

## AMNESTY AND POLITICAL PARTICIPATION: CASE SUMMARY

### INTRODUCTION

As the GOC and FARC debate political participation, one main concern involves possible amnesty and how this relates to FARC entry to politics. International cases of amnesty laws before guerrilla political participation offer lessons learned. This document summarizes three such examples, and briefly relates them to the Colombian case.

### EL SALVADOR



#### Guerrilla Violence and Crime

The Farabundo Marti National Liberation Front (FMLN) was formed in 1980 of a coalition of left-wing guerrilla groups in El Salvador. Fighting between government forces and the FMLN in the civil war lasted from 1980 to 1992. After a peace agreement was reached that year, the UN established a Truth Commission (TC) to investigate human rights abuse. The TC's 1993 report attributes 5% of the conflict's violence to the FMLN, including massacres of innocent civilians and other "deliberate and approved" guerrilla policies that victimized non-military targets. The report singled out FMLN leader Joaquin Villalobos as one of the principal "ultimately responsible" FMLN leaders, and recommended that he and several other guerrilla leaders be prevented from entering politics for 10 years.<sup>i</sup>

#### The Amnesty Law

Five days after the report was published, the Salvadoran Government passed an Amnesty Law covering all violent acts committed in the war. The Law was criticized for contradicting Salvadoran and international norms and enabling impunity. FMLN leaders such as Joaquin Villalobos received amnesty for crimes against humanity, contradicting the above-mentioned TC report recommendations.

#### Political Participation

The FMLN was legalized as a political party and first participated in elections in 1994, after the number of seats in Congress was increased from 60 to 84 to accommodate the left.<sup>ii</sup> That year, the party won some

local elections and has since risen in popularity, winning the 2009 presidential elections with candidate Mauricio Funes. The FMLN was beaten by the conservative ARENA party in 2012.<sup>iii</sup> In its 15 years, the party has become divided between communist and center-left members. Joaquin Villalobos and other ex-leaders left the FMLN party in 1995 and formed the centrist Democratic Party, which maintained activity for four years.

### URUGUAY



#### Guerrilla Violence and Crime

The Uruguayan National Liberation Movement, known as the Tupamaros, was a left-wing guerrilla group active in Uruguay in 1963 to 1972. For the first five years, the group focused on gaining political support and resources by robbing banks and private businesses. In 1968, the Tupamaros began to kidnap politicians and wealthy businessmen, and to distribute left-wing propaganda. Attacks on Uruguayan security forces became more frequent, and usually took the form of targeted individual attacks. In 1972, newly elected President Juan Bordaberry ordered security forces to wage internal war on the Tupamaros. The group's leaders were imprisoned for 12 years or more as the military dictatorship after Bordaberry continued to repress suspected leftist groups and terrorize the population with disappearances and murders.<sup>iv</sup>

#### The Amnesty Law

In 1985, the democratically elected government of Julio María Sanguetti passed an amnesty law for all politically-motivated crimes committed by non-state actors after 1962. The amnesty was provided regardless of whether cases had been processed and tried, and extended to all those accused of being authors or co-authors of political crimes including kidnapping and murder, as illustrated above. Tupamaro members were covered by the amnesty, and were released from jail.<sup>v</sup>

#### Political Participation

After leaving jail, leaders of the Tupamaros formed the Popular Participation



Movement, and many entered formal political positions within a few years. The most prominent example of this political participation by a Tupamaros founding leader is José Mujica, who was a Member of Parliament 1995-2000, a Senator for two consecutive terms 2000-2010, Minister of Agriculture 2005-2008, and finally President 2010-2015.<sup>vi</sup> Eleuterio Fernández Huidobro, Uruguay's current Minister of Defense, was also a Tupamaros founder and had a similar professional trajectory after leaving prison.<sup>vii</sup>

### SOUTH AFRICA



### State Violence and Crime

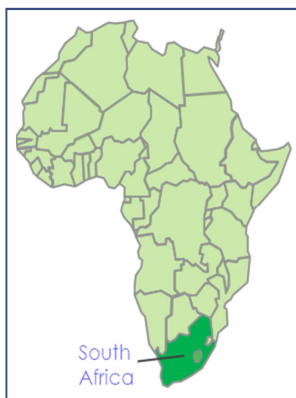
The white minority South African government adopted apartheid as an official policy in 1948. The institutionalized regime of systematic violence against the black majority drew great criticism in the international political and human rights arena. In 1990, President Fredrik de Klerk negotiated an end to apartheid and the implementation of South Africa's first multi-racial elections.

### The Amnesty Law

The South African Truth and Reconciliation Commission (TRC) was created in 1995. It had the authority to grant amnesty for politically-motivated offenses like state-sponsored crimes against humanity under apartheid.<sup>viii</sup>

Given that the State was the most responsible actor, amnesty was considered necessary for a smooth post-apartheid transition without increased social divisions. International humanitarian law was young, so South African transitional justice had more flexibility to act autonomously than recent bodies.<sup>ix</sup> Crimes were assessed under the International Convention on the Suppression and Punishment of the Crime of Apartheid. However, the TRC used local law to grant amnesty.<sup>x</sup>

This amnesty received much international and local criticism questioning the constitutionality of amnesty for crimes against humanity.<sup>xi</sup> Others maintain that amnesty was necessary for a peaceful transition that would not rupture socioeconomic development after apartheid.<sup>xii</sup>



### LESSONS FOR COLOMBIA

The International Criminal Court and Colombian Constitutional Court have stressed that absolute amnesty for FARC leaders would contradict national and international norms. In addition, international transitional justice standards have evolved since these amnesties were issued, so the same treatment of crimes against humanity would not be allowed today. However, many points from the cases are relevant to FARC political participation.

El Salvador's case is distinct from that of Colombia as only 5% of the crimes against humanity were identified as being guerrilla-sponsored. However, the legalization of the FMLN party and the expansion of Congress to allow for the left provide food for thought in terms of the formation of a FARC political party.

Similarly, Uruguay's guerrilla group successfully entered politics in a context in which the State was the principal cause of violence. After 12 years of a repressive military dictatorship, it is possible that the relatively small-scale violence of the Tupamaros was not prioritized, contrasting with the case of FARC violence. However, the Tupamaros' entry to politics was successful and deserves to be considered in debates about FARC political participation.

Although South Africa's case is one of predominantly state violence against the populace, amnesty was considered necessary for a smooth transition to post-apartheid. This raises questions about how an amnesty law (probably in some way conditioned) would harm or benefit the post-conflict phase. The point that amnesty was considered unconstitutional and had repercussions on social divisions with respect to the victims' perception of the lack of justice for their aggressors should also be considered.

Perhaps the most salient point highlighted by these cases is the need to define "politically-motivated crimes", "crimes against humanity", and others that impact FARC entry to politics. The language used in the three amnesty laws varied greatly, but depended on strong definitions of these crimes in order to clearly delineate the actors and types of violence involved. This variation in definitions and perceptions regarding the function of conditioned or absolute amnesty should be taken into account in current debates in Colombia, and in longer-term measures for stable and lasting peace.

Photo sources: El Salvador: <http://www.bbc.co.uk/news/world-latin-america-14672692>  
Uruguay: <http://comunidad-uruguay-peru.blogspot.com/p/audiciones-del-presidente-jose-mujica.html>  
South Africa: <http://www.knotofstone.com/2013/06/exploring-past-and-future-lives-nelson-mandela/>

<sup>i</sup> UN Commission on the Truth for El Salvador. *De La Locura a La Esperanza: La Guerra De 12 Años En El Salvador: Informe De La Comisión De La Verdad (1992-1993)*. El Salvador: Editorial Arcoiris, 1993

<sup>ii</sup> García, José Z. *The Salvadoran National Legislature. In Legislatures and the New Democracies in Latin America*, D. Close (ed.). Boulder and London: Lynne Rienner, 2005.

<sup>iii</sup> FMLN political party website. <http://www.fmln.org.sv/oficial/index.php/nuestropartido-37/historia>

<sup>iv</sup> Latin American Studies. *Tupamaros of Uruguay*. <http://www.latinamericanstudies.org/uruguay/tupamaros-uruguay.htm>

<sup>v</sup> Uruguay Gov. Web. [www0.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=15737](http://www0.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=15737)

<sup>vi</sup> Ibid. [www.presidencia.gub.uy/presidente](http://www.presidencia.gub.uy/presidente)

<sup>vii</sup> Ibid. [www.presidencia.gub.uy/gobierno-nacional/ministros/curriculum-eleuterio-fernandez-huidobro](http://www.presidencia.gub.uy/gobierno-nacional/ministros/curriculum-eleuterio-fernandez-huidobro)

<sup>viii</sup> Mallinder, L. *Amnesty, Human Rights, & Political Transitions*. Studies in Int. Law: Vol. 21 (2007)

<sup>ix</sup> Campbell, P. *TRC: Human Rights & State Transitions- South Africa Model*. African Studies Quarterly

<sup>x</sup> Truth and Reconciliation Commission Legal Hearing Transcript. 27-29 October 1997.

<sup>xi</sup> <http://www.justice.gov.za/trc/special/legal/legal.htm>

<sup>xii</sup> Truth and Reconciliation Commission of South Africa Report (1998).

<http://www.justice.gov.za/trc/report/finalreport/Volume%201.pdf>

<sup>xiii</sup> De Klerk, F. Speech at the Fundación Saldarriaga Concha Forum. Bogotá (2013)