The law did not contain any provision for revoking the amnesty if outgoing President tried to exercise political power or if the other beneficiaries engaged in recidivism.

Amnesties themselves may contain exclusions which then impact on who they include. All amnesties are intended to only apply to certain individuals or groups of persons. However, explicit exclusions are written into the text of some amnesties, which specify that the protection from criminal liability does not apply to certain individuals or groups, or persons responsible for certain forms of crimes. Exclusions of this type are generally intended to ensure that those responsible for serious offences or offences that are unrelated to the conflict remain liable for prosecution. As such, they can shape inclusion and exclusion in the political settlement.

With respect to vertical exclusion, amnesty laws sometimes contain provisions to limit the personnel scope of amnesties to exclude leaders of rebel groups or high-ranking public officials:

For example, Article 6 of Cambodia's 1994 Loi Relative à la mise hors-la-loi de la clique du Kampuchéa Démocratique, Loi N° 064 stated:

> For leaders of the "Democratic Kampuchea" group the stay [on prosecutions] described above [in Article 5] does not apply.

Similarly, Article 4 of the Republic of Congo's Law No. 21-99 states
> Amnesty may not be granted to authors of war crimes who, by abuse of power arising out of the exercise of high political office of the State or party leader or by abuse of authority or by any other means, have of the sums of money used for the outbreak of the civil wars of 3 November 1993, 5 June 1997 and 18 December 1998, or the prosecution thereof.

Where an amnesty offers the possibility of horizontal inclusion to amnesty beneficiaries, conditions on non-recidivism can raise the prospect of exclusion for those who engage in violence and criminality after receiving the amnesty. In such instances, where individuals fail to commit to the peace and adhere to non-recidivism conditions, the terms of an amnesty can be used to re-impose criminal liability and hence contribute to their exclusion from the political settlement.

To demonstrate, Article 5 of the Central African Republic's 2008 Loi No. 08.020 portant amnistie générale à l'endroit des personnalités, des militaires, des éléments et des responsables civils des groupes rebelles stated:

> If a subsequent offence is committed, (irrespective of the offence) the effects of the present Law will be automatically wiped out in relation to the persons concerned.

> In such cases, the amnestied facts will serve as a basis for possible prosecution. The benefit the release by the effect of this Act, granted to persons convicted or detained, will be revoked by readmission or resumption of the proceedings.

In this provision, recidivism by an amnesty beneficiary would result in the amnesty being removed and the resumption of criminal proceedings or the renewed detention of persons who had been released from imprisonment by the amnesty.

A further example can be found in Article 5 of the Democratic Republic of Congo's 2014 Loi No. 14/006 portant amnistie pour faits insurrectionnels, faits de guerre et infractions politiques, which provided

> Any violation of this commitment [to renounce and refrain from insurrectionary acts and acts of war] will automatically void the amnesty granted and thus disqualify the author of the violation of the benefit of any subsequent amnesty.

[cont'd]

This provision also voids the amnesty but it also disqualifies the person who engaged in the recidivism from benefiting from any future amnesty.

In other cases, the amnesty-related penalties for recidivism are time-limited. For example, Article 3 of Libya's 2012 Law No. 35 On the Amnesty of Particular Crimes provided

> Amnesty granted by the provisions of this law shall be revoked if the amnestied persons commit an intentional offence within five years from the date of entry into force of this law. In this case, such persons shall be sent back to prison to serve their sentences or the remainder thereof in the case of convicts. Criminal procedures shall be resumed against persons whose criminal actions have been dropped in accordance with the provisions of this law, provided that this is published in the media.

The data in the ACPA sample also indicates that some amnesties are used to impose administrative sanctions on amnesty beneficiaries. These sanctions can include imposing restrictions on political activity or eligibility for public office. As these forms of measures would limit the ability of the amnesty beneficiaries to engage in the political settlement, they too can be interpreted as a form of exclusion.

For example, Article 5 of Algeria's 1999 Loi no 99-08 relative au rétablissement de la Concorde civile stipulated that amnesty beneficiaries were

> deprived in all cases of the rights envisaged in Article 8 (2n) of the Penal Code, during 10 years starting on the date of the decision of exoneration from prosecution.

Article 8(2) of the then Penal Code related to the 'deprivation of the right to be an elector or elector and, in general, of all civil and political rights and the right to wear any decoration'. Consequently, Article 5 of the amnesty meant that amnesty beneficiaries were denied the right to vote, to stand for election, or exercise other civil and political rights for a period of ten years.

This restriction was repealed in Algeria's 2006 Ordonnance no 06-01, which granted a further amnesty to those who had been engaged in Algeria's civil war. However, Article 26 of Ordonnance no 06-01 which was outlined in a section entitled 'Measures to Prevent a Repetition of the National Tragedy' provided that

> The exercise of political activity is prohibited in any form whatsoever, for any person responsible for the use of religion that led to the national tragedy.

It continued by stating that

> the exercise of political activity is also prohibited for anyone who participated in terrorist actions and who, despite the damages committed by terrorist and the instrumentalisation of religion for criminal purposes, refuses to recognize their responsibility in the design and implementation of a policy advocating violence against the nation and state institutions.

In sum, the types of amnesties reviewed in this section can clearly operate to exclude amnesty beneficiaries from post-agreement political structures. In some cases, explicit exclusions for specific individuals and groups apply automatically when the amnesty enters into effect. In other instances, they are dependent on the amnesty beneficiaries' behaviour after they have received the benefits of the amnesty. In this way, the threat of exclusionary provisions (and the re-imposition of criminal proceedings or punishment) can be designed to ensure amnesty beneficiaries engage with the peace processes, rather than acting as spoilers. Exclusionary provisions are in some cases permanent, whereas in other instances, they operate only for a defined period of time, which can be sequenced into other milestones within the peace process. This can help to remove potential spoilers from political life until the new political structures have become consolidated.

Conclusion

Amnesties have long been a widely used response to armed conflict. At different points during ongoing conflict, peace negotiations, and post-conflict, amnesties can be used for diverse and sometimes contradictory objectives. Amnesties can be intended to strengthen a state's military position or to acknowledge that neither side can win militarily; to create impunity for serious violations or to remedy harms experienced by marginalized persons; to remove obstacles to insurgents taking part in the post-conflict political settlement or to remove potential spoilers from political life. Despite their prevalence however, as of yet we know very little about what makes an amnesty work and the circumstances under which an amnesty can contribute positively to sustainable peace.

Over the last decade, a number of empirical studies have carried out large-N comparative analyses to measure the impact of amnesties on peace. There is a consensus in the resulting literature that where amnesties are tied to peace negotiations and agreements, they can have a positive impact on peace. However, there are disputes in the literature over whether these findings apply to amnesties in general, or whether they only apply to amnesties enacted in authoritarian contexts or amnesties that exclude serious violations. In addition, existing research has largely understood peace to mean the absence of violence. Consequently, in measuring the impact of amnesties on peace, existing studies have considered whether there was a reduction in the intensity of violence, whether a peace agreement was signed, and/or whether the peace endured for a specific number of years.

Existing research has largely failed to grapple with the complexity of amnesty design to interrogate how an amnesty fits within the broader trade-offs of political negotiations and the extent to which amnesty can contribute to developing an inclusive political settlement. This report has argued that there is considerable diversity in amnesty design, which can shape the extent to which an amnesty fosters an inclusive or exclusive peace. Further research is needed to develop more robust ways of measuring the impact of amnesties that takes differences in amnesty design into account. In addition, further research and policy development on amnesties should take a holistic view, that looks beyond which crimes are covered in an amnesty to take into account a wider range of design features, in determining which amnesties are permissible and desirable.

Resources

Belfast Guidelines on Amnesty and Accountability (Transitional Justice Institute, 2013)
Available at:
► https://www.ulster.ac.uk/research/institutes/transitional-justice-institute/research/current-projects/belfast-guidelines-on-amnesty-and-accountability [accessed 26 June 2018]

Peace Agreements Database.
Available at:
► https://www.peaceagreements.org [accessed 6 June 2018]

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