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Amnesty: A Yard-stick Towards the Resolution of Internal Conflict

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Abstract:

The deepest level of Conflict Resolution is considered to have been attained when positive peace and development are restored to communities experiencing violent social conflicts. However the complexity of the nature of internal conflicts in contemporary times has generated confusion about both the factors that cause such conflicts; and about the best approaches to resolving and transforming such conflicts into a positive change for the society. The first section explains the difference between three levels of Conflict Resolution namely; conflict prevention, conflict resolution, and conflict transformation. The second part explores the legal and political dimensions of the concept of amnesty and how it has been a crucial tool for reconciliation, restoration of trust and confidence-building amongst disputing parties in civil conflicts. Examples are drawn from the Truth and Reconciliation Committee in South Africa as well as the Niger Delta Amnesty Programme in Nigeria. The last part argues that amnesty plays a vital role in providing a way out of deadlocked relationships between conflicting parties, where communication has broken down, trust has been eroded, polarised positions have been solidified and violence has become a viable option. However achieving the deepest level of conflict resolution still requires a step further from amnesty, into constructive dialogue and collaborative problem solving until the root causes of violent protracted social conflicts are resolved.

Introduction

The focus of the international peace community, as well as scholars in the field of Peace and Conflict Resolution has shifted from international wars to domestic conflicts. In contemporary times, internal conflicts occurring within states have become more destructive, destroying many lives and property, displacing millions of people from their homes, and destabilising institutions and structures of governance within affected societies. Moreover the proliferation of such conflicts around the world in the past two decades have illuminated the interdependent nature of national security within an increasingly globalised world, and thus has necessitated the urgent need to explore appropriate methods and strategies to be employed to find a lasting resolution to such deadly and often protracted internal conflicts and to establish sustainable positive peace within conflict-ridden states.

However the search for appropriate strategies of conflict resolution is a humongous task that entails not only an adequate understanding of "conflict" in general and of "social conflict" in particular, but also the exploration of the effectiveness of specific strategies to specific types and levels of social conflict. This paper will focus on amnesty as a strategy of resolving internal social conflict. Before moving on to the discussion on amnesty, it is important to clearly define the conflict resolution context within which the concept of amnesty is analysed. Whether amnesty is a yardstick or adequate strategy for resolving internal conflicts will depend on what is defined as a "resolution". The next section will discuss the meaning of Conflict Resolution and will distinguish between levels of conflict resolution. Equipped with this background understanding of the context within which the question of amnesty is been asked, the next section will define amnesty and distinguish between amnesty as a legal and as a political concept. This definition of amnesty will enable a better conceptualisation of the term as a "tool" or "yardstick" for conflict resolution. Finally, drawing upon the application of amnesty for conflict resolution in South Africa and in Nigeria, the paper will conclude on the appropriateness and effectiveness of amnesty in the conflict resolution process.

Understanding Conflict

When is a conflict said to be resolved? This is a question whose answer has generated debate amongst scholars and practitioners in the field of Conflict Resolution. This debate centres on how conflict is defined and what a resolution should entail. Put simply, conflict can be defined as a state of disagreement between two or more parties, over one or more

issues. Such a disagreement can emerge as a result of the intrinsic incompatible nature of the parties and/or their goals, or otherwise as a result of some temporal position acquired by parties to satisfy their needs. In any case, conflict as a social phenomenon is said to be inevitable, unpreventable. However there is also a distinction between violent conflict and non-violent conflict. Violence which is the infliction of physical harm or injury on a person or thing can simply be considered as a strategy for addressing conflict. Before parties in any conflict employ violence as a strategy for dealing with the situation, a nascent conflict must have already existed between them and have been recognised by them. However whether or not a non violent conflict escalates into a violent one is dependent upon the strategies employed by those parties involved.

The idea of conflict escalation and de-escalation has been developed by scholars such as John Burton[i], Hugh Miall and Oliver Ramsbotham. According to Ramsbotham et al, the stages of conflict can be categorised into several phases[ii]. This normally begins with the **pre-conflict phase** where a difference has been identified between two or more parties. Such a difference of opinion, position, goal, or interest can immediately be reconciled, however if left unaddressed, such a difference can escalate into a contradiction and unto polarisation. When parties begin to meet separately, refuse to see each other eye to eye, begin to form alliances, and device strategies for addressing the situation, then a risk situation has been created.

The next is **the confrontation phase**, where the parties decide to meet with each other and try to find a solution. However if such a solution is not welcomed by either party and efforts are not made by either party to understand each other's needs, then violence may erupt as each party intends to solve the conflict by completely eliminating the other. In the case of social conflicts such as ethnic, civil, religious and economic conflicts, violence can even escalate further unto a full blown war which is the peak of any conflict. At this **crisis phase** dialogue becomes not only an impossible strategy to employ but a dangerous one as all trust has been lost and an atmosphere of fear and hopelessness permeates all strata of social life. Family relatives of war casualties are completely devastated and filled with anger, rage, hatred and un-forgiveness, criminality and insecurity continue to thrive amidst the war and the conflict seems intractable.

However either through a natural exhaustion by warring parties, or with the intervention of powerful conflict resolution actors such as state government officials,

traditional rulers etc violent social conflicts eventually begin to de-escalate into the **post conflict phase**. In armed conflicts, a ceasefire can be declared and the violence stopped, however, the conflict still lingers in the mind of the parties who do not trust each other, and whose needs are still unmet. Depending upon further employment of adequate strategies such as constructive dialogue and problem solving workshops, an agreement can be reached between the former disagreeing parties, and the conflict can further de-escalate and social relations normalise. Normalisation is still not the last phase of a de-escalating conflict until reconciliation has been attained between parties and both begin to work together again for the consolidation of peace to generate positive outcomes for both parties and to resolve the grievances that gave rise to the conflict initially.

Three Strands of Conflict Resolution Strategies

The above analysis portrays the dynamic nature and behaviour of social conflict which in reality may not always follow this linear pattern but may go from one level to the other and back in cyclical and unpredictable forms. As one will say "you may know the beginning of war but you do not know the end of it". However the behaviour of conflict is largely although not ultimately dependent upon the kind of strategy employed by the parties involved. Before going ahead to discuss amnesty as a strategy of conflict resolution, it must be understood that resolving a conflict can mean different things to different people. To many scholars conflict resolution is regarded is any kind of settlement of a dispute, while some others such as John Paul Lederach[iii] and Edward Azar[iv], consider conflict resolution as been synonymous to development. In simple terms, Conflict Resolution strategies can be sub-divided into three levels namely; Prevention strategies, Management strategies, and Transformation strategies. Conflict prevention is a concept that was introduced by the former Secretary General of the United Nations Boutrous-Boutrous Ghali. He defined it as "action to prevent disputes from arising between parties, to prevent existing disputes from escalating into [violent] conflicts and to limit the spread of the later when they occur" (Boutros-Ghali, 1992: para 20)"[v]

Prevention therefore can mean two things, the **structural conflict prevention** which aims to remove any factors that can endanger violent conflict such as incompatible structures. This can be achieved through the prior satisfaction of the individuals needs for access, acceptance and security[vi]. This kind of prevention is a much wider concept which requires a long term proactive strategy for economic, socio-cultural and political development. Prevention

strategies are non-violent strategies such as dialogue and principled negotiation. On the other hand **operational prevention** refers to the prevention of violent conflicts from escalating further through direct or indirect military or quasi military intervention. This kind of conflict prevention can only be employed during the crisis phase of a conflict and can only succeed in preventing violence while other alternatives methods of conflict resolution are sought. It is operational prevention that is considered to be synonymous to **conflict management**. Managing a conflict implies that the conflict has degenerated to violence and if necessary coercive strategies of intervention must be used for the greater goal of peace. The use of strategies such as suppression, containment, and tools such as tear gas and batons by the police force to deal with rioters is an example of conflict management strategies.

Conflict Transformation is regarded as the deepest level of conflict resolution where there has been "a deep transformation in the institutions and discourses that reproduce violence, as well as in the conflict parties themselves and their relationships"[vii]. Miall further explains that

> *"Contemporary conflicts require more than the reframing of positions and the identification of win-win outcomes. The very structure of parties and relationships may be embedded in a pattern of conflictual relationships that extend beyond the particular site of conflict. Conflict transformation is therefore a process of engaging with and transforming the relationships, interests, discourses and, if necessary, the very constitution of society that supports the continuation of violent conflict" (Miall, 2001; p4)"*

Conflict transformation strategies are therefore aimed not only at reconciling parties and engaging them to find a mutually satisfactory solution, but also to redefine their relationships with each other such that the incompatibility that gave rise to the conflict is removed and a future re-occurrence of the conflict prevented. Thus based on the above it is clear that a conflict is truly resolved when through the employment of appropriate strategies by appropriate actors, the violence has been averted or ended, and grievances and needs of the parties have been addressed, and the relationship between the parties have been transformed into a positive and constructive one. With this in mind, this paper will now proceed to discuss amnesty as a veritable tool or yardstick for the resolution of internal conflicts.

Defining Amnesty

The word amnesty is derived from the Greek word *amnesia* which means forgetfulness. Indeed to forget is an integral part of the concept of forgiveness which is crucial for the process of reconciliation. Forgiveness is a strategy that entails the pardoning and forgetting of crimes or atrocities committed to one party by another leading to, or as a result of a conflict between them. Amnesty finds its roots in forgiveness which in turn finds its roots in the doctrines of some religions such as Christianity and Islam. For example the holy Bible teaches in Luke 17:3-4;

> *"Take heed to yourselves: If thy brother trespass against thee, rebuke him; and if he repent, forgive him. And if he trespass against thee seven times in a day, and seven times in a day turn again to thee, saying, I repent; thou shalt forgive him". (The Holy Bible: KJV)*

Forgiveness implies that a party is choosing to forgive another who desires to be forgiven. However this is sometimes considered as a difficult alternative strategy of dispute resolution. This is so because it is never easy for a victim of war who has suffered the loss of dear ones or other damages to the cold hands of war to forgive those who committed such crimes and atrocities. However refusing to forgive and refusing to be forgiven are two conditions that can enslave the parties involved in a prison of the mind. While the party who needs to forgive continues to mourn their loss and to bear emotions such as hatred and bitterness towards the criminal, they are unable to harbour positive thoughts which are crucial for themselves to have inner peace and consequently for their family or their community to experience and benefit from such peace that exist within them. The psychological state of the parties in a conflict is one of the most fundamental factors that must be addressed for their relationship to be transformed and the conflict to be truly resolved. While Party A refuses to forgive the other party (Party B) who committed war crimes such as murder, rape, looting, etc, party B is also trapped in a negative psychological state because his/her mind continues to be hunted by the atrocities committed. As such an atmosphere of distrust continues to characterise their relationship and thus further sustains the risk of another potential eruption of violent conflict.

Despite the difficulty in forgiving one who is considered as an enemy, not deserving forgiveness for crimes committed against innocent people, until the parties in a conflict are able to transcend the trauma they are under as a consequence of the terror of war, and move into the realm of forgiveness, reconciliation cannot be achieved and the conflict cannot said

to be resolved satisfactorily. This is because the party that forgives is able to embrace the other who is forgiven and both parties are then able to move forward together with a new found trust in each other based upon the mutual decision to accept the wrongs, to forgive them, and to make them right. However such forgiveness implies not only the pardoning of punishable crimes, but also the decision to forget the past and work together for a peaceful future.

Legally speaking, amnesty in criminal law is a sovereign act which confers a pardon in the form of innocence to persons who have been otherwise guilty of crimes against the state such as sedition, rebellion and treason. It may be a full or conditional pardon and may be given for a prescribed period of time. Indeed the debate on amnesty or amnesia as a conflict resolution policy is usually considered in comparison to other strategies such as justice and revenge. In general three poles of strategies can be articulated as alternative methods of dealing with post-crisis psychological trauma. The first which is **amnesty** has already been defined as the forgive and forget approach, the second and opposing pole is the **pursuit of justice** which entails trials, purges, truth commissions and compensatory reparations and the third consists **private vengeance** which is the taking of the law into ones hands

However the application of amnesty for reconciliation has differed in several countries in the past. For amnesty to be operational, other issues must also be considered such as what the appropriate time is for amnesty to be employed, who qualifies for amnesty, if the amnesty a blanket amnesty or it is conditional? With an insight into the experiences of the Truth and Reconciliation Commission (TRC) in South Africa and the Niger Delta Amnesty Programme (NDAP) in Nigeria, the next section will discuss the application of amnesty in post conflict and crisis phases in order to understand its advantages and disadvantages and to explore how to make the strategy more effective for resolving internal conflicts.

South Africa: Truth and Reconciliation Commission

Following the south African struggle spear headed by Nelson Mandela and his ANC party to end apartheid rule in south Africa, the agreement which signified the end of the war and the beginning of post conflict initiatives established the Truth and Reconciliation Commission which also included the provision for amnesty to be granted to individuals who had committed crimes in the course of the war. As expected this did not go very well with many black South Africans who yearned for their former white persecutors to be punished by the law. However Nelson Mandela successfully convinced his people of the need to avoid

"victor justice" where the party who emerged victorious use the law to victimise the vanquished. He stated that unless amnesty is utilised, the horrors of the war will continue to hunt South Africans. However there were conditions to the amnesty of the TAC, "The commission would respect the ANC's promise to offer amnesties, but the reprieve would not be granted automatically. It would, rather, be linked to a demand for full disclosure from perpetrators. Those seeking amnesty would have to apply for it, provide complete details about what they had done, and establish that their activities were politically motivated (rather than the result of greed, sadism, and so on). Applicants would not, however, be required to apologize or otherwise express regret. Furthermore, the arrangement would eliminate not only criminal responsibility but also civil liability"[viii]

Many have raised concerns over the legitimacy and moral justification of the South African truth commission and especially its power to grant or deny amnesty to testifiers. However the TAC approach of exchanging truth for amnesty can also be considered a plausible way of acquiring information useful for further understanding of the causes of the conflict and of the gravity of human rights violations so as to enable accurate decision on how to achieve a resolution. Although the critics of the TAC came from both ends of the pole, on the one hand some criticised it for looking back on atrocities and as such opening wounds which were yet to be healed, while on the other hand it was also criticised for obstructing justice as human rights violation should be tried and punished according to law. The rationale with which one examines the question of amnesty also affects how one perceives its legitimacy and credibility. Rather than a tool for administering retributive justice, it should be regarded as a way of extending sympathy through political generosity[ix].

Despite all the shortcomings of the TAC, it succeeded in setting some murdered free, and also in shedding light into the reality of life under the apartheid regime and during the conflict, however it still falls short of political reconciliation and conflict transformation. The TAC and its application of amnesty represent an example of how to uniquely adapt amnesty as a strategy for dealing with post conflict trauma however in the case of South Africa; other strategies must also be employed to address structural and institutional problems, as well as to fully restore equity and harmony in race relations.

Nigeria: Niger-Delta Amnesty Programme

The Niger Delta conflict in Nigeria is in many ways different from the South African struggle for emancipation from white rule. Perhaps more complex considering the numerous factors, and parties involved in this internal, yet internationalised conflict. The Niger delta, Nigeria's oil rich region has been characterised by insecurity since the discovery of oil in the 1970's. Since this time the Nigerian economy has gradually shifted to a position of dominant reliance on the regions oil thus making the area of paramount interest to the entire country. The poor state of socio economic development of the region has led to grievances by the ethnic groups of the region such as the *Ijaw* and *Itsekiri*. On one hand it is the failure of the subsequent governments at the local, state and federal level to satisfy the needs of the people for socio economic development, and also the failure of international corporations operating in the area to take corporate social responsibility that led to the "oil war" with militant groups such as the Movement for the Emancipation of the Niger Delta (MEND).

On June 24, 2009, President Umaru Musa Yar'Adua officially opened a two-month amnesty window (from 06 August to 04 October 2009) to all militants in the Niger Delta region. Unlike the South African experience where amnesty was exchanged for truth, the Nigerian amnesty is offered in exchange for the demobilization and disarmament of militants. Upon surrendering their weapons, militants would receive financial compensation from the government over a period of time[x]. This raises a question about the truth about the motives of the war. while the federal government continue to regard the militant groups as criminal organisations who are involved in oil bunkering, illegal arms trafficking and kidnapping of foreign and domestic dignitaries for financial gain, militant groups such as MEND refuse to buy the amnesty programme and maintain that they are fighting for a legitimate cause; for the emancipation of their people from undue hardship and the increase of the regions allocation to from 13 to 25 percent.

The government has also been criticised for failing to fulfil its financial obligations to repentant militants, and also for even deciding to provide such a deal at this stage of the conflict. The Niger Delta crisis is still fresh as militant groups are threatening to resume attacks after the amnesty period has expired, while some other militant groups have decided to cash in on the amnesty deal and still return to cause mayhem. The provision of cash incentives is considered to be encouraging criminality amidst the crisis situation in the region. Militancy in the Niger-Delta pays more than any cash incentive the government is willing to

offer alongside its amnesty programme. The question on the militants mind is what does society has to offer? For an underground creek militant to surrender his weapons, accept forgiveness for a crime which he doesn't agree he is committing, and to leave in a society where there are no job opportunities, no quality health care and educational institutions are on strike. Really the amnesty carrot cannot completely cure the hunger of the Niger Delta militant. However the amnesty programme of the federal government has gone as far as showing the willingness of the government to end the crisis within that region as its cotniuationis detrimental to the economic development of the entire country. But more strategies must be adapted alongside amnesty in order to complement it in such a way that amnesty is able to be maximised by both parties.

Conclusion

The effectiveness of amnesty as a strategy for resolving conflicts depends partly upon the time or phase of the conflict when it is employed. At the pre conflict phase, it is easier to employ amnesty in terms of forgiveness and as such to prevent a conflict from becoming violent. In this sense amnesty can be used for conflict prevention. At the crisis phase, it is inadequate for amnesty to be employed because tensions are very high, polarised positions have been stratified and sentiments are deep. As in the case of the Niger –Delta, while the crisis is still on going and the Joint Military Task Force of the Nigerian government are still in operation in the region following a coercive strategy order to eliminate the militants, a sudden switch from this coercive strategy to amnesty automatically spells doom for the initiative. However at the post crisis phase when an agreement have been reached between warring parties and violence have completely been ruled out for both parties, then amnesty can also be a very useful strategy towards reconciliation between parties and for the precipitation of the healing of the psychological scars and memories of the war. However as seen in te south African experience, the use of amnesty in the post conflict phase can be more difficult than the pre conflict phase due to the crimes committed during the war which makes forgiveness difficult. However amnesty still does not imply a deep resolution of internal conflicts. Until the grievances and needs of all parties are addressed, and the conditions that gave rise to violent conflict such as poverty, illiteracy, lack of job opportunities, lack of adequate facilities, corruption, ethnic discrimination and religious intolerance among others are adequately confronted, internal conflict will continue to emerge in different forms and by

different organisations. Dealing with all these factors requires a combination of strategies and a collaboration of actors working in diverse fields but all geared towards the same goal of resolving latent internal conflicts, creating and sustaining positive peace, and preventing future re-occurrence of violent social conflicts.

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