

Acta
Universitatis
Danubius



JURIDICA

An Appraisal of the Compatibility of Pardon Decisions with Obligations of International Law

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Abstract: This paper examines the challenges of aligning pardon decisions for grave international offenses, such as war crimes and genocide, with international law standards, focusing on their impact on justice, accountability, and human rights. Building on existing research regarding the tension between national sovereignty and international legal obligations, it references key treaties like the International Covenant on Civil and Political Rights, the Convention Against Torture, the Rome Statute, and the Geneva Conventions. Utilising a doctrinal research methodology, the paper conducts a comparative analysis of case studies from various jurisdictions. The findings reveal that while pardons can aid national reconciliation, they often conflict with international obligations, undermining principles of justice and accountability. This study draws attention to the need for blending international human rights and humanitarian law principles with domestic pardon procedures, suggesting legislative reforms and increased international collaboration to ensure that pardon decisions uphold international legal standards. The paper contributes to the discourse on balancing state sovereignty with international legal obligations, advocating for stronger integration of international standards in domestic practices.

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Keywords: Pardon; Accountability; International Law; Transitional Justice; State Sovereignty.

1. Introduction

Pardon, clemency, and amnesty are fundamental components of legal systems across the globe, providing means for forgiveness and mercy in the implementation of justice. A pardon is commonly bestowed by a leader of a nation or government, absolving an individual from the lawful repercussions of a criminal verdict (Simjanoska, 2017, p. 15). Clemency entails the act of demonstrating leniency or mercy towards an offender by mitigating the harshness of their punishment. On the other hand, amnesty is sometimes employed in political settings to provide immunity to a group of individuals for particular offences, typically associated with political crimes or insurrections. These measures are important because they offer chances for corrective relief, societal reconciliation, and the reduction of severe sanctions, exemplifying the principles of compassion and redemption within a legal framework (Ngwoke & Abayomi, 2022, pp. 218, 221).

Analysing pardon decisions in relation to international law is essential due to the possible consequences for justice, responsibility, and human rights. International law establishes norms and responsibilities that nations are required to follow, which include the enforcement of grave offences such as terrorism, crimes against humanity, war crimes, and genocide (Correa Flórez, et. al, 2022, p. 1201). When decisions are not closely matched with international duties, they can debilitate attempts to achieve justice for victims, degrade the rule of law, and reduce the credibility of international accountability systems. Moreover, the inappropriate use of pardons can lead to the absence of punishment for individuals who have committed grave offences, thereby contradicting the fundamental values upheld in international human rights and humanitarian legislation (Lenta, 2023, p. 443).

This study's main aim is to assess the conformity of pardon judgements with international legal obligations. This entails a thorough examination of pertinent international legal frameworks, treaties, and conventions that regulate the granting of pardons. This study will also analyse some examples in which pardon judgements have generated controversy, assessing their conformity with international commitments. This study aims to determine the effects of pardon decisions on international accountability mechanisms and state sovereignty. It seeks to offer practical suggestions for aligning national pardon practices with international legal standards, in order to uphold justice, accountability, and human rights.

2. Foundational Concepts and Theoretical Frameworks

Debates about the legal and political conceptions of pardon, mercy, amnesty, and international law are such that they wield considerable importance. A pardon is a legal action typically executed by a head of state or government, which grants forgiveness to an individual for their offence, hence eliminating the legal repercussions of the conviction. Pardons can be either absolute or contingent and are frequently employed to rectify judicial inaccuracies, provide opportunities for redemption, or foster social peace (Udofa, 2018, p. 119)

Clemency is a comprehensive term that includes several types, such as pardons, commutations of sentences, and reprieves. Clemency functions to alleviate the severity of punishment and is based on the values of mercy and compassion. Amnesty is a type of leniency that is usually given to a collective of people, frequently for their involvement in political crimes. Amnesty, in contrast to a pardon, completely invalidates the legal standing of a crime, hence eliminating any form of prosecution or punishment (O'Donnell, 2017, p. 31; Pascoe, 2019, p. 41).

International law refers to the set of regulations and fundamental concepts that dictate the conduct and interactions between nations and other international organisations. It encompasses treaties, conventions, customary international law, and concepts acknowledged by civilised nations. The objective of international law is to preserve peace, security, and collaboration among nations, while also promoting justice and safeguarding human rights on a global scale (Armstrong, et. al, 2012, p. 99).

The function of pardons in the legal system can be analysed from many theoretical perspectives. Perspectives on the utilisation of pardons vary between theories of justice, such as retributive and restorative justice. Retributive justice is centred around the idea that punishment should be given in response to wrongdoing. It emphasises the need to hold offenders responsible and ensure that the punishment they receive is proportional to the crimes they have committed. From this standpoint, pardons could be perceived as weakening justice by enabling offenders to evade rightful punishment (Maculan & Gil Gil, 2020, p. 137).

Restorative justice, on the other hand, prioritises the restoration of the damage caused by criminal actions and the fostering of reconciliation between perpetrators and victims (De Oliverira Morsh, 2019, p. 13). Pardons, in this context, can be seen as instruments for the purpose of healing and reinstating societal harmony,

particularly when they are accompanied by measures that recognise and confront the suffering endured by the victims (Kohen, 2009, p. 416).

The notion of mercy plays an integral role in the rationale behind granting pardons. Mercy encompasses both compassion and leniency, acknowledging the inherent imperfections of the justice system and the capacity for individuals to change and rehabilitate. Rehabilitation concepts are anchored on the belief that punishment should serve not just as retribution but also as a means of reintegrating convicts into society as law-abiding individuals (Burnside, 2012, p. 16). Pardons can fulfil this rehabilitative objective by providing worthy individuals with an opportunity for redemption and a new beginning.

International law combines key values such as fairness, responsibility, and the protection of human rights, all of which have direct implications for the process of granting pardons. International law principles suggest that individuals who engage in grave offences such as war crimes, genocide, and crimes against humanity must be held responsible for their actions (Rome Statute of the International Criminal Court (Last Amended 2010), 1998, Article 1). The Rome Statute of the International Criminal Court (ICC) sets methods for holding persons accountable for such offences, emphasising the importance of delivering justice to uphold peace and security on a global scale.

Accountability is one of the core principles of international law (United Nations, 2022). It guarantees that individuals and states are accountable for their conduct, especially in cases of severe human rights abuses (Chavannes & Arkhipov-Goyal, 2019, p. 62). Granting pardons that undercut accountability can undermine the validity of international legal institutions and impede the implementation of standard norms. The idea of accountability necessitates that pardon decisions undergo a thorough examination to ensure that they do not grant immunity to individuals who have committed grave offences.

Human rights are essential principles in international law, as established in conventions like the Universal Declaration of Human Rights (UDHR) (United Nations) and the International Covenant on Civil and Political Rights (ICCPR) (ICCPR, 1966). The ideals of human rights prioritise the safeguarding of individual dignity, liberty, and equality. Pardons should be issued in a manner that upholds fundamental rights, guaranteeing that the rights of victims to seek justice and compensation are not infringed upon. The delicate equilibrium between showing pity towards perpetrators and ensuring justice for victims is guided by the framework provided by international human rights legislation.

Pardon judgements are of utmost importance in the realm of transitional justice, which aims to confront the consequences of human rights violations and conflicts (United Nations). Transitional justice seeks to attain reconciliation, accountability, and the establishment of legal principles in countries that have experienced conflict (United Nations, 2004, p. 4). Decisions on pardons in transitional justice contexts must adhere to the standards of international law in order to promote lasting peace and stability. They should be incorporated into a holistic approach that encompasses truth-telling, restitution, and institutional reforms aimed at preventing future abuses.

The conceptual underpinnings and theoretical viewpoints related to pardons, mercy, amnesty, and international law offer a variety and somewhat complex framework for examining decisions on pardons. Through a comprehensive grasp of these fundamental principles and theoretical perspectives, we may analytically assess the congruence between pardon rulings and global commitments, guaranteeing the preservation of fairness, responsibility, and fundamental freedoms at both domestic and international levels.

3. International Legal Obligations Pertaining to Granting Pardon

There is a plethora of international legal structure that governs decisions on pardons, considering its blend of a range of treaties, agreements, and principles of customary international law. These legal instruments jointly specify the criteria and responsibilities that states must follow, especially in cases involving grave international offences including terrorism, genocide, war crimes, and crimes against humanity. The system seeks to guarantee that pardon choices do not compromise international justice, accountability, and human rights.

The Geneva Conventions of 1949 (ICRC, 1949) are a fundamental series of accords in international humanitarian law that provide the criteria for the humane treatment of individuals during times of war. The Geneva Conventions, together with its Additional Protocols, require the safeguarding of the civilian population and the compassionate handling of prisoners of war. Article 51 of the First Additional Protocol (Protocol Additional to the Geneva Conventions (Protocol I), 1977) to the Geneva Conventions serves as extensive safeguards for civilians in times of war, specifically prohibiting targeted attack of civilians, indiscriminate attacks, retaliatory actions, and the use of human shields. This provision implies that civilians must not be deliberately targeted or subjected to acts of terrorism. Likewise, any violations of these rights do not exempt parties from their legal responsibilities to ensure the safety

and well-being of civilians. When evaluating pardon decisions, particularly for individuals implicated in grave international offences, it is imperative that one harmonise such decisions with the principles precisely codified in Article 51 so that they do not obliterate security measures put up for civilians or weaken the enforcement of international humanitarian law. It is especially important to carefully assess the granting of pardons in cases where civilians have been attacked, or there have been indiscriminate attacks, or human shields have been used. This evaluation is necessary to ascertain that the state is meeting its international obligations under the Geneva Conventions and other applicable treaties. By doing so, the integrity of international humanitarian law is preserved and justice and accountability are upheld.

The Rome Statute of the ICC, (Rome Statute of the International Criminal Court (Last Amended 2010), 1998) which became effective in 2002, to a great extent, enhances the global legal structure by creating a permanent court to try individuals for grave international crimes. Article 27 of the Rome Statute makes a point that holding an official position, such as being a head of state or government, does not provide immunity from criminal liability under the Statute. According to Article 53, the ICC Prosecutor is required to consider the interests of justice when determining whether to pursue an investigation or prosecution. This means that any domestic pardon that hinders the administration of justice may be examined by the ICC. Furthermore, Article 80 sees to it that the authority of the ICC does not substitute national systems but rather supplements them, strengthening the concept that domestic pardons must be in accordance with international commitments to prosecute grave offences.

The ICCPR, (1966) which was enacted by the United Nations General Assembly in 1966 and became effective in 1976, is a remarkable tool in international human rights law. The ICCPR delineates a political and civil rights that nations are obligated to uphold and safeguard. Article 6 of the ICCPR guarantees the right to life. It specifies that the death sentence ought to be applied only for the most severe offences and in a way that does not infringe upon this fundamental right. Article 7 of the document expressly outlaws the use of torture and any form of treatment or punishment that is cruel, barbaric, or humiliating. This section serves to strengthen the safeguarding of human dignity in all situations. Article 14 guarantees the right to a just trial, which encompasses the right to have a verdict and punishment examined by a higher tribunal. States must award pardons in a manner that adheres to the standards of the ICCPR. Pardons should not be employed as a means to undermine the fundamental

right to life, for instance, by exonerating those found guilty of heinous crimes without a thorough and impartial evaluation process that acknowledges the seriousness of these offences. It is also important that the act of awarding pardons does not result in the exemption from punishment for acts of torture or any other form of cruel, inhuman, or degrading treatment, as this would be a violation of Article 7 of the ICCPR. The procedure of issuing pardons should strictly follow the principles of justice and accountability, just so that the right to a fair trial, as safeguarded by Article 14, is not compromised. Therefore, although pardons can be utilised as means of showing mercy and fostering reconciliation, they must be meticulously weighed against the need of upholding and safeguarding fundamental human rights as delineated in the ICCPR.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (CAT) (1984), which was adopted in 1984 and became effective in 1987, lays it on the line that nations take measures to prevent and penalise instances of torture. According to Article 2 of the CAT, torture cannot be justified under any circumstances, even during times of war, the prospect of war, internal political instability, or any other public emergency. According to Article 7, governments are obligated to either prosecute or extradite those who are suspected of committing torture. This provision of CAT suggests that pardoning persons who are culpable for torture would violate the state's duty to guarantee accountability and justice for the victims of torture.

States are also bound by customary international law, which is based on the consistent practice of states and a belief that there is a legal obligation to follow its *opinio juris* (Elias, 1995, p. 503). Customary international law blends fundamental principles, such as the proscription of indiscriminate killing, war crimes, and crimes against humanity (Meron, 1991, p. 79). These norms are classified as *jus cogens*, indicating that they are absolute norms and compelling laws that cannot be violated or set aside (de Hoogh, 2020, p. 128). Thus, any pardon that violates these fundamental norms would be deemed null and void according to international law.

In addition, states are subject to further responsibilities imposed by regional human rights instruments, such as the European Convention on Human Rights (ECHR, 1950) and the American Convention on Human Rights (ACHR, 1969). To put things into perspective, the European Court of Human Rights has Article 2 of the ECHR as the provision that safeguards the right to life, necessitating thorough inquiries into unlawful deaths. Article 4 of the ACHR guarantees the right to life and has been construed by the Inter-American Court of Human Rights to encompass the duty to

investigate and bring to trial grave human rights abuses. Decisions that impede these requirements can be contested in regional human rights courts, which possess the power to enforce states' compliance with their international obligations.

The international legal framework that governs decisions on pardons is extensive, making a mix of a variety of treaties, agreements, and principles of customary international law. These legal mechanisms collectively seek to prevent pardon decisions from compromising justice, accountability, and human rights. When issuing pardons, states must thoroughly evaluate their international commitments, especially in situations involving severe international crimes, to guarantee that their actions align with the values and norms set by the international community. By fulfilling these responsibilities, nations actively support the preservation of global peace and security, as well as the safeguarding of human dignity and rights.

4. Pardon Decisions within Transitional Justice Systems

Transitional justice is associated with a range of legal and non-legal actions taken by societies to face up to the consequences of human rights violations and conflicts. The main objectives of transitional justice are enmeshed in the promotion of reconciliation, the enforcement of accountability, and the establishment of the rule of law. Reconciliation is for the most part, aimed at promoting social unity and facilitating the process of reconciliation among groups that were formerly divided. While accountability on the other hand, guarantees that individuals who commit grave human rights breaches are held accountable for their conduct. The principle of the rule of law draws attention to the emphasis on creating legal and institutional structures that deter future misconduct and safeguard human rights (International Center for Transitional Justice; United Nations).

Amnesty decisions have had many functions in situations involving transitional justice, functioning as both instruments for fostering peace and as contentious actions that could compromise accountability. The Truth and Reconciliation Commission, 1998) formed in the mid-1990's is a prominent illustration in South Africa. The TRC granted conditional amnesty to people who fully revealed their participation in crimes committed during the apartheid regime. This strategy sought to achieve a harmonious equilibrium between the imperative of truth and accountability and the objective of national reconciliation. Although the amnesty provisions of the TRC were a subject of controversy, they were part of a larger truth-telling and restitution process that adhered to the ideals of transitional justice.

Conversely, the utilisation of pardons in Rwanda subsequent to the 1994 genocide has been more controversial. The Rwandan government granted various pardons to individuals who had been convicted of crimes related to genocide, allegedly with the aim of fostering national unity and facilitating their reintegration into society. Nevertheless, these pardons have faced criticism for potentially subverting the fundamental notions of justice and responsibility, as established in the Rome Statute of the ICC. Article 17 of the Rome Statute points out the concept of complementarity, which grants the ICC the authority to pursue legal action in situations when national legal systems are either unwilling or unable to legitimately prosecute crimes. The pardons granted by Rwanda have sparked concerns over the state's fulfilment of its duty to punish individuals accountable for grave international offences.

The Special Court for Sierra Leone (SCSL) was established in Sierra Leone with the purpose of prosecuting and addressing serious crimes against civilians during the long-drawn civil war in the country (Residual Special Court for Sierra Leone, n.d.). While Sierra Leone's Truth and Reconciliation Commission allowed for amnesty in specific situations, the mandate of the SCSL as codified in the first volume and first chapter of the report on Truth and Reconciliation Commission clearly abhors amnesty for offences such as war crimes, crimes against humanity, and other severe breaches of international humanitarian law (Truth and Reconciliation Commission of Sierra Leone, 2004). This strategy was an attempt geared toward achieving a harmonious blend of reconciliation and accountability, by ensuring that the individuals primarily responsible for committing crimes were held accountable, while also offering possibilities for the reintegration of those who played a minor role in the crimes back into society.

Ensuring that pardon decisions align with international legal commitments is an important aspect of transitional justice. States are obligated by international human rights law and international humanitarian law to carry out thorough investigations, prosecute, and impose penalties for grave offences. Article 2 of the ICCPR mandates that nations must guarantee the right to a satisfactory solution for those who have suffered from human rights abuses. The responsibility to offer efficient solutions encompasses the commitment to hold wrongdoers accountable, a duty that can be undermined by haphazard choices to grant pardons. Moreover, according to customary international law, as evidenced by the Geneva Conventions and their Additional Protocols, it is obligatory to bring to trial those people who are accountable for serious violations of international humanitarian law. In a similar

fashion, Article 49 of the First Geneva Convention requires nations to pass laws that are fundamental to imposing severe punishments on individuals who conduct or give orders to commit serious violations. Granting pardons in such circumstances has a higher chance of contravening these commitments, potentially resulting in international legal disputes and compromising the credibility of national justice systems.

The notion of accountability is also brought into the limelight within the context of the ICC, in that the preamble to the Rome Statute emphasises the need to put an end to the lack of punishment for individuals who commit severe international crimes. According to Article 20(3), governments are not allowed to utilise their national pardon procedures to protect individuals from being held accountable for crimes within the jurisdiction of the ICC. It goes without saying that this provision seeks to ensure that international systems of justice can step in when national actions, such as pardons or amnesty, weaken the ability to hold individuals accountable.

The peace process in Colombia with the Revolutionary Armed Forces of Colombia (FARC) involved the implementation of transitional justice, which encompassed aspects of both accountability and pardon (FARC, 1964). The Special Jurisdiction for Peace (JEP) (JEP, 2015) was created to adjudicate offences committed during the armed conflict, providing the opportunity for reduced penalties in return for complete admissions of guilt and contributions towards revealing the truth and providing restitution. Although this strategy sought to reconcile the necessity for justice with the pragmatic challenges of reconciliation, it received criticism for potentially enabling severe criminals to avoid suitable consequences. Nevertheless, the groundwork of the JEP was specifically crafted to conform to Colombia's international commitments, guaranteeing that grave transgressions would be dealt with through a legal and reparative judicial system.

When assessing the compatibility of pardon choices with international legal commitments, it is of utmost importance to examine if these decisions align with the ideals of justice, accountability, and human rights. Decisions that conform to international norms can have a good impact on transitional justice in that it fosters reconciliation and social cohesion, while also ensuring that serious crimes are dealt with in a suitable manner. On the other hand, pardons that are given without careful consideration or for political reasons, not only weaken the need for holding people accountable for their actions but also put the rule of law at risk and erode the confidence that the public has in the fairness of the justice system. In essence, decisions about pardons in transitional justice situations must be meticulously

formulated to achieve a delicate equilibrium between the objectives of reconciliation and accountability. Although pardons might contribute to societal cohesion and reintegration, they must not violate international legal duties to prosecute grave offences. States can guarantee that their decisions to grant pardons contribute to sustainable peace and justice, reinforce the rule of law, and defend human rights by following international standards and principles.

5. Examination of Contentious Pardon Cases in Selected Jurisdictions

5.1. Afghanistan

Decisions about pardons can wield substantial influence on both domestic and global legal environments, especially when they coincide with grave transnational offences. Under the Taliban's rule in Afghanistan, judgements about pardons have been extremely controversial, especially when it comes to persons implicated in acts of terrorism and severe violations of human rights. The Taliban's policies of amnesty and pardons have faced significant criticism due to their potential to erode accountability for grave offences, like as attacks on civilians, suppression of women's rights, and persecution of ethnic and religious minorities. These activities blatantly violate international human rights law and the Geneva Conventions amongst other legal instruments, which require states to either prosecute or extradite persons who are culpable for war crimes and crimes against humanity.

During the Taliban regime, the act of granting pardons was frequently employed as a strategic tool to strengthen authority and establish credibility, both within the country and on the global stage (Crisis Group, 2022). Although the Taliban has sometimes pardoned individuals as a means to negotiate peace or show mercy, these actions are often seen as tactics to avoid responsibility rather than foster reconciliation or fairness (Amnesty International). International observers and human rights organisations have expressed disturbing concerns regarding the pardons granted to Taliban militants and commanders who have been engaged in serious human rights crimes. Furthermore, the Taliban's stance on amnesty has ignited discussions regarding the conformity of their activities with international legal norms. The principle of non-impunity, which is a fundamental aspect of international humanitarian law, requires nations to guarantee that major international crimes are met with accountability. The Taliban's amnesty policies, which frequently prioritise political convenience over fairness and reconciliation, pose a

challenge to this principle, embodying the conflict between a nation's authority and its international legal responsibilities in areas devastated by conflict.

5.2. Sri Lanka

In 2020, Sri Lankan President Gotabaya Rajapaksa granted clemency to former Army Sergeant Sunil Ratnayake, who had previously been found guilty in 2015 for the unlawful killing of eight Tamil civilians during the civil conflict. This decision generated substantial criticism both within the country and across the globe (Amnesty International, 2020a, p. 1). More specifically, the pardon received condemnation from the United Nations and multiple human rights organisations, who argued that it weakened the enforcement of responsibility for war crimes and violated Sri Lanka's international legal commitments. Article 6 of the ICCPR shines a light on the fundamental entitlement to life and the imperative of holding individuals responsible for any breaches of this entitlement. As a signatory of the ICCPR, Sri Lanka has a duty to investigate and prosecute significant violations, such as Ratnayake's involvement in the said extrajudicial murders. The pardon granted to Ratnayake, despite his conviction following a fair legal procedure, gives a plethora of reasons to doubt Sri Lanka's dedication to fulfilling this obligation, making it reasonable to conclude that the pardon was a strategic manoeuvre to placate nationalist emotions rather than a sincere act of fairness, thereby undermining the confidence of the public in the judicial system and international institutions for holding individuals accountable.

5.3. South Africa

The TRC of South Africa, which was founded in the 1990s, is sometimes regarded as a great example of the manifestation of pardons and amnesties in the context of transitional justice. The TRC granted amnesty to those who provided complete disclosure of their participation in crimes committed during the apartheid era, with the objective of revealing the truth and promoting national healing. This approach was based on the conviction that uncovering the truth and recognising previous acts of violence were germane to the process of reconciliation and progress as a country.

Although the amnesty provisions of the TRC were a subject of controversy, they were considerably crafted to adhere to the ideals of transitional justice, striking a balance between the imperative of holding individuals accountable and the objective

of fostering reconciliation. A compelling instance is the amnesty given to the security police officers who were responsible for the tragic death of anti-apartheid activist Steve Biko (South African History Online, 2022). In 1977, Biko, a prominent leader of the Black Consciousness Movement, tragically passed away while in police custody. He had endured severe beatings, leaving a void in the movement. His passing came to represent the harshness of the apartheid regime (South African History Online). The TRC's decision to grant amnesty to his killers sparked widespread outrage and condemnation, both domestically and internationally (Winterhalter, 2020). Many viewed it as a failure to deliver justice for a heinous crime. There are concerns about the TRC's approach to granting amnesty and whether it aligns with international human rights standards. This is especially relevant when it comes to holding individuals accountable for serious human rights violations (Stanley, 2001, p. 526). Although the TRC had the goal of promoting national reconciliation, it received backlash for potentially violating international principles of justice and accountability found in instruments such as the ICCPR and the CAT.

The Promotion of National Unity and Reconciliation Act, (1995), which created the TRC, specifically connected the amnesty procedure to complete disclosure and public recognition of crimes, just so as to ensure a reasonable level of responsibility. Even so, the TRC's dependence on amnesty suggests its potential to enable serious wrongdoers to evade complete legal repercussions, thereby complicating South Africa's adherence to international obligations to prosecute crimes against humanity as stipulated in the Rome Statute of the International Criminal Court.

5.4. Colombia

The peace process between the Colombian government and the FARC incorporated novel approaches to transitional justice, combining pardons with measures to ensure responsibility (Piccone, 2019, p. 12). While the Special Jurisdiction for Peace was established with the purpose of adjudicating crimes that occurred during the armed conflict, it also provides the opportunity for reduced sentences and other forms of punishment in return for complete confessions, truthful disclosures, and restitution to the victims (Correa Flórez, et. al, 2022, pp. 1200, 1201, 1202, 1211).

The treatment of FARC members under the peace agreement, especially the option to avoid conventional jail sentences, sparked much debate in Colombia (Felbab-Brown, 2018). Many critics, including victims' groups, raised concerns about the

agreement, claiming that it granted immunity to those involved in heinous crimes like kidnappings, massacres, and drug trafficking. They argued that the agreement compromised the notion of fairness and did not sufficiently address the needs of those affected by the war (Crisis Group, 2021). An intriguing case emerged concerning the handling of FARC commander Rodrigo Londoño, also recognised as Timochenko. In spite of his involvement in multiple serious crimes, Timochenko was given the opportunity to engage in the political sphere and even pursued the presidency in the 2018 elections (InSight Crime, 2020). There was a considerable amount of public outcry and debate surrounding the question of whether the peace process sacrificed justice in favour of political expediency. The peace agreement with FARC, although praised for resolving the conflict, has faced scrutiny regarding its compliance with international legal obligations, specifically the ICCPR, CAT, and the Rome Statute of the ICC. Some critics have raised concerns about the lenient sentences and political participation granted to FARC members, suggesting that these actions might go against international standards of justice and accountability for serious crimes. They worry that such measures could potentially weaken the global efforts to combat impunity.

Although the intention of this strategy was to achieve a harmonious combination of peacebuilding and justice, it also gives room for the possibility of enabling severe human rights abusers to evade appropriate punishment. The framework was created to guarantee adherence to Colombia's international commitments, including those outlined in the ICCPR and the Rome Statute, by ensuring that severe violations are dealt with through a legal and restorative justice system. The decisions made by the JEP have undergone careful examination to ensure they adhere to the principle of complementarity as outlined in the Rome Statute. This framework mandates that national courts must genuinely prosecute grave offences.

5.5. Myanmar

Myanmar's military regime declared amnesty for almost 23,000 prisoners, including those who were convicted of political offences, in 2021 (UN News, 2024). This action was met with staunch resistance and condemnation as an effort to ease global scrutiny in response to the coup d'état that occurred in February 2021. Among the individuals who were set free were members of the military and their associates who were involved in severe violations of human rights against the Rohingya people, a group that the United Nations has identified as potentially being victims of genocide. Myanmar's decision to grant amnesty to individuals implicated in crimes against

humanity violates its responsibilities under international human rights and humanitarian law. The principle of non-impunity, which is established in legal instruments like the ICCPR and the Convention on the Prevention and Punishment of the Crime of Genocide, (1948), requires nations to take legal action against individuals accountable for grave international offences. The amnesty rulings in Myanmar have garnered condemnation from numerous international authorities, including the UN Human Rights Council, due to their detrimental impact on justice and accountability.

5.6. Philippines

During President Rodrigo Duterte's tenure, the Philippines witnessed a contentious application of pardons and commutations, especially regarding law enforcement and military personnel who were found guilty of offences connected to the government's anti-drug campaign. In 2020, President Duterte granted a pardon to Joseph Scott Pemberton, a US Marine who was found guilty of the murder of a transgender lady from the Philippines (McCarthy, 2020). This act of pardon was perceived as a strategic manoeuvre to enhance diplomatic relations with the United States and faced censure for compromising the principles of legal governance and the rights of the victim.

As a signatory to the ICCPR and other international human rights treaties, the Philippines has a duty to guarantee that justice is delivered for grave offences. Just like the earlier mentioned countries, the pardons granted by Duterte have sparked worries regarding the country's commitment to meeting these duties, particularly in terms of holding state agents accountable for their involvement in extrajudicial murders and other violations of human rights.

5.7. Nigeria

The Nigerian government's handling of certain militants, specifically the choice to reintegrate ex-members into the Nigerian army via "Operation Safe Corridor", (Amnesty International, 2020b, p. 8) comes off as another pressing instance of potential breaches of international treaties including the ICCPR, CAT, and the Geneva Conventions amongst others (OHCHR, n.d.). Nigeria formally accepted and ratified the ICCPR in 1993, and the CAT in 2001, and has been a participant in the Geneva Conventions since 1961. This has made Nigeria commit legally to

maintaining the rights related to civil, political, and humanitarian matters that are protected by these agreements. The Nigerian government's reintegration of former terrorists, some of whom may have engaged in severe human rights violations and acts of terrorism, without transparent judicial procedures, raises worries regarding the government's ability to effectively ensure accountability and justice. This could be interpreted as a failure to safeguard the fundamental right to life of the victims and survivors of the Sect's acts of violence. In the same spirit, both Article 7 of the ICCPR and CAT explicitly prohibit the act of torture as well as any form of cruel, inhuman, or degrading treatment or punishment. The rehabilitation of terrorists into the army can be perceived as neglecting the profound physical and psychological trauma suffered by victims of the Sect. The decision of the Nigerian government to reintegrate "repentant terrorists" has faced heated public criticism and resistance from multiple human rights organisations, which have emphasised the perceived unfairness and absence of accountability for the conduct of the supposed "repentant" terrorists. More so, Article 14 of the ICCPR establishes every individual's right to a just and impartial trial, which includes the entitlement to have their case examined by a competent body saddled with the responsibility to do same.

The Nigerian government's reintegrating former militants without proper and open legal procedures further escalates the erosion of public trust in the Nigerian legal system and weakens international accountability mechanisms (Bankole, 2023). Protecting civilians from harm in times of war is a primary goal of the Geneva Conventions, especially as enshrined in Article 51 of its First Additional Protocol. This provision explicitly criminalises acts of violence with the intention of instilling fear amongst the civilian populace and attacks that do not differentiate between targets and protected persons. The actions of the Sect have unequivocally breached these rules, in that the Nigerian government's strategy of reintegrating ex-militants without holding them accountable leaves an almost indelible impression of a failure to uphold the ideals of justice and safeguarding for civilians as stipulated in the Geneva Conventions. Concerns over Nigeria's reintegration of former Sect members through the Operation Safe Corridor scheme have led many to question the country's adherence to international human rights standards. Justice for victims must not be sacrificed for the sake of peace and reconciliation, and the debate over their reintegration shows how important it is to strike a balance between the two (Amnesty International, 2020b, p. 70). Striking a balance between domestic goals, international legal duties, and state sovereignty is tensive and fraught with difficulty, as this case shows.

These case studies demonstrate the tangled web relationship between national pardon judgements and international legal duties. Although pardons can be used to promote reconciliation and achieve political goals, they frequently give rise to major apprehensions regarding fairness, responsibility, and adherence to international legal standards. It is essential to ensure that pardon judgements do not weaken these values, since the existence and preservation of these values are of matchless importance for the sustenance of the credibility of both domestic and international legal systems and for safeguarding the rights of victims and the supremacy of law.

6. The Impact of Controversial Pardons on International Accountability Systems

In order to fully grasp the effects of pardon decisions on international accountability systems, it is essential to analyse how these decisions impact the prosecution of grave international crimes and the function of international organisations in maintaining legal norms. Granting pardons can greatly weaken international institutions, such as international criminal tribunals and the International Criminal Court for holding individuals accountable, as they depend on the principle of non-impunity, which mandates that nations must conduct investigations, bring charges, and impose penalties on people who are accountable for grave offences according to international law. Granting pardons to those charged or convicted of crimes by states can impede the pursuit of justice and accountability. This is because when individuals who commit acts of genocide, war crimes, or crimes against humanity are pardoned, it conveys the impression that there are no repercussions for severe breaches of human rights, and as a result belittles the credibility of international tribunals as well as diminish their ability to deter future wrongdoers.

The consequences of pardon decisions have a far-reaching effect not only on individual cases but also on the whole structure of international law. The Rome Statute of the ICC places heavy emphasis on the obligation of governments that are party to the statute to collaborate with the ICC in its efforts to investigate and prosecute grave international offences. Pardon decisions that protect wrongdoers from being held responsible would inevitably impede cooperation efforts and also open doors to conflicts between a country's sovereign rights and its international legal duties. This contradiction brings out the difficulties in finding a balance between national reconciliation initiatives and the need to maintain justice and human rights on a global scale.

Examining the impact of pardons on the prosecution of grave international offences demonstrates their immediate consequences for the administration of justice and the establishment of responsibility. For example, in the framework of transitional justice, countries such as South Africa and Colombia have employed pardons as a component of more comprehensive reconciliation initiatives. Although these endeavours strive to promote peace and stability, they frequently give rise to apprehensions over the accountability of those who commit severe human rights abuses. South Africa's Truth and Reconciliation Commission case brought attention to the challenges of reconciling amnesty with the quest for justice for the atrocities committed during the apartheid era. The commission's methodology enabled wrongdoers to request amnesty in return for complete revelation, although detractors contended that it failed to sufficiently address the entitlements of victims to legal recourse and reparations as stipulated by international law.

Similarly, in post-conflict countries like Colombia, the Special Jurisdiction for Peace has been subject to scrutiny due to its method of issuing pardons and alternative penalties to former combatants. While the primary objective of these procedures is to facilitate the reintegration of ex-combatants into society, it is imperative that they also prioritise the establishment of accountability for the commission of grave offences during the conflict. The conformity of these pardoning decisions with international legal norms continues to be a hot topic of continuing discussion and judicial examination.

International organisations have a vital role in addressing pardon decisions that contradict international legal commitments. International organisations such as the United Nations and regional human rights courts oversee and evaluate governments' adherence to global standards, while also serving as platforms for holding them accountable. For instance, when Sri Lanka granted clemency to a soldier who had been found guilty of committing war crimes, the United Nations Human Rights Council denounced the decision and demanded impartial inquiries into accusations of human rights violations. These responses make prominent the dedication of the international community to maintaining human rights and ensuring that pardon decisions do not weaken global initiatives to advance justice and accountability.

In addition, international organisations promote communication and collaboration between countries in order to reinforce legal structures and maintain global benchmarks. The ICC depends on the cooperation of state parties to carry out arrest warrants and expedite trials for persons who are accused of committing war crimes, crimes against humanity and indiscriminate killing. Pardon decisions that protect

suspects from legal action might hinder these endeavours and undermine the ICC's authority to hold wrongdoers responsible according to global legal standards.

As such, the influence of pardon decisions on international accountability procedures exemplifies the wider conflicts between state sovereignty and the global effort for justice. Although pardons can be used for valid reasons in the context of national reconciliation, they should not be used to deny justice to victims or bypass international legal responsibility for their actions. To achieve a harmonious balance, it is necessary to carefully navigate legal concepts, political realities, and ethical imperatives while making pardon judgements. This ensures that these decisions promote lasting peace and protect the rule of law in accordance with internationally accepted standards.

7. Striking A Balance Between State Sovereignty and International Obligations

The task of reconciling the authority of individual states with their commitments under international law is an intricate difficulty when it comes to making pardon judgements and managing international relations more broadly. State sovereignty refers to the inherent authority of a nation to independently regulate its internal affairs without any external interference. This includes setting the tune for models and strategies regarding justice, law enforcement, and national security. In stark contrast, states are obligated by international law, including human rights treaties and conventions, to adhere to universal principles of justice, accountability, and human rights.

The conflict between the sovereignty of individual states and their commitments under international law is especially evident when it comes to choices regarding pardons in situations involving severe criminal offences. International legal frameworks, such as the Rome Statute of the ICC and the Geneva Conventions, mandate that states either prosecute or extradite those who are culpable for such crimes if they fail to truly prosecute them on their own. The idea of complementarity seeks to maintain the primary responsibility of states for justice within their boundaries while simultaneously upholding international standards of accountability.

Legal principles such as the margin of appreciation add more layers of complexity to this equilibrium. The concept of margin of appreciation grants governments a certain degree of discretion when it comes to fulfilling their international

responsibilities, taking into account the cultural, social, and political variations that exist between nations (Arai-Takahashi, 2013, p. 62; Follesdal, 2018, p. 272). Even at that, this discretion is not boundless and must be employed within the confines established by international legal standards. For instance, while making decisions about pardons, states may contend that specific political or social factors warrant the pardoning of individuals who have been convicted of crimes that are considered essential for achieving national reconciliation. However, these decisions must still be anchored on the core principles of fairness and human rights whose lowdown has been given in international law. State executives facing this conflict must meticulously consider the priorities of their jurisdiction in relation to international obligations.

During transitional justice processes, authorities may experience pressure to reconcile national divisions and promote stability while also swearing to the fact of justice for victims and holding perpetrators accountable, especially when making choices regarding pardons. The South African encounter with the TRC exemplifies efforts to reconcile amnesty with truth disclosure and reparations, with the goal of addressing historical injustices while still upholding accountability to some extent. For context, the objective of this strategy was to uphold both the process of national reconciliation and the international standards of justice.

Similarly, Colombia's Special Jurisdiction for Peace tried to address this dispute by offering lenient sentences and alternative penalties to ex-combatants who admitted to their involvement in crimes during the armed war. The strategy taken by the JEP sought to strike a balance between efforts to promote peace and the need to hold accountable those responsible for serious human rights crimes taking the form of terrorism, and war crimes amongst others. This approach demonstrated a sophisticated response to the requirements of both internal reconciliation and international legal mechanisms.

In spite of that, there are ongoing difficulties when pardon decisions diverge from international legal norms. Myanmar's decision to provide amnesty to military leaders who were responsible for human rights violations against Rohingya minorities has defied global standards of accountability and has been strongly criticised by foreign organisations.

These amongst a plethora of instances emphasise the necessity of strong international supervision and accountability systems to ensure that pardon decisions do not compromise justice or perpetuate impunity. To effectively handle the conflict between state sovereignty and international legal duties, it is necessary to adopt a

principled strategy that acknowledges the specific circumstances of each nation while also living up to universal norms of justice and human rights. Legal principles such as complementarity and the margin of appreciation offer structures for weighing various interests, but their implementation must follow through the integrity of international law. State executives have a vital role in influencing pardon decisions that encourage reconciliation and stability while upholding core values of accountability and respect for human dignity as set in international legal agreements.

8. Conclusion

This paper has shed light on the complex connection between pardon rulings and international legal responsibilities, emphasising the difficulties and possibilities shrouded in reconciling national autonomy with worldwide norms of fairness and human rights. In this paper, we have examined the effects of pardon decisions on international accountability systems and adherence to international legal norms, with a special focus on transitional justice and conflict resolution contexts. Inferences from varying jurisdictions were drawn upon to show the contrasting models and their outcomes when the countries tried to find a balance between their domestic priorities and their obligations under international law. Another interesting perspective of this paper is the exploration of the consequences of pardon decisions having far-reaching effects not just on individual cases, but also on the wider legal systems and global standards that regulate international relations. States may use pardons to bring up reconciliation and stability, but it is imperative that these decisions do not compromise justice for victims or the responsibility of those who have committed grave international offences. The international community's examination of pardon judgements emphasises the necessity for uniformity and conformity to global standards of human rights and humanitarian law. Achieving rooted consistency between pardon decisions and international law necessitates adopting a fair and equitable strategy that acknowledges the authority of individual nations while simultaneously adhering to universally accepted standards of justice and human rights. To light the way for reconciliation, accountability, and sustainable peace in line with the international legal system, policymakers should effectively handle pardon decisions by following practical advice and embracing international cooperation.

9. Recommendations

Decisions about pardons in relation to international law are influenced by ongoing discussions on sovereignty, accountability, and global governance. The importance of pardon decisions in promoting peace and maintaining international legal standards remains relevant as states navigate differing geopolitical concerns and internal disputes. To ensure pardon choices align with international legal commitments, policymakers should consider practical measures such as:

1. Integrating human rights and humanitarian law into domestic pardon processes with explicit standards and transparency;
2. Ensure national legal systems comply with international norms like the Rome Statute and Geneva Conventions;
3. Enhancing judicial authority to monitor pardons and establish victim participation channels;
4. Strengthening collaboration between countries and international institutions to align pardon procedures with international standards;
5. Establishing an independent body to oversee states' adherence to international commitments and provide expert support.

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