



## AFRICA POLICY BRIEF

## Untangling Justice, Peace and Amnesties in the Central African Republic

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The question of amnesties has come to the forefront once again as the Central African Republic (CAR) started a new round of African Union-mediated peace negotiations on 24 January 2019. While rebel groups demanded a general amnesty as a non-negotiable condition, the government maintained strong opposition to any new amnesty. The Khartoum peace agreement signed on 6 February 2019 did not uphold rebel groups' demand for a general amnesty, but it leaves many grey areas concerning the question of amnesty and justice. Consequently, it is likely that the question of amnesties or pardons will resurface in the course of the agreement's implementation. Drawing on broader discussions about the amnesty dilemma and examining the provisions of the 2019 Khartoum peace agreement, this policy brief sets out the key parameters which frame the amnesty issue in the CAR.

instability and mass displacement (UNHCHR estimates that over 1.1 million Central Africans or 26% of the country's population have been forced from their homes). Numerous peace and mediation efforts have been initiated and a UN peacekeeping mission (MINUSCA) has been deployed, but with limited success in stemming the violence, especially in the northeastern parts of the country. The CAR remains a tinderbox. In 2016 a host of parallel mediation initiatives were brought together under the umbrella of the African Union (AU), leading to the adoption of an AU Roadmap for Peace and Reconciliation in the CAR in July 2017. Following which the AU convened several meetings with rebel groups to lay the groundwork for formal peace negotiations with the Central African government, which opened on 24 January 2019 in Khartoum. Peace efforts have progressed slowly due to deep disagreements between the Central African stakeholders on a host of issues. One bone of contention is amnesties.

Opinions have been deeply divided about the need to give amnesties to armed combatants in the CAR in exchange for their participation in a peace process. Amnesties are executive or legislative measures which extinguish criminal or civil liability for past crimes and are therefore seen by many as creating impunity for mass human rights violations. The Central African

### INTRODUCTION

Since 2013, the CAR has been in a state of perennial crisis marked by violence between armed groups, intercommunal tensions, political

government and human rights organizations have strongly opposed the inclusion of an amnesty in any ceasefire or peace agreement, calling instead for measures that ensure accountability for abuses and redress for victims. The Republican Pact adopted at the 2015 Bangui National Forum set out the principle of a ‘reconciliation conditioned to justice’ and was unequivocal in rejecting the option of an amnesty, as was the Central African Parliament in its recommendations for a draft peace plan.<sup>i</sup> The United Nations (UN) and the European Union (EU) have toed the same line, defining the need to combat impunity as a cornerstone of their policy engagement in the CAR.<sup>ii</sup>

Rebel groups, however, have repeatedly made their participation in peace negotiations and disarmament processes conditional on the adoption of a general amnesty. Following the mediation round facilitated by the AU in August 2018, rebel groups presented a list of 97 demands, with amnesties set as a non-negotiable condition.<sup>iii</sup> This aligns with previous practices in the CAR, where, since the 1990s, various peace agreements have included amnesty provisions for armed combatants. Various mediators have shown sympathy for this demand by rebel groups, considering it a necessary element of rebuilding trust and inducing all the warring parties to join the negotiation table. Although the AU Roadmap for Peace and Reconciliation is silent on the amnesty issue, countries from the region which have taken a lead role in mediation efforts, such as Chad, the Republic of Congo and Angola, have indicated they support the adoption of a new amnesty in the CAR.<sup>iv</sup> Both the 2015 Nairobi agreement (mediated by the Republic of Congo and Kenya) and the 2016 Benguela agreement (mediated by Angola) envisaged the adoption of an amnesty, while the Sant’Egidio brokered accord of June 2017, while avoiding the word ‘amnesty’, indicated a

preference for a policy of accommodation and pardon over one of accountability.<sup>v</sup>

Both Central African stakeholders and external actors have thus been deeply divided over the amnesty question. Unsurprisingly, therefore, the issue emerged as a key stumbling block at the 2019 peace talks held in Khartoum. While the rebel groups’ demand for a general amnesty was not upheld in the final agreement, the agreement does leave many grey areas concerning the question of amnesty and justice. And like the 2017 Sant’Egidio brokered accord, it adopts a language that leans more towards accommodation, reconciliation and pardon, thereby moving away from the more justice/accountability-oriented approach taken at the Bangui National Forum. As a result, the amnesty question may resurface as part of the peace accord’s implementation, for instance, through demands for the national parliament to consider the adoption of an amnesty law. Drawing on broader discussions about the amnesty dilemma and examining the provisions of the 2019 Khartoum peace agreement, this policy brief examines the key parameters which frame the amnesty question in the CAR.

### AMNESTIES AND PEACE

The inclusion of amnesties in peace processes has been a long-standing practice that has come under increasing scrutiny over its legality and effectiveness. Scholars and jurists alike disagree about the extent to which a general prohibition of amnesties currently exists under international law, especially for crimes other than war crimes, crimes against humanity and genocide. While human rights advocates claim that amnesties are no longer an acceptable response in the face of mass atrocities, others argue that amnesties for non-international crimes can, in certain circumstances, be compatible with international law. But amnesties are not simply an issue of law. Equally important is the question as to

whether amnesties are necessary for or an obstacle to peace.

Amnesties' effects on peace outcomes are contentious.<sup>vi</sup> For some, amnesties undermine peace by allowing the most violent and abusive actors to hold the peace process hostage and claim political legitimacy without needing to acknowledge, let alone take responsibility, for their role in the violence and large-scale suffering of the population. By rewarding the use of violence and mass human rights violations as political instruments, amnesties also create negative incentives that may hamper peace efforts. Amnesties furthermore entrench impunity, which undermines efforts at rebuilding the rule of law in fragile countries and weakens civic trust in state institutions. Finally, amnesties may impose a forced silencing and reconciliation on victims and can breed resentment and desires for revenge, thereby creating a breeding ground for renewed violence in the future.

Others view amnesties as forming part of a necessary peace bargain. They can help bring the belligerent parties to the negotiation table by building trust between them and inducing armed actors to disarm. Amnesties can thus facilitate the conclusion of peace agreements and help end violence and atrocities. They also provide appeasement and prevent the instrumentalisation of the past to ratchet-up antagonisms for narrow political purposes, thereby creating the conditions for political stabilisation. While amnesties may offend our sense of justice, the moral duty of stopping the killings, it is argued, trumps the moral duty to individual victims.

### THE IMPORTANCE OF DESIGNING AMNESTIES

At present, there is a lack of strong empirical evidence supporting or disproving either of the

above claims, and what evidence is available is often contradictory. Significant unknowns remain. For instance, amnesties may sometimes be helpful in achieving conflict termination yet at the same time contribute to creating conditions which are harmful to longer-term peace sustainability.<sup>vii</sup> Amnesties may thus simultaneously be supportive of short-term peace and harmful to long-term peace. Discussions about the usefulness of amnesties also need to take into consideration other parameters, such as whether alternative means to pressurise/incentivise armed actors into disarming are available. It is also important to consider the differing ideological, political, socioeconomic or material considerations which guide combatants' decisions on whether to disarm. It may very well be that in certain situations amnesties will have little real-time effect on actors' motivations to engage in peace or disarmament processes. The centrality of amnesties as peace incentives should therefore not be assumed *a priori*.

What has become increasingly apparent is that the kind of amnesty adopted is extremely relevant to its legitimacy and effectiveness. By and large, blanket amnesties are viewed as unacceptable – they do not conform to international law and are more likely than other types of amnesties to have negative effects on sustainable peace. If amnesties are adopted, they thus need to be limited or conditional amnesties – and preferably both.<sup>viii</sup>

In the past, insufficient attention has been paid to the design of amnesties, on the assumption that it is the decision to adopt an amnesty which matters *in se*. It has become increasingly apparent, however, that several factors matter when considering amnesties: when and how amnesties are adopted, to who and what they apply, how they are implemented, and how they are integrated with broader peace and justice

efforts.<sup>ix</sup> This means that amnesties are not a quick-fix solution. Contrary to what is often hoped by those asking for amnesties, they can no longer be used to simply whitewash the past. Instead, ‘good amnesties’ involve limitations to the scope of the amnesty granted and, most often, also require reciprocal gestures of goodwill by those to whom they are granted. Only well-designed amnesties can make a positive contribution to peace.

### AMNESTIES IN THE CENTRAL AFRICAN REPUBLIC

One positive outcome of the 2019 Khartoum agreement is that the rebels’ demand for a general amnesty was not upheld. In fact, the agreement makes no reference at all to the notion of amnesty. But a close examination suggests that the issue has been put on the back-burner rather than resolved, and that the door has been left open for the adoption of a policy of leniency and accommodation.

In the accord’s section on ‘justice and national reconciliation’<sup>x</sup> it is provided, for instance, that the Truth, Justice, Reparation and Reconciliation Commission (the CVJRR, whose creation was already called for under the 2015 Republican Pact) will have an express mandate to promote forgiveness – without detailing what this entails and how the Commission is meant to reconcile this with its mandate to promote truth and justice. The agreement further calls for the creation of a commission composed of all belligerent parties which would, before the CVJRR is established, have the task of ‘examining all the aspects linked to the conflict in the CAR’ and ‘mak[ing] suggestions about the justice policies to be adopted’. Lastly, the agreement states that the president may, in the interest of promoting national reconciliation, ‘use his discretionary right of pardon and grace’. Equally important are the silences in the agreement, in particular its failure to mention

the already operational Special Criminal Court (SCC) for the CAR or the ordinary domestic courts. Combined, these wordings and omissions strongly indicate that very little agreement has in fact been found on the question of justice for past atrocities and that some form of amnesty may still be on the table in the future. For this reason, it is useful to reflect on the elements which will delineate any future discussions about amnesty and impunity.

### *Repeat amnesties*

Historically, amnesties and peace processes have gone hand in hand in the CAR. Following mutinies and coup attempts in 1997 and 2003, amnesties were granted to those involved. The 2003 National Dialogue convened by François Bozizé after he successfully removed Ange-Félix Patassé in a coup, recommended the adoption of a sweeping amnesty for ‘all crimes committed during the conflicts between 1960 and 2003’.<sup>xi</sup> Later on, following various rebellions in the north of the country, promises of amnesties were included in all the agreements concluded with rebel groups. This was formalised with the promulgation of an amnesty law on 13 October 2008, which granted amnesties to both government forces and rebel groups for crimes committed since 2003, to the exclusion of war crimes, crimes against humanity and genocide. On each of these occasions, amnesties were presented as key measures for promoting national (political) reconciliation between the government and armed opposition forces.

Caution is, however, required when it comes to multiple amnesties. The repeated adoption of amnesties often acts as an indicator that a conflict is particularly intractable and marked by deep distrust between the belligerents. It is thus unlikely that amnesties, on their own, will make a significant contribution to bridging this deep divide and act as a vector for political reconciliation. Repeated amnesties can also

progressively undermine the credibility of the commitment made through an amnesty, both by the government and armed actors.<sup>xiii</sup> Ultimately, such amnesties become empty gestures. Repeated amnesties can also undermine peace efforts by signalling that the cost of engaging in violence, including mass violence against civilians, is low.

Under such conditions, the ability of a new amnesty to act successfully as a means of inducement and political reconciliation is low. Instead, other political measures need to be explored to address the underlying drivers of distrust and failed commitments to previous peace processes. The timing of the adoption of an amnesty or pardon measure also matters greatly. Amnesties can be adopted at different stages of a peace process: while conflict is ongoing, before the start of negotiations, or after conflict termination/when a peace accord is signed. Research suggests that during-conflict amnesties or those adopted before or at the start of peace negotiations are less effective, as amnesties require the pre-existence of some degree of trust between the belligerents.<sup>xiiii</sup> The fact that the amnesty question was left unresolved at the Khartoum talks is, in this view, positive. If it is to be considered as a measure to be deployed within a broader justice policy, it should only be put on the negotiation table after belligerents have shown signs of a (credible) commitment to the peace process and first steps have been taken towards the implementation of the peace agreement. Thus, amnesties need to be understood not as a confidence-building measure to induce disarmament but as a privilege awarded after belligerents have effectively committed to peace and disarmament.

The question of how to deal with recidivism is also key. Non-recidivism clauses are a common conditionality included in amnesty laws, but they

are particularly relevant for repeated amnesties. As a minimum, any new amnesty or pardon measure in the CAR should provide that amnesty beneficiaries who resume fighting or commit new human rights abuses after the conclusion of the peace agreement lose the protective benefits of the amnesty and become liable to criminal investigation and prosecution.<sup>xiv</sup> As the 2008 amnesty law in the CAR already included one such non-recidivism clause, previous amnesty beneficiaries who re-offended should also be excluded from the scope of a new amnesty or pardon measure. Such a provision may be contentious as it significantly narrows the range of individuals who would be eligible for amnesty, and might be challenging to implement,<sup>xv</sup> but it would be key in preventing a repeat amnesty from signalling that the use of violence has few significant consequences for the perpetrator.

Lastly, the categories of individuals and of crimes to which the amnesty would apply must be given careful consideration. Beyond the non-negotiable exclusion of international crimes from the scope of an amnesty, the exclusion of further crimes which have been particularly harmful to the civilian population in the CAR should be examined. To avoid perceptions of political bias and unfairness – which often lie at the basis of the failure of amnesties – questions of who can claim benefits from the amnesty (state forces vs rebel forces, leadership vs mid-level commanders vs foot soldiers) and the period to which it applies must be carefully examined. And, just as importantly, care should be taken to develop an effective and independent mechanism to monitor the implementation of the amnesty to both curtail attempts at its political instrumentalisation (for instance, by applying it more leniently to one group) and prevent what is formally a conditional amnesty from transforming into a de facto measure of blanket impunity (for instance,

by not carrying out a proper examination in each individual case to see whether exclusion criteria apply or conditionalities are met).

### *Co-existence with the Special Criminal Court*

Further circumscribing the amnesty question in the CAR is the fact that the country has already taken steps to tackle impunity. The SCC was created in 2015 and is due to move forward with its first investigations in 2019. Any amnesty would need to consider this pre-existing institution and be designed accordingly to avoid conflicts and contradictions which could create legal uncertainty or scupper the effectiveness of both the amnesty process and the SCC. The co-existence of an amnesty and the SCC would create a challenging dilemma between accepting an amnesty with a significantly narrowed scope (at the risk of it becoming unpalatable to the rebel groups) or risking a de facto curtailment of the mandate of the SCC.

The Central African Penal Code prohibits amnesties or pardons for war crimes, crimes against humanity and genocide. However, the law establishing the SCC makes no mention of amnesties (or immunities).<sup>xvi</sup> This thus leaves a grey area about the extent to which amnesties could be promulgated and invoked before the SCC to block it from carrying out investigations. While it could be envisaged that amnesties are provided for non-international crimes only, other elements come into play as well. First, the SCC also has jurisdiction to investigate the more amorphous category of ‘serious violations of international humanitarian law and international human rights law’. A key question would thus be whether an amnesty would not only exclude international crimes but also serious human rights violations, which, although not legally prescribed, would be more in line with the spirit of the Bangui accord. Second, the SCC’s recently adopted prosecutorial strategy

establishes that it will prioritise investigations against individuals who ‘have played a key role in the commission of crimes’ and are repeat offenders.<sup>xvii</sup> This reiterates the importance of carefully examining who would be eligible for amnesty and who would fall outside its remit. This is particularly relevant as the adoption of a broad amnesty or pardon could also lead to an increased reliance on the International Criminal Court rather than on the SCC to carry out prosecutions, thereby further weakening the already tenuous position of the SCC.<sup>xviii</sup>

### *Local legitimacy of amnesties*

Amnesties can only have a positive effect on long-term peace if they are accepted and seen as legitimate by the broader population. In the absence of survey studies examining the attitudes of the CAR population to justice and peace-related topics, it is difficult to assess the extent to which the Central African population would support or oppose an amnesty as a measure to promote appeasement and disarmament. However, experiences in other countries have shown that even when there is popular support for an amnesty, this fritters away if amnesties are seen as imposing unilateral acts of forgiveness on the population. For amnesties to be accepted broadly by society as a ‘necessary compromise in the interest of peace’, other parallel measures need to be implemented which address victims’ needs.

In Uganda and South Africa, for instance, perceptions of the legitimacy of amnesties were linked to whether they were accompanied by an effective truth-telling exercise or processes through which perpetrators could atone for their past crimes. Victims in Uganda, while initially welcoming the amnesty law, have grown critical of the fact that the amnesty was not accompanied by processes which allowed for perpetrators to engage with the community to explain what happened and why, and to ask for

forgiveness. This made people feel that the government simply assumed communities had forgiven the amnesty beneficiaries.<sup>xxix</sup> Similarly, in South Africa, the decline in support for amnesties over time was strongly correlated with people's dissatisfaction over the amount of truth-telling that the truth and reconciliation commission managed to produce.<sup>xxx</sup>

The creation of a truth and reconciliation commission in the CAR was provided for under the 2015 Republic Pact and reiterated in the Khartoum agreement. Such a commission could work as a useful complement to the SCC (as the court will not be able to examine the vast scale of human rights abuses that have been committed) and as a counterweight to an amnesty or pardon measure. However, the CVJRR should not be used to evade justice and acknowledgment. Its primary role should not be 'the promotion of forgiveness' – forgiveness is a highly individual process which cannot be imposed from the top – or the granting of amnesties or pardons, but to establish a comprehensive record of the nature, causes and actors behind past atrocities. The mandate and composition of the CVJRR will therefore need to be designed carefully to guarantee its effectiveness and independence. Furthermore, the 'inclusive commission' created under the Khartoum agreement to 'examine all aspects relating to the conflict and the justice actions to be taken' should not substitute itself for the CVJRR or unduly restrict the investigative mandate of the CVJRR. As a body composed of the belligerent parties, this 'inclusive commission' also has limited legitimacy and needs to be complemented with broader consultative processes, such as those already begun with the creation of the Comité de Pilotage in March 2018 to prepare for the establishment of the CVJRR.<sup>xxxi</sup>

The absence of a simultaneous adoption of reparative measures for victims can also lead to amnesties being seen as unfairly biased in favour of perpetrators, especially in situations where amnesties are linked to disarmament processes. Linking amnesties and reinsertion packages makes sense to the extent that it can facilitate combatant demobilisation and reintegration, and it is also unrealistic to expect that institutions tasked with overseeing the implementation of an amnesty will have the ability to also put in place reparative measures for victims. But it is important to engage in consultations with the victims throughout the amnesty process to allow for their views on how best to reconcile it with their need to be heard. Equally, to ensure a broad buy-in for the amnesty process, it will often be preferable to implement some form of victims' reparations in parallel to amnesties rather than postponing such reparations to a later date. Importantly, accompanying amnesties with measures for acknowledgment, apology and redress is not only necessary for satisfying victims' justice needs, but can also help to facilitate the reintegration of combatants who might otherwise fear that they will face revenge or stigmatisation when they return to their communities.

### **IMPUNITY BEYOND AMNESTIES**

While amnesties pose significant challenges to the pursuit of justice for past human rights violations, the absence of amnesties does not necessarily mean there will be no impunity. Numerous other institutional, political and financial constraints can create an environment that perpetuates impunity, independently of whether an amnesty is in place or not. Many countries that have adopted narrowly restricted amnesty laws or no amnesty laws still face significant impunity problems. Similarly, in countries where amnesty laws have been eroded, this has not necessarily led to more justice.<sup>xxii</sup> There is thus a need to look beyond the amnesty

controversy when discussing justice. In part this means that effectively combating impunity will require investing in strong and independent judicial institutions and effective human rights monitoring mechanisms – both of which are currently lacking in the country.

Another key consideration is that broad policies of integrating former belligerents in state institutions have often been the quickest path to entrenching *de facto* impunity. Such integration offers have been common practice in past peace efforts in the CAR and also form part of the current Khartoum agreement.<sup>xxiii</sup> While the Central African government has been adamant in its rejection of an amnesty, the decision by President Touadéra to integrate former ex-Seleka and Anti-balaka elements in the government with the ministerial reshuffle of September 2017 presaged that integration would be used as a key instrument of appeasement and accommodation. While the promotion of inclusivity may be necessary to underpin the peace process and bolster President Touadéra's weak political power, it can also foster an environment which further entrenches impunity.

Discussions about Disarmament, Demobilisation and Reintegration (DDR) and the (re)integration of rebel forces in the national army will be particularly key in this context. The 2015 Republican Pact set out the basis for a vetting exercise as part of such a process: it provides that members of rebel forces who integrate into the national army must be subject to a verification process. Although the agreement is vague on the exact scope of and criteria for this verification process, UN documents specify that this includes a human rights screening.<sup>xxiv</sup> So far, this process has only been applied to the police and gendarmerie and to a pilot DDR project. The implementation of such a vetting/verification process means there can be no automatic integration, which goes

against the expectations of some rebel groups. But when the objective is ending impunity, preventing notorious human rights abusers from integrating into state institutions is an even more decisive issue than the amnesty question.

The Khartoum agreement leaves the door open for such a verification process as it postulates that the reintegration of rebel actors who used to be civil servants or soldiers will be examined on a case-by-case basis (article 4(i)) and that only those individuals who fulfil 'the necessary conditions' will be integrated into the security forces (article 6(c) – the article, however, doesn't detail what these necessary conditions are). The agreement also provides for the immediate creation of special mixed security units composed of state and rebel forces. Since it seems that these will be created outside of the regular PNDDR process and take on primary responsibility for exercising security tasks, they could fall outside any verification process. Yet, in the interest of protecting civilians and guaranteeing security, it will be important to exclude notorious human rights abusers from these units. Since MINUSCA might be called upon to provide technical assistance to the units, it can contribute to this aim through a full application of its Human Rights Due Diligence Policy.<sup>xxv</sup>

## CONCLUSION

Amnesties have come to form a key stumbling block in the peace negotiations in the CAR. While rebel groups have been adamant in their request for a general amnesty, the government is staunchly opposed to such a measure and calls for remaining within the boundaries of the 'reconciliation conditioned by justice' set out in the Bangui National Forum agreements of 2015. The Khartoum peace agreement signed on 6 February 2019 makes no mention of an amnesty, nor does it resolve the issue. Its provisions clearly lean more towards a policy of

leniency and accommodation, and leave the door open for the amnesty issue to resurface at a later stage of the peace agreement's implementation.

Holding steadfastly to a moral rejection of any form of amnesty might not prove feasible or in the best interests of peace in the CAR. At the same time, as this brief has shown, it is also clear that only a clearly delineated amnesty could have any hope of making a positive contribution to peace and balancing peace and justice needs. A strong message therefore needs to be sent to rebel groups that if they want to obtain the adoption of an amnesty or pardon measure, they will need to accept negotiations on its scope and bounds and to engage in supplementary acts that

provide genuine and full acknowledgment and atonement for their crimes. The only acceptable amnesty would be one that does not function as a unilateral act of forgiveness but rather represents a reciprocal engagement towards peace.

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<sup>i</sup> Forum National de Bangui (2015) *Pacte républicain pour la paix, la réconciliation nationale et la reconstruction nationale en république centrafricaine*. 11 May; National Assembly of the CAR (2017) *Initiative parlementaire pour l'adoption d'un plan de paix en République centrafricaine – Recommendation*. 26 May.

<sup>ii</sup> United Nations Security Council Resolution 2399 (2018); European Commission (2017) *National Indicative Programme for the Central African Republic, 2014-2020* (Ares(2017)294972). 8 June.

<sup>iii</sup> RJDH *centrafrique* (2018) Centrafrique: Les 12 revendications “non négociables” des groupes armés pour la prochaine concertation. 21 August. Available at: <http://rjdh.org/centrafrique-les-12-revendications-non-negociables-des-groupes-armes-pour-la-prochaine-concertation/>

<sup>iv</sup> *Jeune Afrique* (2017) Idriss Déby Itno: “Au lieu de nous donner des leçons, l'Occident devrait écouter notre avis”. 6 February. Available at: <https://www.jeuneafrique.com/mag/398067/politique/idriss-deby-itno-lieu-de-donner-lecons-l'occident-ecouter-avis/>; AFP (2017) En Centrafrique, l'ombre toujours tutélaire du Tchad. 21 November. Available at: <https://afrique.lalibre.be/11265/en-centrafrique-l'ombre-toujours-tutelaire-du-tchad/>

<sup>v</sup> International Crisis Group (2017) *Avoiding the Worst in Central African Republic*. Africa Report No. 253, 18; « Entente de Sant'Egidio » *Accord Politique pour la Paix en République Centrafricaine*, 19 June 2017; *The Nairobi Agreement on Ceasefire and Cessation of Hostilities Between ex-Seleka, FPRC and anti-Balaka of the Central African Republic*, 8 April 2015.

<sup>vi</sup> Mallinder, L. (2018) *Amnesties and Inclusive Political Settlements*. PA-X Report: Transitional Justice Series, 9-18. Available at: [http://www.politicalsettlements.org/wp-content/uploads/2018/12/2018\\_Mallinder\\_Amnesties-Report.pdf](http://www.politicalsettlements.org/wp-content/uploads/2018/12/2018_Mallinder_Amnesties-Report.pdf); Jeffrey, R. (2014) *Amnesties, Accountability and Human Rights*. Philadelphia: University of Pennsylvania Press.

<sup>vii</sup> For instance, for a critical view on Mozambique, which is often presented as a case study for amnesty, see Igreja, V. (2015) ‘Amnesty Law, Political Struggles for Legitimacy and Violence in Mozambique’. *International Journal of Transitional Justice* 9(2), 239-258.

<sup>viii</sup> Limited amnesties are amnesties which apply to a restrictive list of crimes, and/or to a delineated set of individuals, and/or are circumscribed in terms of their geographical or temporal scope. Conditional amnesties provide that potential beneficiaries will only be granted amnesty if they engage in certain acts (for instance, disarming, renouncing violence, releasing hostages, participating in community service projects, etc.) and refrain from returning to violence.

- <sup>ix</sup> Mallinder, L. (2014) *Belfast Guidelines on Amnesty and Accountability Report*. Transitional Justice Institute Research Paper No. 14-04, Belfast: Ulster University; Freeman, M. (2009) *Necessary Evils. Amnesties and the Search for Evil*. Cambridge: Cambridge University Press.
- <sup>x</sup> *Accord Politique pour la paix et la réconciliation en République Centrafricaine*, 6 February 2019, art. 7-13.
- <sup>xi</sup> Dialogue National République Centrafricaine (2003), *Rapport des Travaux de la Commission N°1 « Vérité et réconciliation »*.
- <sup>xii</sup> Dancy, G. (2018) 'Deals with the Devil? Conflict Amnesties, Civil War, and Sustainable Peace'. *International Organization* 72(02), 416.
- <sup>xiii</sup> Reiter, A. G. (2014), 'Examining the Use of Amnesties and Pardons as a Response to Internal Armed Conflict'. *Israel Law Review* 47(01), 133-147.
- <sup>xiv</sup> The Khartoum agreement contains a form of non-recidivism clause. Article 35 states that individuals who violate the terms of the agreement will be liable to repressive measures provided for by the guarantors and mediators of the accord. However, this provision primarily relates to UN and AU sanctions measures and does not deal directly with human rights abuses or penal sanctions.
- <sup>xv</sup> The human rights mapping exercise undertaken by the UN in 2016-2017 could serve as a first basis for such an identification process. <https://www.ohchr.org/en/countries/africaregion/pages/carprojetmapping2003-2015.aspx>
- <sup>xvi</sup> Art. 162, *Loi N° 10.001 portant Code pénal centrafricain*, 6 January 2010.
- <sup>xvii</sup> Cour pénale spéciale de la République centrafricaine (2018) *Stratégie d'enquêtes, de poursuites et d'instructions*. 4 December, §58.
- <sup>xviii</sup> Both courts are meant to act in complement to each other, but under the SCC Statute a regime of reverse complementarity was created which provides that the ICC has primacy over the SCC. The SCC, in turn, has concurrent but primary jurisdiction over domestic courts. In practice, it is understood that the ICC will focus its investigations on 'those most responsible' while the SCC focuses on 'those who have played a key role in the commission of crimes'. However, these categories are sufficiently vague and legally imprecise to leave room for potential competition between both institutions, or even usurpation. The recent transfer of the Central African rebel commanders Alfred Yekatom and Patrice Edouard Ngaïssona to the ICC rather than to the SCC is already raising questions about the relevance of the SCC.
- <sup>xix</sup> Anyeko, K. and McClain, L. (2012) *Who Forgives Whom? Northern Uganda's View on the Amnesty Act*. Gulu: Justice and Reconciliation Policy Brief, 5.
- <sup>xx</sup> Backer, D. (2010) 'Watching a Bargain Unravel? A Panel Study of Victims' Attitudes about Transitional Justice in Cape Town, South Africa'. *International Journal of Transitional Justice* 4(3), 443-456; Gibson, J. L. (2002) 'Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa'. *American Journal of Political Science* 46(3), 540-556.
- <sup>xxi</sup> *RJDH Centrafrique* (2018) Centrafrique : Un pas vers la mise en place de la Commission Vérité Justice et Réparation et Réconciliation. 15 March. Available at: <http://rjdh.org/centrafrique-un-pas-vers-la-mise-en-place-de-la-commission-verite-justice-et-reparation-et-reconciliation/>
- <sup>xxii</sup> Lessa, F. et al. (2014), 'Persistent or Eroding Impunity? The Divergent Effects of Legal Challenges to Amnesty Laws for Past Human Rights Violations'. *Israel Law Review* 47(1), 106.
- <sup>xxiii</sup> The agreement provides for the creation of a government of national unity and the integration of rebel actors in the state security forces and state administration.
- <sup>xxiv</sup> Art. 7, *Accord sur les principes de désarmement, démobilisation, réintégration et rapatriement (DDRR) et d'intégration dans les corps en uniforme de l'État centrafricain entre le Gouvernement de transition et les groupes armés*, 10 May 2015; United Nations Security Council Resolution 2301 (2016), art. 34b.
- <sup>xxv</sup> The UN's HRDDP makes the provision of support by UN entities to non-UN security forces conditional on the latter's compliance with and respect for international human rights and humanitarian laws. The HRDDP obligates the UN to engage in processes of human rights risk assessment, monitoring and screening, and can result in the suspension of UN assistance.



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