

Amnesty as a Way Out: Latin America's Trend in Pursuing Human Rights Violations

Rocío Guenther

Trinity University

International Criminal Justice

Dr. Rosa Aloisi

**Amnesty as a Way Out:
Latin America's Trend in Pursuing Human Rights Violations**

ABSTRACT

Criticism of amnesties has grown exponentially. Much of this criticism has been closely linked to examples from situations in Latin American countries. The culture of impunity that reigns in Latin America makes it harder to create accountable countries and creates a cycle of violence that hinders victims from healing. As scholars have analyzed the consequences of different reconciliation methods in countries recovering from war or human rights violations, opinions and approaches have changed. Amnesties alone have proven to be ineffective at providing peace of mind for countries that need healing after human rights violations, and thus, their use should be questioned.

There has been a call for a more holistic approach that combines different mechanisms to achieve justice in countries ravaged by human rights abuses. In Latin America, most amnesties have not been successful ways to deal with conflict. Amnesties, in the domestic sense, have been a buffer to international justice when they are used as a cover-up. The new era of posttransitional justice has begun, where request for trials of past abuses are still alive.

INTRODUCTION:

An amnesty is an official pardon for people who have been convicted of political offenses. Many times the Truth and Reconciliation Commissions (TRCs)—wishing to prioritize gathering correct information and confessions—or a country itself, agree to pardon certain offenders of human rights violations, in order to preserve order in an already tumultuous state. Amnesty laws are a problematic topic, which affect the implementation and function of international justice. There are those in favor of amnesties and the collection of truth through Truth Reconciliation Commissions, who believe that regular justice exacerbates conflict. In the same vein, there are also those who believe traditional justice heals a country's

profound wound in the long run, instead of just patching it up temporarily through the use of amnesties & TRCs. Speaking in international law terms, but more specific to Latin America, do Amnesties hinder justice?

I contend that most amnesties are designed to prevent trials, with the excuse that troubled or unstable countries may flounder if they are not implemented. Furthermore, various Latin American countries have managed to carry out successful prosecutions and have not suffered from anti-democratic trends. Therefore, there should either be a balance between amnesty laws and prosecution, or we must do away with amnesties all together to achieve greater justice. The amnesty trend in Latin America specifically, shows the proliferation of impunity both culturally and legally. Additionally, scholars such as Leila N. Sadat have produced longitudinal studies that suggest amnesty laws foster a culture of impunity where violence becomes the norm (Sadat, 2006).

DIVERGING BELIEFS:

Some researchers assert that combining trials and amnesties creates a “justice balance,” and that only through combinations of single mechanisms—such as human rights trials, truth commissions, and amnesties—will there be widespread improvement (Olsen, 2009; Sikkink, 2011). There has also been empirical testing, which argues that none of the transitional justice mechanisms on their own improve democracy and reduce human rights violations (Olsen, 2009). While this approach has its valid point, other researchers believe that truth commissions on their own have a negative impact, but can contribute in a positive way only when they are combined with amnesties and trials (Olsen et al., 2010). There is a lack of cross-national, comparative data on transitional justice at present, and although many scholarly articles have been written on the topic, there still is not an emphasis on the effect that transitional justice has on human rights and democracy (Olsen et al., 2010). This is why I

believe researchers must not jump to conclusions and support the idea that amnesties help transitional governments become democratic or that they help maintain peace. It is a topic that still needs further research.

In many Latin American cases, military unrest forced the hands of states and officials toward pardon and amnesty. Amnesties were put in place purposely to counter the threat of prosecution. The naming of perpetrators was ignored, in fear of democracy wavering and authoritarian mindsets returning (Collins, 2008). A supporting view for amnesties is that trials alone provide risks for new governments, and that their use not only aides transitions but it also helps with practicality, easing the burden of legal and financial resources; after all it would be insurmountable to try every single top to bottom individual in the military or other organizations (Olsen, 2009). Truth commissions and amnesties also add a balance to the mix, according to many, as they provide at least some requirement of truth gathering and many forms of accountability, which become easier to uncover as perpetrators gain liberty through confession (Mallinder & McEvoy, 2011). In consequence, it is stressed that if amnesties are appropriately designed they can be effective as ways to recover truth and reconcile governments at odds. More importantly, amnesties represent a governance of mercy and help reassert sovereignty as well as the return of law to a previously lawless area. Lastly, they intimately reaffirm and consolidate state power when it comes to the law, taking into account specified or local categories and procedures (McEvoy & Mallinder, 2012).

Some scholars suggest that Truth Reconciliation Commissions help legitimize the newly created ICC. TRCs are built to provide accurate records of what happened, while the International Criminal Court focuses on punishing individual perpetrators (Roche, 2005). Still, they have been known to work together in many instances. There is a delicate interaction between the International Criminal Court and the latter. Researchers say that Truth

Commissions help legitimize the ICC through a cooperative relationship. Furthermore, those participants in truth commissions who divulge secrets could help the ICC go after those perpetrators who are not protected by amnesty laws, and thus achieve some justice (Roche, 2005). On the other side, some scholars argue that truth commissions seem helpful on the surface, but it has been argued that they lead to amnesty laws directly, which in turn pardon those initially convicted (Roht-Arriaza, 1998).

Other scholars stress that amnesties just slow down the process of justice. Chile and Argentina are two examples from Latin America that used amnesty laws to shield the military from prosecution (Roht-Arriaza, 2014; Sikkink, 2011). Amnesties, described as a “blanket of crimes” by many dissenters, have been argued to help ease transitions and deter possible revolutions or military coups (Sikkink 2011; Roht-Arriaza, 1998). However, there are examples of countries that have successfully gone through with harsh trials and had no severe consequences. The recent re-opening of past human rights violation cases and annulment of amnesties also enhances this point. Scholar Roht-Arriaza emphasizes that truth and justice should go together (Roht-Arriaza, 1998). The fact that a thirst for justice is still alive even after truth commissions have uncovered the facts is strong evidence that truth is simply not enough for the victims and those affected. Judicial action is the only way to truly heal these wounded countries in the long term. It is my believe that strict rule of law, by holding individuals accountable through prosecutions, stops future perpetrators from committing violence, and consequently may strengthen democracy. I do not believe that amnesties can do this, rather they make perpetrators think they may be able to get away with violations if they have sufficient power in government or control of their countries and vulnerable citizens.

THE CHANGING TREND & ANNULMENT OF AMNESTIES:

Operation Condor alone—where Argentine military officers murdered, disappeared, and kidnapped citizens—has been a topic of rage for nationalists. In Chile, during the Pinochet government, over 5,000 were executed or disappeared (Roht-Arriaza, 2014), and yet amnesties or exceptions have shut down prosecutions or slowed them down considerably. Various scholars highlight the idea that amnesties should not be able to override the obligation to investigate, prosecute, and punish human rights violations, especially now with the American Convention of Human Rights (Roht-Arriaza, 2014).

In addition, many amnesties have violated international or constitutional rights. What then, of the survivors of the tortures and the killings? Many have regarded reparations and compensation money as blood money—for many angry family members of those deceased and those who survive, reparations are not enough. Evidence that amnesties hinder the justice process includes citizens that have involved private parties to investigate cases and civil society groups that have found loopholes in Amnesty laws (Sikkink, 2014; Husain, 2011). They have incessantly battled for justice over the years, not content with giving up and letting amnesties slide. Over time, especially at present in the courts, many amnesties have been annulled, stressing their role as an obstacle to justice (Husain, 2011).

The ICC's vagueness in its body of law and enforcement makes it so that amnesties may squeeze through the system, which contradicts what the ICC, in its essence, stands for (Radosavljevic, 2008). More specifically, the ICC does not allow for amnesties but only for plea arguments. However, it could recognize amnesties given by countries to criminals in the name of societal peace (Aloisi, 2015). To give examples, we can consider the case of Kony in Uganda. Criminals who committed heinous crimes should not enjoy flexibility and leniency, be it through amnesties or charge discounts; the goal of the persecution is to prevent impunity by conviction, it is not their duty to advance peace, reconciliation, or restoration (Roche,

2005; Radosavljevic, 2008). Unfortunately, the delicacy of the matter manifests itself through the wish for restoration in fragile transitioning states (McEvoy & Mallinder, 2012).

Governments have been known to raise amnesties as a defense when foreign courts try to investigate information or extradite defendants, thus, creating more conflict between the already blurred line of national and international parameters. Countries can decide on their own amnesties regarding a person in their soil, no matter the crime (Roche, 2005; Rhot-Arriaza, 1998). Which should override the other? Should foreign courts ignore domestic amnesties? Amnesties in the domestic sense, are a buffer to international justice when they are used as a cover-up. The ICC is facing many challenges, this one is among them; the organization must tread lightly if it wants to retain legitimacy and be respected.

Are amnesties so faulty and unfair that they will become a thing of the past? Many scholars believe so, due to the dramatic change in Latin American legal culture (Husain, 2014; Sikkink, 2011). In 2010, Argentinean President Jorge Rafael Videla was sentenced to life imprisonment by the Federal Oral Court in Argentina, charged with “crimes of assassination” (Husain, 2011). Although he committed crimes between 1976 and 1983, and president Carlos Menem granted him a pardon in 1990, the Supreme Court finally began to declare his amnesty and many others, unconstitutional (Husain, 2011). Uruguay and Peru have also annulled laws that had protected armed forces in the past. Civil Society groups fought violently for the spotlight to remain on the crimes, and at present scholars are documenting the broken amnesties. Brazil is an example of a country that won’t yet budge regarding its amnesties, but the pressure is there. “Some ICC implementing laws have rendered the prohibition of amnesties operative. In Brazil the ICC implementing legislation expressly excludes the granting of amnesties for genocide, crimes against humanity and war crimes” (Roche, 2005; pg. 246). But what if we decide to ignore any use of amnesties? We must not let go of restoration, truth recovery, and accountability in both legal and institutional

parameters. We must find a way for amnesties to be more constructive in post-conflict situations, in a way that will not lead to the hindering justice (Mallinder & McEvoy, 2011). Henceforth, we must take a “justice balance” approach and try to combine truth finding to justice, in such a way that pardons aren’t categorized as a way out. That is the challenge.

THEORY

I believe that amnesties alone cannot provide peace because there is no justice. There is a moral obligation to survivors and victims, which should be met. States should not make decisions solely based on political and strategic purposes. Without some form of justice and accountability, victims and families who suffer from human rights violations will dissent and demand that something be done. Civil society has become more demanding, citizens are more educated now, and they demand more from their governments. In the present, and through the use of technology it has become easier to spread grievances faster and start social movements. One may look to the Egypt scenario, where social media helped topple a repressive government. We may also look to Mexico and human rights violations, where social media helped rally protesters against the deliberate killing of 43 students by police forces in the town of Ayotzinapa. Civil society, in the end, is what gives power and takes away power from a government. There has been a trend in Latin America concerning the prosecution of past atrocities. People from Chile, Argentina, and other countries have demanded justice and consequences to perpetrators despite amnesties.

I will analyze an international example regarding amnesties as well as examples within Latin America. Comparing Latin America to another case abroad helps give the phenomenon a deeper perspective and helps understand what makes Latin America unique. I argue that amnesties have been violated in the past, due to a large call for justice despite the truth getting out and the government picking up the pieces of a war torn environment.

Through the example of Sierra Leone I argue that the intention was for amnesties to solve the problem, but in the end it did not work that way and a special court had to intervene to provide some form of justice. I argue that amnesties in Latin America have even bigger consequences because there is already a culture of impunity engrained in society. I stress that injustice is further perpetrated when new governments decide not to face past atrocities and ignore them.

Amnesties are used to avoid justice when they are not combined with other mechanisms. I am for the justice balance, where many approaches come together to provide a solution and where victims have active participation in the process, be it through speaking out to Truth and Reconciliation Commissions or voicing their reactions to crimes as witnesses in a trial. Amnesties alone do not involve the victims or survivors of atrocities and violations, they separate the guilty from the victims, which creates a distance that does not promote reconciliation. At the end of a conflict, reconciliation measures searching out justice and truth are needed to ensure the peaceful coexistence of victims and perpetrators. Once more, holistic mechanisms to justice help ease the tensions amongst citizens of a troubled country more than handing out complete mercy to perpetrators of atrocious acts.

The attempted prosecutions in the 1990s for past human rights crimes in Chile, Argentina, and other parts of Latin America brings to light both the social legacies of massive human rights violations (Collins, 2008). Clearly, these legacies are long lasting and transitional settlements that just included truth telling and amnesty were not enough to satisfy the populace. Questions of responsibility for state crimes persist and have constantly resurfaced in post conflict societies. If a government wants to deal with healing they should consider applying a holistic approach of mechanisms that involves trials in order to reach a common goal. Countries should hold trials simply to show they understand that to be the right way to deal with past human rights violations, which is an opinion supported heavily by

victims and transnational human rights networks (Olsen et al., 2010). Every violation and crime calls for different reparative mechanisms, and not one single mechanism can be the answer to all crimes, it must be implemented on a case-by-case basis. I contend, due to a culture of entrenched impunity and injustice on all levels, that Latin America should take a more strict approach than other countries and strive for retributive justice, try to avoid the use of amnesties as much as possible, and involve Truth Reconciliation Commissions alongside trials.

CASE STUDIES

Sierra Leone

To focus our ideas on Latin America, it is also important to compare how amnesties have worked all around the world in other countries. Let us look at the example of Sierra Leone. The civil war was a brutal affair. Millions were displaced, killed, raped, amputated, forced into marriage, mutilated and more. A peace agreement in Lomé, Togo in 1999 signed by the Government of Sierra Leone (GOSL) and the Rebel United Front (RUF) helped cease hostilities. Part of the agreement gave a complete amnesty to the RUF and the leader Foday Sankoh. Before the accord, Sankoh had been sentenced to death. The controversial Lomé accord also included a Truth and Reconciliation Commission (TRC) and a Human Rights Commission. Part of the accord said: “To consolidate peace and promote the cause of national reconciliation, the Government of Sierra Leone shall ensure that no official of judicial action is taken against any member of the RUF/SL, ex-AFRC, ex-SLA or CDF” (Shocken, 2002: p. 5). Consequently, many people were angered by this and claimed that justice would not prevail.

Both abroad and within Sierra Leone there were disagreements, but many amputees and refugees believed the peace accord alongside the amnesties was the only way to stop the war. There was also pressure from abroad (especially the U.S. and the U.K.) to sign the

agreement to secure international assistance and not have to send many resources to Sierra Leone. Unfortunately, although a peace agreement was put in place, the rebels broke it and continued to commit heinous crimes. Due to this hostility, the U.N. considered the idea of an ad hoc court (Schocken, 2002).

In the end, The Special Court for Sierra Leone (SCSL) was established and they decided to violate the Lomé accord. The U.N. very last minute, added to the agreement that the amnesty could not cover international crimes of genocide, crimes against humanity, and other violations of humanitarian law. In part, there was a big misunderstanding among the community. When the U.S. and U.K. supported the agreement, they avoided the amnesty issue (Schocken, 2002). The argument was that the accord only covered crimes under domestic law, not international law. The prosecutor also added that it was valid because the RUF and the AFRC violated the accord. Charles Taylor, in his trial, put into question the jurisdiction of the court by claiming he was not from the country where the crimes occurred. All this was to no avail.

Many perpetrators claimed their trials were not valid due to the amnesties that were promised to them. The placement of the amnesty only created confusion and anger. Furthermore, if the amnesty is valid, the SCSL can only have jurisdiction on crimes committed after 1999, another point of contention, as violence and crimes stem as far back as 1991 (Amnesty International, 2001). Prominent representatives in the ordeal claim that the war would have continued with many more civilian casualties were it not for the amnesty. But I say, didn't the rebels break the Lomé accord and incite more violence anyway? If amnesties are made to be broken then why do we have them? Even abroad, we can see that although amnesties are put in place, pressure from the public can convince officials in charge of justice and reconciliation to revoke them.

Chile

After Pinochet's regime of power, many citizens and victims who did not receive justice regarding human rights abuses, began to demand posttransitional accountability by undermining amnesties through individual claims with the help of lawyers and human rights organizations. Despite international efforts to increase accountability after Pinochet, domestic accountability is still lacking not only in Chile but in Argentina and El Salvador as well (Collins, 2008). Pinochet's detention in the U.K. proved to the world that government officials were no longer untouchable, which led to an increase in justice demands back home; even Pinochet himself alongside other perpetrators started being mentioned in complaints filed by individual people (Collins, 2008). Citizens looked for loopholes to the 1978 amnesty law, redefining disappearance as a crime not subject to amnesty. Since then, lawyers have attempted to use international law to declare the 1978 amnesty invalid or inapplicable to no avail (Collins, 2008).

Chile's efforts at looking for loopholes and demanding accountability even years after the regime prove that for victims of injustice there is never peace until criminals are tried for their wrongdoings. If we get rid of amnesties and the international law community focuses on incorporating trials, it will help kick-start domestic accountability in each country that is involved. This in the long run, will help these governments become more accountable individually. Posttransitional justice has so far been internally driven, the international community must help change this in order for citizens to stop taking things into their own hands because those in charge don't provide the justice the victims deserve.

Mexico

We can argue that in Sierra Leone's case, it somewhat appeased some tensions between rebel groups, but why has Latin America not had an appeasement trend? Latin America is a special case, because there are human rights violations every day. The

government is known to turn a blind eye and many citizens have become desensitized, accepting the violence as a part of daily life. At present kidnapping, killings, and drug wars proliferate. One of the main reasons that Latin America has more of an amnesty trend that hinders justice has to do with the culture of impunity that is already entrenched nationally. For example, when Mexico transitioned from the authoritarian rule of the *Partido Revolucionario Institucional* (PRI) to a new government, newly elected president Vicente Fox granted de facto amnesty to violators of state crimes under the old regime (Quezada, et al. 2006).

One of the most famous crimes involved the killing of hundreds of student protestors in the Tlatelolco plaza and no one was tried for the crime. Even though the government was charged with genocide, the arrest warrants to the culprits were called invalid and justice never saw the light (Quezada, et al. 2006). The failure to prosecute creates a culture of impunity, weakens the rule of law and encourages vigilante justice (Olsen et al, 2010). A perfect example is the recent citizens in Mexico who have created their own police groups to fight organized crime. Many times police forces are colluded with drug traffickers and corrupt government officials, and when injustice goes on long enough, citizens decide to take matters into their own hands. It is in the better interest of the government to work alongside the international community and promote prosecutions that make criminals accountable.

In Mexico, and in other Latin American countries, past violations or scandals are always put under a rug. Lack of action will only lead to cycles of more violence and vigilante justice. Amnesties are given automatically even at a domestic level, so when the international community decides to do the same, the populace is angered even more. They are used to provide impunity on a daily basis, and when it becomes international and justice is not complete, it becomes the last straw. These type of patterns, where justice is not sought and

forgiveness is given, increases the culture of impunity and continues to erode human rights and justice.

CONCLUSION:

International assistance is vital to restore peace and combat impunity in those societies in transition where poverty, fragile institutions, large numbers of perpetrators, and weak social cohesion reigns (Sadat, 2006). In the international law sphere, creating exceptions to the rule, through amnesties, gives raw power to certain nations over others and downgrades parallel situations. For countries to reject accountability and continue to enforce amnesties is opportunistic to say the least, it undermines justice and propels impunity. The boundaries between national legal systems and the international legal order are changing continuously as we speak. It is time for these boundaries to be tested, so we can further the caging in of perpetrators instead of helping them find loopholes.

REFERENCES:

- Collins, Cath. 2008. "State Terror and the Law: The (Re)judicialization of Human Rights Accountability in Chile and El Salvador." *Latin American Perspectives*. 35(5): 20-37.
- Husain, A. (2011, January 17). "Latin American Amnesty Laws Annulled; the Struggle Against Impunity Continues." *Peace Palace Library*. Retrieved February 24, 2015.
- Mallinder, Louise, and Kieran McEvoy. 2011. "Rethinking Amnesties: Atrocity, Accountability, and Impunity in Post-Conflict Societies." *Contemporary Social Science* 6(1): 107-128.
- McEvoy, Kieran, and Louise Mallinder. 2012. "Amnesties in Transition: Punishment, Restoration and the Governance of Mercy." *Journal of Law and Society* 39(3): 410-440.
- Olsen, Tricia D., Leigh A. Payne, and Andrew G. Reiter. 2010. "The Justice Balance: When Transitional Justice Improves Human Rights & Democracy." *Human Rights Quarterly*. 32(4): 980-1007.
- Olsen, Tricia D., Leigh A. Payne, and Andrew G. Reiter. 2009. "Does Transitional Justice Work? Latin America in Comparative Perspective." *Global Studies Review* 5(3): N.p..
- Radosavljevic, Dragana. 2008. "Restorative Justice Under the ICC Penalty Regime." *The Law & Practice of International Courts and Tribunals* 7(2): 235-255.
- Roche, Declan. 2005. "Truth Commission Amnesties & The International Criminal Court." *British Journal of Criminology* 45(4): 565-581.
- Roht-Arriaza, Naomi (2014, December 23). "From Amnesty to Accountability: Transitional Justice in South America." *World Politics Review*. Retrieved 24 February 24, 2015.
- Roht-Arriaza, Naomi. 1998. "Truth Commissions and Amnesties in Latin America: The Second Generation." *American Society of International Law* 92(1): 313-316.
- Sadat, Leila N.. 2006. "Exile, Amnesty, and International Law." *Notre Dame Law Review* 81(3): 955-1036.
- Schocken, Celina. 2002. "The Special Court for Sierra Leone: Overview and Recommendations" *Berkeley Journal of International Law* 20(2): 436-461.
- Sikkink, Kathryn. (2011). *The Effects of Human Rights Prosecutions in Latin America. The Justice Cascade* (pp. 129-161). Ney York, NY: W.W. Norton & Company.