

Peace Now, Justice and Equality Later?

Nina Caspersen

University of York

Email: nina.caspersen@york.ac.uk

Draft, please do not cite

Inequality, Peace and Conflict

Fourth Annual Conference of the International Association for Peace and Conflict Studies and the ECPR Standing Group on Critical Peace and Conflict Studies

Manchester, 10-11 September 2015

“Justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing strategies” (United Nations, 2004)

Post-cold war strategies for conflict resolution were meant to ensure stability in war-torn states by promoting democracy, the rule of law, human rights and economic reforms. The record of this approach is however mixed, at best. Critics of ‘liberal peace-building’ argue that this externally-driven strategy represents “a peace from IKEA: a flat-pack peace from standardised components” (Cooper, et al., 2011, pp. 1997-8). It is insensitive to local culture and risks triggering domestic resistance (see e.g. (Richmond, 2009) (MacGinty & Richmond, 2013). As a result of such resistance, liberal peacebuilding moves away from local engagement and becomes focused on coercive implementation, and the outcome is therefore often illiberal (Richmond, 2009). Oliver Richmond regrets that the post-Cold War moral capital, its emancipatory claim, has been squandered, while Michael Barnett and his colleagues (2014) more pragmatically argue that the resulting “compromised peace-building” may be the best that can be hoped for.

The critical peacebuilding literature is focused on the peacebuilding or the post-settlement phase and has largely ignored the content of the peace agreements that create the institutional framework for this international agenda. These settlements tend to be seen simply as “contextual or permissive

conditions for post-conflict activity” (Selby, 2013, p. 64). However, is it possible that the liberal ideals are squandered at an earlier stage: not only when the peace agreement is implemented but when it is negotiated?

This paper focuses specifically on the issue of human rights, which plays a central role in the liberal peace agenda, but remains severely contested in the conflict resolution literature. A number of authors argue that in order to reach an agreement, in order to stop the violence, it is often necessary to compromise on human rights. As an anonymous official warned in a now (in)famous article, “the quest for justice for yesterday’s victims of atrocities should not be pursued in such a manner that it makes today’s living the dead of tomorrow” (Anonymous, 1996, p. 257). Even proponents of human rights concede that negotiations often require concessions to “unsavoury groups” (Sriram, 2008, p. 182), such as the granting of amnesty for past abuses. The immediate goal is to stop the killing and ensure security and stability, but the hope is that ‘softer’ human rights concerns can be left for a later stage, for the peacebuilding phase, possibly aided by international involvement. The question is however if this is realistic or if the institutions created by the initial peace agreement will significantly hamper such attempts.

This paper first analyses the content of post-Cold War peace agreements: to what extent are effective human rights provisions included? This is based on an analysis of peace agreements signed in self-determination conflicts between 1990 and 2010. The agreements were selected according to two criteria: 1) they attempted to find a solution to intra-state conflicts that included demands for self-rule or outright independence for one or more communities; 2) they were comprehensive agreements in that they were signed by major parties in the conflict and they aimed to address the underlying causes of the conflict. 19 agreements met these criteria: Bangladesh/Chittagong Hill Tracts (1997), Bosnia (1995), Croatia/Eastern Slavonia (1995), India/Bodoland (1993), Indonesia/East Timor (1999), Indonesia/Aceh (2005), Israel/PLO (1993), Macedonia (2001), Mali (1992), Moldova/Gagauzia (1994), Niger (1993), Northern Ireland (1998), Papua New Guinea /Bougainville (2001), Philippines/Mindanao (1996), Russia/Tatarstan (1994), Russia/Chechnya (1996), Senegal (2004), Sudan/South Sudan (2005), Ukraine/Crimea (1996). The analysis finds that that these agreements, with their emphasis on territorial autonomy and group rights, may be Western but they are also surprisingly illiberal. The second part of the paper discusses if human rights can be prioritised at a later stage. Four options are considered: interim agreements, adding details later, constructive ambiguity, and third party involvement. Two key obstacles are emphasised: the ‘core deal’, and the actors empowered by it, and the nature of intra-communal dynamics. The problem therefore goes beyond making peace with ‘unsavoury characters’. Although it is possible to make

peace agreements more flexible, the temporal sequencing of peace, justice and equality is hard to achieve in practice, and the path dependency created by the initial settlement is considerable.

Human Rights in Post-Cold War Peace Agreements

Christine Bell (2000, p. 297) has described human rights as “the universally recognized chic language in which to write peace agreements”. She argues that including references to human rights is a simple way to confer international legitimacy onto an agreement and it is also relatively easy for the conflict parties to agree on a list of overarching human rights, as each can read different things into them. But listing human rights is not enough. Enforcement is also necessary and this is much harder to agree on. Even more controversial is the issue of past abuses. The violation of human rights was a central feature of many of these self-determination conflicts, but in order to end a violent conflict it is usually necessary to negotiate with the very people responsible for the suffering. It may therefore not be possible to achieve both peace and justice. Myron Weiner (1998, p. 440) has argued that this is a genuine dilemma in the sense that we have to choose between distasteful alternatives; there is no satisfactory solution.

But can an unjust, top-down peace form the basis of a long-term solution? An agreement that compromises on basic rights is unlikely to address the fears and grievances that frequently fuel these conflicts and may therefore never achieve popular legitimacy. If justice and peace are both needed for a sustainable solution, at least in the long-term, then this raises the question of postponing justice: can we have peace first and justice and equality later? Weiner (1998, p. 449) leaves the “temporal sequencing of norms” as an open question, while Bell (2000) emphasises that peace agreements should be seen as transitional and she would therefore appear to give an affirmative answer.

The problem is that peace agreements, and the institutions they create, are designed to be rigid; they are meant to provide solid guarantees and therefore be difficult to reform. Moreover, these institutions empower certain leaders and they will consequently have a vested interest in their continued existence. Considerable path dependency would therefore be expected. However, there may be ways of promoting greater flexibility. These options will be discussed below, but we first need to examine the extent to which human rights provisions have been included in peace agreements.

Analysis of Peace Agreements

One of the clearest trends that can be observed in the 19 peace agreements is the preference for autonomy as a solution to self-determination conflicts: it was included in 18 out of 19 agreements. The degree of this autonomy varies significantly but it is territorially defined in all but two cases. This could be seen as unsurprising. A claim to self-determination is at the core of these conflicts and these claims are predominantly made on behalf of groups that are territorially concentrated, thereby presenting territorial autonomy as a fairly straightforward compromise that will protect the territorial integrity of the state, while recognising the legitimacy of the demand for (internal) self-determination (see e.g. (Ghai, 2000)). What space do such territorial, group-based agreements leave for human rights? Human rights provisions will in the following analysis be interpreted widely. I am not simply interested in Western conceptions of human rights, but rather in provisions that protect individual human rights and the rights of groups excluded from the peace process, provisions for accountability and for victims support. These are provisions that can potentially act as a counter to the 'core deals' described above and the powerbase of the signatories, which is what makes them so controversial

Human Rights Institutions: Rhetoric but Lack of Substance

The agreements do contain frequent references to human rights. The Erdut agreement for Croatia/Eastern Slavonia is typical with its promise that "the highest levels of internationally recognized human rights and fundamental freedoms shall be respected in the region" (art. 6). Even the extremely short Khasavyurt Accord for Chechnya, which includes hardly any institutional mechanisms, expresses the will to "protect unconditionally human rights and freedoms proceeding from the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights". Human rights are in fact explicitly mentioned in all but two peace agreements: The Bodoland Accord (India) and the Belgrade Agreement (Serbia and Montenegro).¹

However we need to look beyond the rhetoric and a number of these agreements only make fleeting and very general references to human rights. The Oslo Declaration for Israel/Palestine for example only mentions 'political rights' and 'just peace settlement' in the preamble and in the case of the Philippines/Mindanao human rights are also only mentioned once: in relation to the autonomous

¹ The Constitutional Charter that implemented the latter actually contains very detailed human rights intuitions, but it does point to a different set of priorities of the negotiating parties

police which must respect constitutional rights and the “the inherent human rights of the citizens” (art. 76e).

We find more specified overarching rights, for example in the form of a bill of rights, in thirteen of the agreements, although this again includes very general commitments to “the exercise of fundamental freedoms in particular freedom of speech and expression” (Senegal) or to “the Universal Declaration of the Human Rights from 1948 and the African Charter on Human and Peoples’ Rights from 1981” (Niger). While such references may be symbolically important, the effects on the actual functioning of the peace agreement are likely to be minimal. More well-developed human rights institutions are found in the cases of Bosnia, Aceh, Macedonia, Bougainville, Sudan, and Northern Ireland.² Here we find references to specific rights – these are either listed or references are made to rights protected in the constitution or in named international treaties – and human rights institutions are also created, in the form of constitutional courts or human rights courts and/or human rights ombudsman or other institutions charged with monitoring human rights. International mediators were involved in all six cases and sometimes drafted the provisions. Paul Szasz (1996) argues that in the case of Bosnia almost none of the human rights provisions originated in Bosnia itself.

But how effective are such provisions which are often agreed under time pressure and which may not have a basis in local legal traditions? Despite variation when it comes to the details included in the six agreements, all are lacking when it comes to specific enforcement mechanisms. The least detailed provisions are found in the case of Bougainville where no new human rights institutions are created, and the agreement simply points to the existing Supreme Court as final court of appeal for human rights. The agreement for Sudan is much more detailed. It includes a long list of rights protected by the agreement, and both a Constitutional Court and a Human Right Commission are to be established. However, details regarding enforcement are lacking. Human rights play an even more central role in the Belfast Agreement for Northern Ireland, but it is similarly vague on the details; for example on the precise functioning of the Human Rights Commission and the Equality Commission which are to be established. Human rights institutions and mechanisms abound in the Dayton Agreement for Bosnia but even here the mechanisms for enforcement are unclear. In particular, there is a ‘security gap’, since no one has an explicit mandate to arrest human rights violators which, as Bell points out (2000, pp. 221, 227) , is necessary as a last resort if human rights are to be enforced. A lot of onus is therefore placed on the implementation phase and effective human rights provisions are postponed for later.

² These are also found in the Ukrainian constitution, but not in the chapter relating to Crimea, which is the part most comparable to the other peace agreements.

Even though peace agreements are typically written in the language of human rights, meaningful human rights protections are therefore rarer than expected and effective enforcement mechanisms even more so. In most of these self-determination conflicts, group rights not individual rights are the main concern and the negotiating leaders will in most cases not prioritise human rights. The exception would be cases, such as Northern Ireland, without territorial concentration of ethnic groups where territorial autonomy does not provide protection against future human rights violations.

Another reason for the lack of effective human rights provisions is the narrowness of most peace processes. The leaders included in peace talks are typically the ones who are viewed as 'veto players'; the leaders who have the ability to obstruct a peace agreement if they are excluded and to make it stick if they are brought on board. A number of groups consequently find themselves excluded from the peace process and from the resulting peace agreement: human rights advocates, women's groups, and the representatives of communal groups not directly involved in the conflict.

Excluded Groups: Lack of Rights for 'Others'

The autonomy arrangements that form the 'core deal' of the peace agreements are not necessarily defined in explicitly ethnic terms. For example, the Ohrid Agreement for Macedonia studiously avoids mentioning the Albanian minority. However, the institutions still tend to be ethnic in their effects, in the sense that they empower a particular group within the region. This is most frequently the local majority group, such as the Acehnese in Aceh, although the favoured group can be a local minority, such as the tribal groups in Bodoland. Similarly, the power-sharing institutions that are included in five of the agreements, guarantee power for the representatives of 'significant groups' only. What results from this is a lack of rights for minorities within the autonomous regions and especially for 'Others', i.e. those not belonging to the main ethnic groups.

In the case of Bosnia, 'Others' are mentioned in the preamble of the Dayton Agreement, but power-sharing arrangements and electoral rules are based on the three constituent nations. The three-person Presidency must, for example, consist of a Bosniak, a Serb and a Croat. In southern Sudan, the institutions were to be dominated by the Sudan People's Liberation Movement/Army (SPLM/A), which is in turn dominated by the Dinka ethnic group. There are quotas for 'other political forces', but their influence is likely to be minimal with only 15 pct of the seats in the regional assembly (pending elections) (art. III.3.5). In the case of Mindanao, some references to cultural rights are found and the possibility for guaranteed representation of regional minorities is mentioned, but

Sharia law is also to be introduced . Finally, in the case of Gagauzia the agreement holds that one Vice-Chairman of the regional assembly is to be of another ethnic origin than Gaugaz (art. 10.2).

The rights of minorities within the autonomous regions may be more developed when this minority is part of the dominant group in the state as a whole. This is most notably the case in Israel/Palestine where Israelis are explicitly exempt from the jurisdiction of the Palestinian authorities. In the Chittagong Hills Tract, there are reserved seats for non-tribal representatives, but they are still under-represented. The Bodoland Accord provides land and language rights for non-tribal communities, and the government can also appoint five (out of 40) members of the autonomous council from groups which “could not otherwise be represented” (art. 3.b.) but they are not guaranteed a share in power.

Some authors have pointed to ‘complex power-sharing’ as a post-Cold War trend, and to the use of local power-sharing in case of heterogenous autonomous regions (Wolff, 2009). However the above-analysis points to more ‘simple autonomy’ and the rights of ‘others’ are particularly limited. The lack of rights for non-titular groups have led to tensions in a number of cases - such as Bodoland, the Chittagong Hills Tract and Aceh - but such rights are typically fiercely resisted by the conflict parties as they could undermine the protections that have been negotiated for the main ethnic group. The territorial autonomy would be constrained and the share in power reduced. In addition, and often more importantly, they could weaken the powerbase of the local leaders and their emerging fiefdoms.

This trend for lack of inclusivity repeats itself if we look at the rights of women. Indeed, it is striking that only handful of agreements even mention gender equality. Most notably, the Belfast Agreement for Northern Ireland includes the “the right to equal opportunity regardless of gender” and “the right of women to full and equal political participation” and, pending devolution, the UK Government is to “promote inclusion, including the advancement of women in public life”. In southern Sudan, thousands of women had joined the armed struggle, but this involvement was overlooked by the leaders of the SPML/A and women were not regarded as “appropriate participants” in the peace talks (Gardner & El-Bushra, 2013, p. 14), and although the agreement makes some general references to equal rights for women, this does not go beyond rhetoric. Other agreements (East Timor, Bougainville, Mindanao) state that women *may* enjoy guaranteed seats in the local assemblies and the agreement for the Chittagong Hills Tract guarantees women three out of 22 seats in the regional council (18 are explicitly reserved for men!). Women were actively engaged in the Hill people’s struggle for autonomy, but women were excluded from the peace talks and the accord makes no provisions for their rights (Mohsin, 2003, p. 54). Some other agreements

mention women's rights in the preamble only (Mali) or make reference to international treaties that include gender rights, but do not point to these specifically (e.g. Bosnia). And that is about it. Even though women are disproportionately affected by the consequences of war, they are rarely represented in peace talks and their rights and interests are not included in the peace agreements.

Past Abuses: De Facto Amnesties

In violent conflicts, peace tends to be concluded between the leaders who control the armed groups. Without the consent of these leaders, peace will be very difficult to agree to and even more difficult to implement. Amnesties therefore used to be commonplace in peace agreements. They were seen as significant tools in the mediator "toolbox" (Sriram, et al., 2014, p. 8), and the UN in a number of cases "pushed for, helped, helped negotiate, and/or endorsed the granting of amnesty as a means of restoring peace" (Scharf, 1999, p. 507). But amnesty arrangements have faced increasing criticism and UN mediators now receive explicit instruction that blanket amnesties cannot be endorsed.³ Some authors have in fact suggested that there are now significant constraints on the granting of amnesties and that justice may therefore be required at the "expense of peace" (Scharf, 1999, p. 507).

It may therefore be surprising that amnesties are still found in a majority of the agreements, either explicitly or de facto. General amnesties are found in five agreements: Chittagong Hills Tract, Aceh, Niger, Bougainville and Senegal. These amnesties either come with no conditions or only depend on the combatants surrendering their weapons. Similar arrangements, although not referred to as amnesties, are found in Mali and in Mindanao where combatants from the separatist movement are to be integrated into the armed forces, without any conditions attached to this. In the case of Bodoland we also find a general amnesty, except in cases of "heinous crimes" (undefined) and in Bosnia amnesty is granted for returning refugees and IDPs, except in cases of "serious violation of international humanitarian law" or a "common crime unrelated to the conflict" (Annex 7, VI). Of the remaining agreements, four were non-violent and amnesty therefore less relevant, which leaves five agreements: Croatia, Israel/Palestine, Macedonia, Northern Ireland, and East Timor. In the first case, Croatia, the lack of amnesty is explained by this essentially being a capitulation; there was therefore no attempt to try to integrate the Serb armed forces or provide incentives for the leaders to compromise. The Oslo Declaration for Israel/Palestine emphasises separation and pays little

³ United Nations, *Mediation Fundamentals: International Laws and Norms*,
<http://peacemaker.un.org/mediationapp#InternationalLawNF>

attention to human rights (Bell, 2000), and while there is no amnesty, prosecution for past abuses is not mentioned either. In Northern Ireland there is no explicit amnesty arrangement, but the agreement does include the 'early release' of prisoners. While similar to amnesty, this can be revoked, in case of new crimes, and is conditional the first two years (Bell, 2000). It has however recently come to light that secret letters were sent to more than 200 republican paramilitary suspects, informing them that they were no longer wanted by police (BBC News, 2015). The conflict in Macedonia was a fairly low-level conflict and amnesties were therefore not a pressing concern. Moreover, the National Liberation Army which had waged the armed struggle did, somewhat unusually for a violent conflict, not take part in the talks. However, mechanisms for prosecutions are not set up either. Finally, in the case of East Timor, the autonomy arrangement, which was one of the options in the independence referendum, is silent on both amnesties and prosecutions, which is perhaps unsurprising given that the architect behind this option, the Indonesian Government, represented the side responsible for the vast majority of human rights violations.

The inclusion of war crimes prosecution is in fact extremely rare in these agreements. Only in the case of the International Criminal Tribunal for the Former Yugoslavia (ICTFY), which covers both the cases of Bosnia and Croatia, was a detailed mechanism set up. This is however not part of the agreements. The ICTFY was created during the war, in 1993, and one of the goals was to deter further human rights abuses. The ICTFY is not mentioned in the Erdut Agreement but does feature in the Dayton Peace Agreement for Bosnia, which precludes anyone indicted by the ICTFY from holding public office. This provision had not been included in previous peace proposals (Szasz, 1996, pp. 313-314). It has however been argued that amnesty de facto was granted even in this case. The ICTFY had wanted full co-operation with the Tribunal to be a condition for the Dayton Agreement, but US officials involved in the talks made clear that this was "not a show stopper" (Anonymous, 1996, p. 256). In any case, the NATO force which was charged with the military implementation of the agreement was not tasked with arresting suspected war criminals.

Prosecution is otherwise only hinted at or implied in two agreements: first in the case of Bodoland, since amnesty is not granted in case of "heinous crimes" and, second, in the case of Mali where a Commission of Internal Enquiry is to look into abuses during the conflict. But it is not clear if prosecutions were intended to result from this Commission. The rest of the agreements are silent on any form of retributive justice, thereby reinforcing the impression that amnesty is the defining principle, not just for combatants but also for their leaders. However, what we do appear to see is a movement away from explicit amnesty arrangements and toward de facto amnesties.

There are two main reasons for the continued popularity of amnesty arrangements. Firstly, amnesties are part of the DDR process; in cases of separatist warfare, amnesty is one of the carrots that is meant to sway combatants to lay down arms and enable their reintegration into society (or into the official armed forces). Secondly, it is often regarded as necessary to secure the peace. Combatants would be more reluctant to disarm and (some) leaders would refuse to sign peace agreements. Tony Blair argues that the peace process would probably have collapsed without the letters to republican paramilitary suspects; they were “essential to getting Sinn Fein on board” (BBC News, 2015). Mohsin (2003, pp. 54-55) laments that despite massive violations of human rights in the Chittagong Hills Tract, the peace agreement makes no reference to these abuses and no accountability measures are included. She attributes this to the powerful position enjoyed by the Bangladeshi military.

Amnesty should however not be equated with impunity. It is possible for amnesty arrangements to be combined with other mechanisms for accountability, such as truth commissions or compensation for victims (Scharf, 1999, p. 512). It has been argued that following bloody intra-state conflicts, such accountability mechanisms are actually better suited than prosecutions. They can help mediate the peace-justice divide; perpetrators may not be going to prison but victims are not forgotten about and may receive compensation. Sriram (2007, p. 583) therefore argues that when it comes to peace and justice, it is not simply a question of either-or. However we actually find very few examples of alternative forms of transitional justice in the 19 agreements. In the case of Aceh, a Truth Commission is to be established and political prisoners and civilians with "demonstrable loss" are to receive compensation. Mali's Commission of Inquiry has been interpreted as a truth commission,⁴ and the agreement also provides for compensation for victims, while the agreement for Niger promises a Day of Commemoration, “in memory of the victims of the conflict”. The peace agreement for Bougainville includes a commitment to reconciliation, both within Bougainville and between Bougainville and Papua New Guinea, but is silent on the specific mechanisms. The issue is postponed in Northern Ireland pending a report from the Northern Ireland Victims Commission. But the agreement does mention victims and their suffering and promises support for community initiatives. Finally, in the case of Senegal, the agreement urges “intra-communal forgiveness and reconciliation” and a group of Casamance officials, village chiefs and religious leaders are to develop “dynamics of forgiveness and reconciliation” paving the way for the return of ex-combatants.

⁴ Peace Accords Matrix, <https://peaceaccords.nd.edu/provision/truth-or-reconciliation-mechanism-national-pact>

A Not Very Liberal Peace

Although many of these agreements were negotiated in “Western bubbles” (MacGinty & Richmond, 2013, p. 763) and almost all of them made use of international mediators, they do not generally embody liberal values. The agreements can be said to be Western as regards the emphasis on self-governance and the importance of territory (Dalsheim, 2014), but the reference to human rights is in most cases rhetorical and appear to constitute an attempt to ensure international legitimacy rather than an attempt to genuinely affect the post-war political order. The emphasis is instead on ethnic groups and their rights, individual rights are either ignored or largely symbolic, the central state is rarely required to impose significant reforms, and the ‘men with the guns’ tend to be empowered at the expense of other actors and groups.

Ian Selby (2013, p. 76) argues that peace agreements “are essentially mechanisms for the restructuring of power relations, and the attainment...of political legitimacy - not liberalisation” and they are also “significantly structured by and designed to reconfigure intra-group power relations”. To this must be added that human rights provisions, if they went beyond mere rhetoric, would risk undermining the ‘core deal’; the group-based protections and rights. This would certainly affect the powerbase of the leaders but it cannot be reduced to this. In addition, although the local parties have resisted human rights provisions in a number of cases, the push from mediators also appears to have been limited. For example, in the case of Aceh, human rights were not high on the agenda, despite being a key Acehnese grievance. Both the Indonesian Government and the Free Aceh Movement (GAM) had reservations about robust justice measures and the mediators preferred to allow the parties to set their own agenda (Hadi, 2008, p. 67). Mediators may accept the leaders as genuinely representative of popular grievances and fears, or they may simply worry that insisting on effective human rights provisions would make it impossible to reach an agreement. Moreover the assumption that such ‘soft’ concerns can be addressed in the peace-building phase, and that a vague commitment suffices in the meantime, appears to be widespread. But the question is to what extent it is possible to move beyond the initial peace agreement.

Justice and Equality Later?

Peace agreements are invariably imperfect. Negotiations are often conducted under extreme time pressure, which does not allow for a careful wording of the documents. The process is usually narrow and the actors whose interests have to be accommodated do not necessarily have long-term governability and stability as their main concern. Flexibility is needed to improve the original

agreement and avoid the freezing of wartime dynamics, but such flexibility will come up against significant obstacles as it could threaten both the protections afforded to communal groups and the powerbase of individual leaders.

In the early 1990s, the hope was that the holding of elections would bring moderates to power, which would make it easier to implement the agreement and gradually introduce human rights provisions. Elections in Bosnia were therefore to be held no more than nine months after the Dayton Agreement came into effect, but the expected victory for the moderate forces did not result. Although slightly weakened, the nationalist parties maintained their grip on power. This is hardly surprising: voters knew the nationalist parties, they were well-organised and they controlled much of the resources, whereas their more moderate rivals had very little time to get organised. In a still fearful atmosphere, their promise to staunchly defend their communities also had popular resonance (Caspersen, 2004). Early elections are clearly not a panacea, but they nevertheless remain the norm in peace agreements. All the nine agreements that specify when elections are going to be held are promising elections less than three years after the agreement comes into effect; seven of them are intending to have elections within the first year. In the case of Mindanao, elections for the new autonomous government were held only a week after the agreement was signed.

The purpose of these elections is however rarely to effect a change in the holders of power. These elections typically constitute the autonomous institutions but they also serve to legitimise the agreement *and* the power of its signatories. In the autonomous regions, the power of the former armed movements will consequently often be consolidated. In the elections for the Mindanao autonomous government, the chairman of the Moro National Liberation Front (MNLF) won unopposed. The Free Aceh Movement (GAM) also won convincingly when Aceh elected the head of its autonomous institutions eight months after the peace agreement. This was attributed to GAM's superior organisation and the legitimacy that it derived both from the settlement and the years of struggle; the voters perceived GAM as being more likely to stand up to the Indonesian Government and push for full implementation of the agreement (Aspinall, 2008). These groups will also typically hold power in any interim period that precedes the holding of elections. In the case of Sudan, this was guaranteed through an exclusive agreement, which assigned power to the two negotiating parties: the National Congress Party (NCP) and the SPML/A. Thus, in Southern Sudan, the SPLM was given 70 percent of the seats in the legislative assembly, until elections were to be held three years later. Many of the agreements so entrench the powers of the leaders who negotiated the peace that elections are unlikely to result in a change in power. As Sriram argues, in the case of amnesties the leaders of groups responsible for atrocities do not only go free, they will also "be given power in any

future state” (2008, pp. 181-2). But will they make the necessary transition, and support justice and equality? The following section discusses options for ensuring flexibility and thereby the prioritising of human rights in the post-settlement phase: interim agreements, delay, ambiguity and third party involvement.

Interim Agreements/Sunset Clauses

One way of ensuring that the compromises on human rights, which may be needed to ensure an agreement, are short-term only, is to include an explicit sell-by date. The whole agreement could be a temporary one, such as the power-sharing arrangement that helped South Africa transition from apartheid, but was replaced by a majoritarian system. The interim period allowed for the development of a broad consensus, including agreement on transitional justice in the form of a Truth and Reconciliation Commission. Sisk and Stefes (2005) however concede that the conditions that enabled such an interim agreement are unlikely to be found elsewhere. Two factors in particular were crucial: an imbalance of power (the clear dominance of the ANC) and a common vision of a future state. Such a vision is lacking in separatist conflicts, which makes an interim agreement more difficult to imagine. The whole point of a power-sharing agreement, especially in its consociational form, is that it is difficult to alter; it reassures the minority that they will not be outvoted in the future. Putting a time-limit on such protections is likely to prove unacceptable. The conflict parties, and in particular the weaker party, will in most cases try to secure an agreement that provide credible commitments and solid guarantees (Sisk & Stefes, 2005, p. 296). Making the ‘core deal’ temporary is therefore fraught with difficulty, and in the analysed agreements, it is only seen in agreements that promise independence referenda after an interim period (Sudan, Bougainville, Serbia/Montenegro). Another option would be to make specific provisions temporary. So-called sunset clauses for example only grant amnesty for a specified time period. This has however not been used in any of the analysed agreements and the problem is again one of acceptability in the negotiation phase: why would leaders accept to put a time-limit on their amnesty?

What may be more feasible is to leave the details of human rights provisions, their substance, for later and rely on a broadening of the peace process to effect a change in dynamics.

Leaving the Details for Later

Bell (2000) argues that full accountability measures are rarely part of substantive peace agreements. The details of these and other human rights provisions are typically left for the post-settlement phase. However, the risk of such a strategy is fairly obvious: if it is left for later, it may never happen. A possible vehicle for change is however the broadening of the process during the implementation phase. Peace agreements are usually negotiated by very few actor, whose claim to represent their communities may be dubious. If the process could be broadened, gradual change may therefore be possible.

In the case of Aceh, the Memorandum of Understanding promised a Human Rights Court for Aceh and a Commission for Truth and Reconciliation. The problem was that these articles were “too vague to be effective” (Hadi, 2008). The Indonesian Government was not willing to let the Human Rights Court deal with past abuses and the Truth and Reconciliation commission has yet to be established (Amnesty International, 2013); the Constitutional Court overruled national legislation, citing concerns about “provisions for amnesty and legal impunity for perpetrators of gross abuses” (Hadi, 2008). The process had been broadened and included public consultations in Aceh before the passing of the Law on Governing Aceh (International Crisis Group, 2006), but the lack of details on human rights proved detrimental given the significant opposition from Jakarta and the lack of international pressure (Hadi, 2008). Another promised Truth Commission, Mali’s Commission of Inquiry, was also never established.⁵ Grassroots reconciliation processes eventually made it possible to implement important parts of the peace agreement (Lode, 2002), but the political will to establish the Commission of Inquiry was lacking.

Within the autonomous regions, a common outcome is that the former armed movement entrenches its power in the post-settlement phase and the rights of individuals and minority groups are increasingly jeopardised. Aceh has for example now taken on “some of the trappings of a one-party state”: GAM’s political machine “has become so strong...that losing at the polls is unlikely, even if it fails to deliver” (International Crisis Group, 2013, pp. 9, 11). Human rights are coming under increasing pressure with the passing of bylaws that extends Sharia to non-Muslims, violate rights and carry cruel punishments (Human Rights Watch, 2014).

However, other outcomes are possible. A lack of details is not necessarily an insurmountable obstacle to effective human rights provisions. For example, in the case of Bougainville, a process of restorative justice within Bougainville has been launched, despite a lack of details in the peace

⁵ Peace Accords Matrix, <https://peaceaccords.nd.edu/provision/truth-or-reconciliation-mechanism-national-pact>

agreement, and hailed as a success (Reddy, 2008). The prime minister of Papua New Guinea and the leader of Bougainville's government have, moreover, broken an arrow in a reconciliation ceremony (Australia Associated Press, 2014). But such efforts crucially serve the strategic interests of both sides. An independence referendum is to be held by 2020, as long as Bougainville meets certain conditions including 'good governance', which is defined to include democracy and respect for human rights (art. 313a). The Bougainville leadership therefore has an interest in implementing human rights provisions and ensuring intra-communal unity, while the PNG Government seeks to convince the inhabitants of Bougainville of the benefits of remaining in a common state. Nevertheless, the slow pace and inclusivity of the peace process also mattered. The Australian Foreign Minister, Alexander Downer, commented that "oodles of patience" were required (Reddy, 2008, p. 120). Intra-communal reconciliation preceded disarmament (Reddy, 2008) and it took four years before elections to the autonomous government, which were assessed as 'free and fair', were held. The peace process was also broad from the beginning, with women playing an important role (Reddy, 2008).

Another case where human rights provisions have been implemented, despite lack of details in the agreement, is the case of Northern Ireland. This again appears to have been aided by a broad process (Fearon, 2013), but the wider context also matters: this was, comparatively speaking, a low level conflict and the human rights provisions could be built into an existing framework of democratic institutions.

The details of human rights provisions matter, but such details are usually lacking in peace agreements. Without them, the wider context becomes crucial but this context is in most cases not conducive to human rights. The broadening of the process may help, but powerful interests have an interest in avoiding effective human rights provisions and these actors tend to be strengthened by the peace agreement and the institutions it creates. The question is however if cleverly worded agreements could help more moderate forces to emerge, maybe not in the short-term but possibly in the medium-term.

'Constructive Ambiguity'

One of the trends in post-Cold War peace agreements is a movement away from explicitly 'ethnic' institutions. So-called liberal consociationalists have argued that by defining power-sharing institutions in non-ethnic terms, such institutions can wither away if attitudes change and they are no longer needed (see (McGarry & O'Leary, 2006). The prioritisation of group rights over individual

rights, and the frequent exclusion of 'Others' could therefore be transitional: a short-term price for stability. Similarly, group-based institutions could gradually be undermined by human rights provisions in the agreement; these might be fairly ineffective to begin with but such countervailing institutions could be strengthened over time.

The problem is, however, that the system tends to reinforce itself. Power-sharing systems and other institutions designed to protect the interests and rights of particular groups will, even if not formally 'ethnic', provide incentives for elites to appeal in ethnic terms and for voters to respond to such appeals. The undermining of such institutions by human rights provisions is, similarly, likely to be forcefully resisted by the elites who benefit from the existing system. Such obstacles to flexibility are particularly significant in cases where an overall consensus on the state is missing, and especially where regions have extensive autonomous powers. Thus, in Bosnia, only the entities were able to effectively enforce human rights protections, but they refused to take on this task (Bell, 2000, p. 227). The extensive autonomy provided for in the Dayton agreement therefore made it impossible for human rights protections to "claw back" the unitary state as had been intended. The institutions created by the initial agreement will not simply wither away. Nevertheless, it is conceivable that the language of human rights, the framing institutions in civic rather than ethnic terms, and the granting of de facto rather than de jure amnesties could still be important. It may empower reformers to demand more change and start debates (see also (Barnett, et al., 2014). However in order to make this possible, it would be advisable not to empower warlords and other actors with dubious democratic credential more than what is absolutely necessary in order to get an agreement, and to try to create some mechanisms for future flexibility.

A final option, which could address the problem of local acceptance, is third party involvement. This involvement is not necessarily limited to coercive strategies. Other forms of persuasion and assistance are possible, and do not carry the same risks.

Third Party Involvement

A key criticism of the liberal peace agenda is that it turns into coercion when faced with local resistance. This criticism has often been made in the case of Bosnia (see e.g. (Chandler, 2000), where human rights - including war crimes prosecution, refugee returns and effective human rights institutions - were strongly pushed and often imposed by third parties. When the local elites resisted such efforts, the powers of the international enforcers were increased. As a consequence of this, Bosnia is one of the few clear examples of the temporal sequencing of peace and justice, but it also

shows its limitations. War crimes suspects were largely left in peace initially, but pursued much more forcefully later on. However it still took 12 and 15 years from the signing of the Dayton Agreement until the two main suspects, Radovan Karadzic and Ratko Mladic, were arrested. Refugee returns were similarly a very gradual affair, and although a significant number eventually returned, it did not fundamentally change the Dayton institutions as initially envisaged (see (Toal & Dahlman, 2011)). International involvement has also characterised Bosnia's Constitutional Court as judges representing the three "constituent nations" were joined by internationally appointed judges. This was meant to reinforce the Court's integrative effect, but without effective enforcement mechanisms, the effect has been less than expected. Moreover, the Court's most significant ruling in 2000 - which required the two entities to amend their constitutions so that they ensure political equality for all three constituent peoples – actually reinforced the ethnically-defined system (Caspersen, 2004). The 2009 ruling by the European Court of Human Rights (ECtHR), in the Sejdić and Finci case, is more significant but also problematic. It illustrates how human rights provisions that may initially have appeared unimportant can help reform rigid institutions. The ECtHR found that the Bosnian Constitution violates the European Convention on Human Rights (ECHR) due to the lack of political rights for 'Others'. The Dayton Agreement gave the ECHR priority over all other law in Bosnia, but the local parties have failed to agree on how to amend the constitution and the international administration is not willing to impose such fundamental reforms. If a court is able to overrule power-sharing institutions (and their decisions) based on human rights, then this would weaken group protections (O'Leary, 2013, pp. 396-8) and it would also undermine the decision-making power of popularly elected officials. This is particularly problematic as the court in question is an international court.

In other cases, the third parties involved in the implementation of the agreements have been far less willing, or less able, to push for human rights. In the case of Aceh, the human rights mandate of the Aceh Monitoring Mission (AMM) was not well-defined and the EU did not provide guidance or backing for a more assertive approach. As a result, the AMM did not put pressure on the Indonesian Government when it watered down the human rights provisions and did also not criticise the provisions for Sharia Law in Aceh even though it was not in line with the stipulation of the peace agreement that "the legislature of Aceh will redraft the legal code for Aceh on the basis of the universal principles of human rights provided for in the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights" (Schulze, 2008, p. 39).

The fear is that pushing human rights provisions, even if these have already been agreed to in principle, will upset a delicate balance and pose a threat to stability. However by failing to put

pressure on the local leaders, third party monitors also make it easier for local leaders to tighten their hold on power and refrain from addressing, and admitting to, past abuses. The case of Bougainville demonstrates that an international peace monitoring group can play a positive role when it comes to human rights provisions, here in the form of restorative justice, without this necessitating coercion. The UN mission was mandated to support reconciliation and it did so through logistical support, by attending and witnessing the ceremonies and, occasionally, by acting as go-betweens (Reddy, 2008, p. 122).

The reluctance to impose human rights provisions is understandable and well-advised. Such imposition would not only undermine local ownership and possible 'exit strategies', there is also a risk that human rights provisions, and thereby the third parties imposing them, could be manipulated by more powerful groups as a means of avoiding the implementation of minority rights; an insistence on "one (wo)man, one vote" can be a cover for majority dominance and insufficient minority protections. However what the above analysis has argued is that vague commitments in a peace agreement is not enough; human rights cannot simply be left for later.

Conclusion

The UN Secretary General may have declared that justice, peace and democracy are mutually reinforcing strategies (United Nations, 2004), but the commitment to justice and democracy in peace agreements signed since the end of the Cold War has been mostly symbolic, without any significant effect on the 'core deal' or on intra-communal power relations. This would not be a problem if effective provisions could simply be introduced later on, when violence has ceased and attitudes moderated, but the problem is that once an agreement has been put in place, it is hard to depart from its basic principles, including on justice and equality. The tendency to overlook the content of peace settlements, and instead view peace-building as a distinct phase, would therefore appear to skew the debate on 'liberal peace-building'. Local resistance to human rights provisions does not necessarily represent a departure from the peace settlement; it will in fact often be strengthened by it. If mediators are serious about promoting human rights, then the provisions in the peace agreement should be as detailed as possible, the process should be broadened early on, and the international mandate needs to be clear. Peace agreements are primarily a means to ending violence but they also represent a chance to transform the existing system; one that will rarely repeat itself.

Bibliography

Amnesty International, 2013. Indonesia: Victims of the Aceh conflict still waiting for truth, justice and reparation. 18 April .

Anonymous, 1996. Human Rights in Peace Negotiations. *Human Rights Quarterly*, 18(2), pp. 249-258.

Aspinall, E., 2008. Elections: Consolidating Peace. In: Aguswandi & J. Large, eds. *Reconfiguring politics: The Indonesia-Aceh peace process*. London: Conciliation Resources.

Australia Associated Press, 2014. PNG leader apologises to Bougainville for bloody 1990s civil war. *The Guardian*, 29 January .

Barnett, M., Fang, S. & Zurcher, C., 2014. Compromised Peacebuilding. *International Studies Quarterly*, Volume 58, pp. 608-620.

BBC News, 2015. OTR letters: Tony Blair says INI peace process could have collapsed without scheme. 13 January .

Bell, C., 2000. *Peace Agreements and Human Rights*. Oxford: Oxford University Press.

Caspersen, N., 2004. Good fences make good neighbours? A comparison of conflict regulation strategies in post-war Bosnia. *Journal of Peace Research*, 41(5), pp. 569-88.

Chandler, D., 2000. *Faking Democracy after Dayton*. London: Pluto Press.

Cooper, N., Turner, M. & Pugh, M., 2011. The End of History and the Last Liberal Peacebuilder: A Reply to Roland Paris. *Review of International Studies*, 37(4), pp. 1995-2007.

Dalsheim, J., 2014. *Producing Spoilers: Peacemaking and the Production of Enmity in a Secular Age*. New York: Oxford University Press.

Fearon, K., 2013. Northern Ireland's Women's Coalition: Institutionalising a political voice and ensuring representation. In: Z. Yousuf, ed. *Accord: Women Building Peace*. London: Conciliation Resources, pp. 31-33.

Gardner, J. & El-Bushra, J., 2013. From the forefront of peace and reconciliation: Testimonies from women building peace. In: Z. Yousuf, ed. *Accord: Women Building Peace*. London: Conciliation Resources, pp. 9-18.

Ghai, Y., 2000. Ethnicity and Autonomy: A Framework for Analysis. In: Y. Ghai, ed. *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States*. Cambridge : Cambridge University Press, pp. 1-26.

Grono, N., 2006. *The Role of the International Court in Peace Processes: Mutually Reinforcing or Mutually Exclusive?*, IPPR briefing paper.

- Hadi, F., 2008. Human Rights and Injustice in Aceh: the long and winding road. In: Aguswandi & J. Large, eds. *Reconfiguring politics: The Indonesia-Aceh peace process*. London: Conciliation Resources.
- Human Rights Watch, 2014. Indonesia: Aceh's New Islamic Laws Violate Rights. 2 October .
- International Crisis Group, 2006. *Aceh: Now for the Hard Part*, Asia Briefing no. 48.
- International Crisis Group, 2013. *Indonesia: Tensions over Aceh's Flag*, Asia Briefing no. 139 .
- Lake, D. A., 2010. Building Legitimate States after Civil Wars. In: M. Hoddie & C. A. Hartzell, eds. *Strengthening Peace and Post-Civil War States*. Chicago: The University of Chicago Press, pp. 29-51.
- Lode, K., 2002. Mali feature study. In: C. Barnes, ed. *Owning the process: public participation in peacemaking*. London: Conciliation Resources, pp. 56-73.
- MacGinty, R. & Richmond, O. P., 2013. The Local Turn in Peace Building: A critical agenda for peace. *Third World Quarterly*, 34(5), pp. 763-783.
- McGarry, J. & O'Leary, B., 2006. Consociational Theory, Northern Ireland's Conflict and its Agreement. Part 1: What Consociationalists Can Learn from Northern Ireland. *Government and Opposition* .
- Mohsin, A., 2003. *The Chittagong Hill Tracts Bangladesh: On the Difficult Road to Peace*. Boulder: Lynne Rienner Publishers.
- O'Leary, B., 2013. Power Sharing: An Advocate's Conclusion. In: *Power Sharing in Deeply Divided Places*. Philadelphia: University of Pennsylvania Press, pp. 386-422.
- Reddy, P., 2008. Reconciliation in Bougainville: Civil war, peacekeeping and restorative justice". *Contemporary Justice Review*, 11(2), pp. 117-130.
- Richmond, O. P., 2009. A Post-Liberal Peace: Eirenism and the everyday. *Review of International Studies*, 35(3), pp. 557-580.
- Roeder, P. G., 2010. States and Civil Societies Following Civil Wars. In: M. Hoddie & C. A. Hartzell, eds. *Strengthening Peace in Post-Civil War States*. Chicago: University of Chicago Press, pp. 53-78.
- Scharf, M. P., 1999. The Amnesty Exception to the Jurisdiction of the International Criminal Court. *Cornell International Law Journal*, Volume 32, pp. 507-527.
- Schulze, K. E., 2008. A sensitive mission: Monitoring Aceh's agreement. In: Aguswandi & J. Large, eds. *Reconfiguring politics: The Indonesia-Aceh peace process*. London: Conciliation Resources.
- Selby, I., 2013. The myth of liberal peace-building. *Conflict, Security and Development*, 13(1), pp. 57-86.
- Sisk, T. & Stefes, C., 2005. Power Sharing as and Interim Step in Peace Building: Lessons from South Africa. In: P. G. Roeder & D. Rothchild, eds. *Sustainable Peace: Power and democracy after civil war*. Ithaca: Cornell University Press, pp. 293-317.

Sriram, C. L., 2007. Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice. *Global Society*, 21(4), pp. 579-591.

Sriram, C. L., 2008. *Peace as Governance: Power-Sharing, Armed Groups and Contemporary Peace Negotiations*. Houndmills: Palgrave Macmillan.

Sriram, C. L., Martin-Ortega, O. & Herman, J., 2014. *War, Conflict and Human Rights*. London: Routledge.

Szasz, P., 1996. The Protection of Human Rights Through the Dayton/Paris Peace Agreement on Bosnia. *The American Journal of International Law*, 90(2), pp. 301-316.

Toal, G. & Dahlman, C. T., 2011. *Bosnia Remade: Ethnic Cleansing and its Reversal*. Oxford: Oxford University Press.

United Nations, 2004. *The rule of law and transitional justice in conflict and post-conflict societies*, New York: Report of the Secretary General.

Weiner, M., 1998. The Clash of Norms: Dilemmas in Refugee Policies. *Journal of Refugee Studies*, 11(4), pp. 433-453.

Wolff, S., 2009. Complex Power-sharing and the Centrality of Territorial Self-Governance in Contemporary Conflict Settlements. *Ethnopolitics*, pp. 27-45.