



Priscilla Hayner

The Challenge of Justice in Negotiating Peace: Lessons from Liberia & Sierra Leone

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**WORKSHOP 6
EXPERT PAPER**

**THE CHALLENGE OF JUSTICE IN NEGOTIATING PEACE: LESSONS FROM LIBERIA
& SIERRA LEONE**

*Priscilla Hayner*¹

1. INTRODUCTION

Addressing questions of justice for massive past human abuses is often cited as one of the most difficult challenges of peace negotiations. But despite the apparent difficulties, many peace agreements have in fact included a variety of measures for accounting for past abuses. While these have rarely included an explicit commitment to prosecutions and punishment for wrongdoers, many have left open that possibility, avoiding a blanket amnesty, while also committing to non-judicial measures such as truth commissions, reparations for victims, or screening the security forces for those implicated in past abuses. The range of policy options has received greater attention in recent years as the field of “transitional justice” has rapidly developed and become part of the lexicon of international relations, and of peacemaking more generally.

In addition, developments in the arena of international law have made clear that a blanket and unconditional amnesty for serious international crimes (crimes against humanity, serious war crimes, genocide) are not acceptable. The United Nations has established clear guidelines for its representatives, indicating that they may not sanction such amnesties. Meanwhile, the potential for indictments emerging from international courts, or hybrid courts such as the Special Court for Sierra Leone, has considerably changed the dynamics around peacemaking in some contexts.

The experience of several recent peace negotiations highlights the difficulties faced in incorporating accountability policies into peace agreements. It is clear

¹ Priscilla Hayner is the Director of the Peace and Justice Program at the International Center for Transitional Justice. She can be reached at phayner@ictj.org.

that the lack of strong justice components is sometimes due to the strength of perpetrators at the negotiating table, and their insistence on impunity. But it is rare that the dynamics are so simple, or that is not some room for maneuver. Opportunities are sometimes missed due to ignorance or misunderstanding of the mechanisms and policies that are available; a lack of time or effort to detail such provisions; a failure of creativity, such as in considering limitations or conditionalities to immunity schemes; or basic lack of clarity or information about the international legal standards or obligations that pertain.

2. NEGOTIATING PEACE IN SIERRA LEONE AND LIBERIA

The peace negotiations in Sierra Leone and Liberia, in 1999 and 2003 respectively, highlight these very dynamics and tensions pertaining to amnesties, the impact of an international indictment in the course of peace talks, and the interesting role for discussing complementary mechanisms that are often considered in parallel with a discussion about either prosecutions or amnesty.

The conflicts in Sierra Leone and Liberia were similar in some ways, and in both cases those responsible for human rights abuse were prominent and powerful in the peace negotiations. Issues of justice and accountability were central elements of concern in both contexts, and helped to define the transition that followed. Despite the similarities, however, the justice-related components in these two peace accords turned out very differently.

The Sierra Leone agreement includes a blanket, unconditional amnesty, including for serious international crimes. It calls for a truth commission, a reparations fund for victims, and a human rights commission to protect rights in the future. It includes no provision for vetting of the security forces on human rights grounds. The Liberia accord leaves the question of amnesty to be decided in the future, indicating only that there may be consideration of an amnesty by the two-year transitional government. It also includes agreement for a truth commission, but includes no mention of reparations. It does however set out plans for vetting of the security forces on human rights grounds.

The difference of the outcome – in particular in relation to the amnesty question – can be explained by a number of factors: In Sierra Leone, 1) the rebels held a considerably military advantage over the government forces, with the international forces that were backing the government likely to soon depart; 2) a recent sacking of the capital city by the rebels served as a clear reminder – and even threat – that a re-engagement in fighting could bring further serious mayhem; 3) the previous peace agreement in Sierra Leone, three years earlier, had also included a blanket amnesty for all parties, which received virtually no international or national condemnation at the time; and 4) key members of the rebel forces had already been convicted of treason and were appealing their sentences, on death row; this included the rebel leader, Foday Sankoh. Thus, virtually all participants in the Lome talks arrived with the assumption that a blanket amnesty would be part of the agreement, and this component was quietly agreed to among key participants as one of the first elements.

In contrast, in the peace talks for Liberia, 1) neither the government or the rebel factions were closely focused on an amnesty; there was no clear history of amnesty for serious human rights crimes in any of the prior peace agreements, and the discussion around justice in fact began with a proposal for a war crimes tribunal; a suggestion for amnesty was also put forward, but not strongly pushed; 2) there was no sense that prosecutions were likely; on the contrary, many delegates were assured, informally on the sidelines of the talks, that prosecutions for crimes of the war would be in no one's interest; 3) a suggestion for a truth commission was quickly accepted, and resolved the debate between a war crimes tribunal vs. an amnesty; and 4) no one paid much attention to the final wording, which left the amnesty issue open for consideration in the future; many participants somehow believed that the final accord did provide amnesty.

In both countries, national participants in the talks have been surprised to see the further developments on justice-related issues after the final peace agreements were signed. In Sierra Leone, the founding of the Special Court, and its decision that the national amnesty did not apply to its own cases, has brought some criminal justice, through limited, for those most responsible for the crimes of the war. In Liberia, the Act establishing the Truth and Reconciliation Commission has explicitly prohibited the recommendation of amnesty for serious international crimes.

Meanwhile, the Special Court for Sierra Leone in turn played a critical role in the peace negotiations for Liberia. The unsealing of the indictment of Charles Taylor, on the first day of the Liberian peace talks, ultimately had a positive impact on the talks. It effectively removed Taylor from playing a role in any future government, significantly delegitimizing him, and leading to his departing the presidency two months later. The indictment was not without risk – many feared a violent reaction by his supporters in Monrovia – but in this case it turned out that the impact was overall quite positive.

3. EMERGING LESSONS

Consider all options: In both Sierra Leone and Liberia, as well as in other known cases, there has been a surprising lack of information on reasonable policy alternatives that is both accessible and appropriate to the needs of the mediator and the parties. This prevents a full consideration of all possibilities, in the complicated arena where different justice mechanisms often inter-relate, and issues of sequencing may also have to be taken into account.

Recent national experience likely to shape outcome on justice: If there is a clear history of accused persons being held to account, or if, alternatively, a country has a history of granting amnesties, these will strengthen the demand and expectation for amnesty anew.

Justice questions not likely to be fully resolved at the peace table: Whether foreseen or not, it is likely that the initial agreements around accountability will be reinterpreted, challenged, or changed, such as in the drafting of specific

implementing legislation (for example for a truth commission). Even basic parameters that are agreed on the accountability issue may change in the months or years that follow. This is positive, in that it allows for national consultation on the precise terms of some mechanisms or policies, and will result in more positive and nationally-nuanced process.

Civil society can play a critical role: While they rarely achieve all they are advocating for at peace talks, independent voices of civil society can bring both expertise on issues of substance, and firm pressure to end the fighting as soon as possible. They have sometimes helped to shape the discussion around truth and justice by proposing specific policy options, as took place in Sierra Leone around the truth commission, and in Liberia in keeping pressure on for a war crimes court, or, as a compromise in the interim, a national truth commission.

The prosecution of key protagonists can play a positive role in a peace process: While certainly not assured in every case, it is clear that in some cases an indictment (such as of Charles Taylor) or arrest (such as rebel leader Foday Sankoh, ten months after the Lome accord) can sometimes have a powerful and positive impact on the negotiation or implementation of a peace agreement. This is especially true when that person is either intransigent or proven to be untrustworthy in any genuine peace process. Such an indictment or arrest, which must be done with great care and of course respect all due process requirements, can effectively remove a person from the political realm, allowing a serious peace process to unfold.