

The justice versus amnesty approach to resolving the protracted conflict in the Central African Republic

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Abstract:

This study aims at the debate of promoting peace and achieving justice in conflict-prone countries. The debate's core is whether justice should be traded for peace-making. Whether or not, justice or peace should take precedence over each other? Proponents of peace over justice contend that pursuing justice will lead to more conflict in an already precarious situation. Their counterparts hold that durable peace cannot be achieved without justice. Eight African states, including the 'phantom' state of Central African Republic (CAR), have applied amnesties in resolving their conflicts. The research focuses on how amnesties and criminal trials have attained the goals of sustainable peace, deterrence, and political stability in CAR. This paper views justice as an essential aspect of achieving peace, not solely in retributive terms. Amnesty is analysed from the lens of international law, which obligates states to extradite or prosecute and punish perpetrators of international crimes. The research limits its analysis to accountability for international crimes and amnesty approach through negotiated post-conflict peace agreements in CAR. The study argues that justice options provide a better opportunity for a comprehensive and durable peace in CAR than amnesty, which promotes impunity and guarantees momentary peace and subsequent relapse to conflict.

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1. Introduction

The states witnessing an ongoing conflict or transitioning violent conflict or post-repressive rule encounter the most challenging choices of amnesties and accountability as the path to conflict transformation and democracy. While victims of violence hold the thirst for accountability, authors of violations bargain for amnesties, especially in negotiated peace deals (Ndiyun, 2022). Conflicts have left many states in a shattered situation with the potential of injustices and unaddressed atrocities to further promote new cycles of violence. Impunity may kill trust in the justice institutions, increasing the likelihood of recourse to vengeful methods, which can promote further atrocities. Suspicion and distrust among the wrongdoers and the victims of violations can stall policymaking and rebuilding of nationhood (Ahmad & Wangenheim, 2021).

Laplante (2009) argues that the transitional justice discourse in post-cold war Latin America focused on the truth versus justice debate, interrogating whether criminal prosecutions should be integrated into political transitions. The practice in this region was that of a political balancing approach by authoritarian rulers with the pretext of achieving peace through amnesties and accountability through truth commissions. The spread of the human rights law and the international criminal law led to a paradigmatic shift, with many scholars contending that an acceptable and legitimate amnesty (conditional amnesty) must conform to the legal norms (Henrard, 1999; Burke-White, 2001; Dugard, 1997; Han, 2006). Although successors of repressive regimes had to resort to amnesties in addressing the atrocities of their predecessors, yet Burke-White (2001) holds that advances in the human rights law gave this demarche an international dimension, with the dominance of criminal justice over impunity through blanket amnesties.

This argument in support of criminal justice over blanket amnesty gained momentum with the establishment of the International Criminal Tribunals for Rwanda and former Yugoslavia in 1994 and 1993, respectively, and the International Criminal Court in 1998 (RSICC, 1998). These developments advocated for the punishment of offenders of serious international crimes, notably crimes against humanity, war crimes and genocide (Dugard, 1997). The experience in Haiti, where amnesty failed to secure peace and deter further hostilities weakened the amnesty advocacy as criminal justice regained popularity. Bassiouni (1996) postulates that achieving peace does not preclude justice because justice is essential for attaining peace. The establishment of the ICC, coupled with the stance of the international community of zero impunity for international crimes, has made prosecutions an essential element of reconciliation in most transitioning states (Dugard, 1997), while amnesties are viewed as a mechanism for promoting impunity rather than reuniting protagonists (Meintjes & Mendez, 2000). The Rwandan genocide, conflicts and authoritarian regimes on the African continent invited the justice versus amnesty mechanisms to Africa.

The Central African Republic (CAR) has been a fertile ground for conflicts and theatre of the

commission of international crimes for decades, right from the attacks against the civilian population after the year 1982 failed coup d'état through the mutinies and counter repressions of 1996, the massive repressions until 2003 after the abortive putsch by Francois Bozize (with the participation of Jean Pierre Bemba's *Movement pour la liberation du Congo* – MLC). These conflicts and crimes have been continued with numerous military offensives of the Bozize regime against the rebellions and suspected civilian supporters between 2003 and 2013, the massive killings by the Seleka regime of Michel Djotodia in 2013 and the recurrent massacre of civilians by the numerous armed groups operating in the country since 2013 till 2022. These heinous acts have produced hundreds of thousands of victims, including civilians being killed, wounded or mutilated, women raped, villages set ablaze, property destroyed, and population displacement within and beyond the national borders. These violations have led to the adoption of a multiple justice and amnesty mechanisms in the CAR, making it a fertile case of inquiry and testing of the appropriateness and effectiveness of the applied peacebuilding and accountability tools.

The paper aims to analyse the significant options employed by the CAR in resolving its enduring conflicts – amnesties and criminal justice. As such, the scope of the paper is limited to various amnesty laws adopted in the CAR as part of post-conflict political settlements and the various criminal justice mechanisms currently involved in the accountability process in the country. The central question in this research revolves around how amnesties and criminal trials have attained the goals of sustainable peace, deterrence, and political stability in the CAR. The paper is also interested in how amnesties framed in conformity with the law can operate alongside other CAR restorative and retributive justice mechanisms to produce durable positive outcomes. The paper examines the motives for adopting the various amnesties in the CAR and accounts for their failure, resulting in conflict in the country. The paper argues that the adoption of blanket amnesties has been counterproductive and does not conform to international and national law. Also, the article contends that the practice of de facto amnesties by appointing rebel group leaders to top government positions in the aftermath of peace deals only provokes victims, hence promoting the cycles of violence. While conditional amnesty is favoured in this paper, the recommendation is for integrating conditional amnesty in the holistic transitional justice process in the CAR for positive and durable outcomes. This paper re-joins the gap in scholarly literature, as very little or no literature exists on the amnesties and criminal justice approaches to conflict resolution in the CAR.

To develop its arguments, this paper is divided into four parts. The first part dwells on the historical background of one of the forgotten and enduring conflicts in the world, the CAR. Part two situates the amnesty versus justice debate in the literature. Notably, it critically analyzes previous literature on the two options of conflict resolution under consideration. Part three offers a critical analysis of the various amnesties adopted in the CAR and the criminal justice mechanisms operating in the country. The final part discusses the way forward and the path out of conflict for the CAR.

1.1. Revisiting Central African Republic's violent history

The CAR has experienced a history of violent conflict since its independence due to the recurrent scourge of rebel groups, militias, bandits, armed groups and civilian criminality (Isaacs-Martins, 2016). The constant attempts by political competitors to maintain or usurp political power and leadership also account for the conflicts. The enduring conflict has led to the persistent weakening of state apparatus in the CAR, including political, democratic and social institutions, flagging the economy. The CAR's history has been marked by ethnic tensions, deep-rooted poverty, corruption and nepotism, and pervasive political instability that has promoted a succession of armed conflicts (Ndiyun, 2022b). Also, the spillover effect of internal conflict in neighbouring states and regional instability has led to the flow of refugees, rebel groups and arms across the CAR's porous borders (United Nations, 2017).

Following a series of military coups, the CAR's political arena has experienced numerous autocratic rulers (Beninga et al., 2018). From independence in 1960, the first multiparty elections were organised in the CAR in 1993, and Ange Felix Patasse was elected president. His mandate was marked by several coups and mutinies, provoking abysmal ethnic disunity across the country and in the CAR military (Institute for Peace and Security Studies, 2018). In 2003, Francois Bozize overthrew Patasse through a military coup. As a result, violence erupted, leading to the 2004 Bush War, which ended in 2007 with the signing of the Sirte agreement. This agreement did not settle the squabble between President Bozize and his adversaries, whose rebel groups merged by ending 2012 under the appellation 'the Seleka'¹. It overthrew Bozize in March 2013 through a coup for failure to implement the Birao and Libreville peace accords of 2007 and 2008, respectively (Ndiyun, 2022a). While in power, the ongoing atrocities carried out by the Muslim-led Seleka on the civilian population prompted the emergence of the Christian-dominated anti-Balaka militia, who launched reprisal attacks against the Muslim population in revenge for Seleka attacks targeting Christians. The anti-Balaka self-defence groups depict the history of the CAR, characterised by resistance to the Peul slave traders in the 19th Century and to colonial rule, wherein the population developed the culture of confrontation and created self-defence groups that today are present in many localities in CAR as village militias (Beninga et al., 2018).

The Seleka stay in power was short-lived as its leader and self-proclaimed president of the CAR, Michel Djotodia, resigned on January 10, 2014, due to his inability to halt the violence and instability in the country and pressure from heads of state of the central African sub-region (Kewir & Sunjo, 2016). Prior to his resignation, Djotodia's dissolution of the Seleka coalition in September 2013 did not reduce tension, as clashes between the former fighters of the coalition and the anti-Balaka led to sectarian violence fuelled by age-old rivalries between the Muslim minority and the Christian majority, and the commission of widespread human rights abuses (Human Rights Watch, 2013). The former Mayor of Bangui, Catherine Samba-Panza, was sworn in as the interim head of state a week later. In July 2014, representatives of the former Seleka factions and the anti-Balaka met in Brazzaville and signed a ceasefire agreement.

The UN Security Council acting under Chapter VII of the UN Charter, through resolution 2149, in April 2014, created the UN Multidimensional Integrated Stabilization Mission in the CAR (MINUSCA) to replace the African Union-led MISCA (Marcucci, 2019). The CAR transitional government referred the situation of human rights violations in its territory since August 1, 2012, to the International Criminal Court. The former Seleka factions and the anti-Balaka representatives concluded a ceasefire deal in Libreville in July 2014, with the former maintaining control over the northern part of the territory, while the former retained hegemony over the south and the government's authority outside Bangui was very limited (Ibid). Presidential elections were organised in February 2016 to ensure a return to constitutional order, with Faustin-Archange Touadéra emerging as the new president. Between the end of 2016 and mid-2017, tension intensified in Bambari and Ouaka between the three factions² of the former Seleka.

On June 19, 2017, Sant'Egidio, a Roman Catholic peace movement, mediated an immediate ceasefire agreement between the CAR government and 14 armed groups, with the latter trading its hostile activities for representation in the CAR political system (Marcucci, 2019). Clashes between the anti-Balaka and the FPRC a day after the signing of the ceasefire agreement led to the death of 100 people in the town of Bria (BBC News, 2017). By November 2017, tension persisted in the north-western part of the CAR between the Christian Revolution and Justice (RJ) and the National Movement for the Liberation of the Central African Republic (MNL) (Le Monde, 2018).

Within the context of insecurity, violence and instability, heinous atrocities, including human rights abuses and grave violations of international humanitarian law, have been committed in the CAR. The CAR government and its international partners have faced the dilemma of adopting either a peace or justice trajectory to resolve the conflict in the country. Both paths have been fairly applied in the country, with no tangible effect in reducing conflict and instability.

The CAR's experience with democratic institutions has been minimal, as most of the political institutions put in place by the various leaders are perceived as illegitimate (Beninga et al., 2018). The failure of the various CAR leaders to establish a country based on the rule of law that promotes the unity of a people with a common culture and historical background has framed the conception that the best option to access state power is either through a rebellion, a mutiny or military coup (Ibid). With five military coups in its records since independence, added to the weak justice and security apparatus (non-existent beyond the CAR's capital, Bangui), the enduring conflicts in the CAR have consolidated an environment of impunity, further favouring violence and the commission of atrocities.

To resolve the conflict in the CAR, political solutions have been favoured through negotiating and signing peace deals with the opposition parties and rebel groups. The country recorded over ten peace agreements between 1997 and 2019. Still, conflict persists, as most agreements

either offered direct amnesty through legislation to armed group leaders alleged to have perpetrated human rights violations or indirect amnesty by integrating them into the government (Ndiyun, 2022). These agreements' failure to resolve the conflict in the CAR opens the debate for appropriate alternative judicial mechanisms by prosecuting all those guilty of committing atrocities.

2. Literature review and conceptual framework

The amnesty versus justice narrative in conflict and post-conflict transitional approaches has mainly evolved through three major stages (Mansour & Riches, 2017). Their application greatly depends on the conflict contexts realities like the political economy, alteration dynamics and the post-repressive regime/post-conflict political settlement renegotiation paths (Sriram, 2009a). The dichotomy between the two concepts has led to outlining the two goals as communally exclusive through divergent narratives (Gissel, 2018), as the quest for justice might dissuade perpetrators from participating in a peace settlement, while the pursuit of peace might promote impunity and hinder accountability (Weiner, 2016). Teitel (2003) contends that the Nuremberg and Tokyo criminal trials portrayed the paradigm shift from achieving peace to pursuing justice. The first stage in the history of the debate operated in Latin America between the 1980s and the early 1990s, with regime changes where ousted autocratic rulers justified the adoption of blanket amnesties as a critical requirement for the transition towards democracy (Renée, 2014). Kushleyko (2015) posits that repressive leaders in Chile and Argentina self-conferred absolute amnesties while preaching general amnesia for past atrocities under the pretext that the need for political stability overweighed the desire for accountability.

The 1990s, however, witnessed a paradigm shift with more importance accorded to greater accountability to fight any impunity (Mansour & Riches, 2017). Sander (2017) argues that within this period, much interest was given to trials in both international and national tribunals as a requirement for achieving peace and justice. This stage marked the shift from the granting of blanket amnesties to conditional amnesties as a mechanism of attaining restorative justice, as reflected in the work of the Truth and Reconciliation Commission in South Africa (Kushleyko, 2015). The third stage intervened in the late 1990s when the United Nations (UN) took an official position not to overlook amnesties for international crimes (Mansour & Riches, 2017). This stage established the legal proscription on impunity and amnesty for heinous crimes.

The legality of the pursuit of justice for crimes under international law abounds. International law imposes a duty on states to prosecute international crimes falling under *jus cogens* norms (Freeman, 2009). These crimes, which entail an obligation *erga omnes* of states, include crimes against humanity, war crimes, ethnic cleansing and genocide (Bassiouni, 1996). The Geneva Conventions of 1949, applicable to armed conflict, impose a duty on states to offer effective criminal penalties for individuals who commit or order the commission of severe violations of the conventions. The scope of applicability of the duty to prosecute extends to non-international

armed conflict according to a broad interpretation by the International Committee of the Red Cross (Mansour & Riches, 2017). Also, Article 17 of the Rome Statute (1998) explicitly bestows on all state parties the duty to prosecute crimes falling under the International Criminal Court's jurisdiction. As such, the states' obligation to prosecute reflects the illegality of impunity for perpetrators of atrocities which operates under the guise of blanket amnesty (RSICC, 1998).

The Special Court for Sierra Leone (SCSL) concretised the paradigm shift in international law on the status of blanket amnesty in *The Prosecutor v. Morris Kallon and Brima Bazzy Kamara* case (2004) by stating that international crimes attract universal jurisdiction, and one state cannot dispossess another of such jurisdiction over perpetrators of atrocities by granting them amnesty. In Sierra Leonean, the SCSL repudiated the blanket amnesty provisions in the Lomé Peace Accord of 1999, considering it a domestic agreement that could not override international norms. Although the Rome Statute does not explicitly mention amnesty (Scharf, 1999), its practice indicates the court's stance in rejecting amnesty (Mansour & Riches, 2017). These analyses bring to light the international law consideration on the inadmissibility of amnesties for international crimes.

Advocates of amnesty contend that the fight against impunity through accountability in transitional justice processes hinders the entire peace process and lengthens hostilities by weakening an already precarious situation (Evans, 2008). According to Wegner (1988), threatening sanctions may ignite a retaliatory or pre-emptive response, promoting conflict escalation. Broache (2015) corroborates this view by arguing that in the Democratic Republic of Congo, the M23 rebellion of 2012 was prompted by the fear of prosecution by one of the group's leaders, Bosco Ntaganda. In Colombia, the FARC participated in the Havana peace negotiations, outrightly stating that they would not admit the imprisonment of its members as a sanction (Gissel, 2018). According to Sriram (2007), supporters of the justice-based approach disregard the political context of conflict, and judicial solutions may lead to relapse or intensification of the conflict. In such a context, granting blanket amnesties is considered necessary in luring warring parties to drop their arms or engage in peace negotiations (Mallinder & McEvoy, 2012).

However, according to Renée (2014), between 1974 and 2008, out of 43 countries granting amnesty to rebel groups to obtain peace deals, 28 of the states provided amnesty more than once, while 19 states did so more than thrice. The degree of success of the various amnesties stands at 34 per cent, with a lower contribution to bringing peace or leading to a peace deal (Ibid). This contradicts the contention that amnesties are essential in achieving peace and unveils their ineffectiveness as a tool for ending the conflict. Moreover, the practice in Chile and Argentina and the move by Spain to punish Francisco Franco's regime violations further illustrate the failure of long-term blanket amnesties in attaining collective forgetfulness for hideous crimes (Mansour & Riche, 2017).

Opponents of absolute amnesties argue against impunity which they consider a sort of reward for crimes. This argument is challenging in the context of a negotiated peace agreement with provisions for amnesties, including granting government positions to perpetrators of atrocities (Mansour & Riches, 2017). Kritz (1997) postulates that impunity motivates authors of past crimes, and failing to punish or deter such acts may promote further violence. In Sierra Leone, the Lomé Peace Accord granted blanket amnesties to the government and the Revolutionary United Front. It offered some members of the rebel group positions in the unity government. However, this impunity in exchange for peace was short-lived, as the refusal of the rebels to disarm led to severe fighting two months after the accord (HRW, 2009). Violence only ceased in the country when the SCSL announced criminal prosecutions without consideration of blanket amnesties (Mue, 2014). Also, the South Sudanese government's provision of *de facto* amnesties and government positions to reproachable rebel leaders emboldened perpetrators of war crimes. It promoted a culture of impunity and the perception of justice by the citizens, leading to the current conflict and impeding the path to peace in South Sudan (Keppler, 2014).

The Ugandan amnesty process challenges the above cases. The Amnesty Act adopted in Uganda as a result of broad-based popular consultations and civil society lobbying yielded a substantial impact on the peace process, as about 30,000 rebels abandoned the bush and integrated the DDR process (Clark, 2021). Despite opposition of its implementation from the ICC, the Amnesty Act in Uganda was reinstated in 2013, due to the previous successes it had recorded (Refugee Law Project, 2013). Unlike other cases of amnesty laws dictated by the state without consulting the population, the Ugandan Amnesty was greatly supported by victims of violations, who indicated an interest in healing and reconciliation with the perpetrators (Khadiagala, 2001). According to the United Nations (2007), most northern Ugandans considered the rebels as their relatives who must be reintegrated into society and treated mercifully. The Ugandan experience thus contests the view that amnesty impedes a durable transition to democratic rule.

Despite the clear-cut distinction between amnesty and criminal (justice) prosecution, they are both applied in post-conflict and transitional justice approaches (Evans, 2008), albeit Sriram's (2009) contention that the peace versus justice dichotomy is increasingly outdated. Restorative justice advocates through the Truth and Reconciliation Commissions (TRC) argue for a strategy to fill the gap between reconciliation and retribution (Mansour & Riches, 2017). This middle-way approach acknowledges victims' needs in a reconciliation process (Renee, 2014), as TRCs document the historical track of past abuses to guarantee their appropriate presentation in the future. In the post-Apartheid truth-telling process of South Africa, conditional amnesty was provided to perpetrators who unveiled their political offences (Mallinder & McEvoy, 2011). To proponents of this approach, granting conditional amnesty in exchange for truth-telling achieves restorative justice, as truth-telling restores peace in societies, reconciling the offenders and the victims and repairing the damages caused by the conflict (Renee, 2014). Through this practice, the role of amnesty changed from achieving collective amnesia to a tool of acknowledgement, memory and forgiveness, and fostering accountability (Porter, 2015).

According to Mbeki and Mamdini (2014), the approach of sequencing peace and justice may lessen the perceived clashes between the two concepts. However, Kersten (2014, p. 49) opposes that any amnesty law adopted to be retracted in the future is no amnesty as it weakens the “future promise” and undermines the role of amnesty as a conflict resolution tool. A critical look at the argument of pro-amnesty scholars reveals that such impunity may only achieve short-lived negative peace and falls short of promoting a comprehensive approach to sustainable peace. This article promotes the notion of holistic peacebuilding, which encompasses both restorative and retributive justice in breaking the culture of impunity, achieving accountability, the rule of law and deterrence while establishing the truth about past atrocities. Retributive justice particularly promotes the punishment of offenders in order to combat impunity and effect deterrence (Krzan, 2017), while restorative justice is a victim-centred approach which considers violence as an infringement on people’s rights and aims at promoting healing and redress for victims (Porter, 2015).

3. Methodology

This qualitative research piece adopts a narrative approach to assemble in-depth insights into the amnesty and justice options adopted in the phantom state of the CAR and produce a well-informed picture of the situation. Narrative inquiry collects the experience of individuals or communities on a particular subject matter through qualitative survey to draw detailed conclusions on the issue being researched. This approach has the potential of revealing certain historically relevant facts and motivations that are hidden, through triangulation. This research paper is built on the collection and interpretation of secondary data from scholarly publications like books articles and research journals, reports and other internet sources.

4. Analysis of amnesties and justice options in the CAR’s conflict resolution path

4.1. The practice of amnesty in the CAR

Between 1997 and 2019, more than ten peace agreements were signed between the CAR government and rebel groups (Ndiyun, 2022a), with most of them containing blanket amnesty provisions (Close, 2020), while others provide for ‘disguise’ or de facto amnesty. The CAR has experimented with amnesties by adopting specific texts three times in its history in 1997, 2003 and 2008, following mutinies and coups d’état. This section examines the various amnesty laws, highlighting their failure to achieve the intended goals, plunging the country into cycles of violence and promoting impunity. The 1997 amnesty was granted by law no. 97.002 of March 15, 1997, in the context of a mutiny within the CAR armed forces and the misappropriation of public funds by some civil servants. This general amnesty in 4 articles unsuccessfully halted the politico-military violence in the country as armed hostilities persisted until the deployment of the United Nations (UN) mission in the CAR (Banale, 2020). The mission restored political stability and facilitated the organisation of presidential polls in September 1999, in which Felix Ange Patasse was re-elected president.

Article 1 of the 1997 amnesty law stipulated the granting of general amnesty on offences committed by CAR armed forces, gendarmes, paramilitary corps and civilians during the period of the mutiny from November 15, 1996, to January 25, 1997, and misappropriation of public funds under judicial investigations. The third article of this amnesty law offered a 15 days deadline for potential beneficiaries to surrender weapons and other military equipment in their possession to be eligible. This article further stipulated that those who default on the restitution will be liable to criminal sanctions. Albeit the adoption of the law complies with the constitutional provisions, the law, however legalised impunity by suspending prosecutions and ignoring the rights of victims of the mutiny and misappropriation of public funds – the state.

On May 28, 2001, the CAR witnessed an abortive coup, followed by the rebellious activities of Francois Bozize. These rebels victoriously overthrew the regime of Patasse on March 15, 2003, in a context characterised by the commission of serious crimes and human rights violations. This practice of gaining political power through the use of force is proscribed by the CAR constitution and Article 3 of the African Charter on Democracy, Elections and Good Governance (2007). In order to consolidate his position and absolve his supporters of criminal responsibility, Bozize, through an ordinance unilaterally granted general amnesty to all those who committed offences during the May 28, 2001, failed coup (Art 1 of 2003 Ordinance).

Similar to the 1997 amnesty law, this ordinance disregarded the existing laws and institutions in the CAR, ignoring the right to remedy for victims of crimes. In opting for amnesty, Bozize also aimed at immunising himself from possible prosecution for international crimes he ordered or committed (Banale, 2020). As such, the amnesty text targeted all crimes, including international crimes. Such amnesty, which limits investigations and prosecution of perpetrators, jeopardises efforts to restore the rule of law by contributing to the culture of impunity. The provisions of Article 3 of the ordinance out-rightly proscribed some CAR personalities like former president Patasse from returning to the country after the coup d'état. Just like its predecessor, the 2003 amnesty ordinance failed to re-establish peace and political stability in the CAR.

The enduring activities of armed groups and insecurity in the CAR between 2005 and 2008 prompted the Bozize regime to adopt an amnesty law favouring rebel groups. While some hitherto Bozize militia supporters bore grudges for their repatriation and returned to their old rebel activities, other pro-Patasse militias teamed up a rebellion against Bozize. Such was the case with the APRD (Banale, 2020). These rebellious activities pushed Bozize to conclude peace deals with the various armed groups. The Sirte agreement was signed on February 2, 2007, between the CAR government and the FDPC under the Libyan mediation (Ndiyun, 2022). The second agreement was signed in Birao on April 13, 2007, between the CAR government and the UFDR, which provided for the cessation of hostilities and cantonment of UFDR combatants, the putting in place of a rehabilitation and reinsertion programme for combatants and the inclusion of UFDR in the management of state affairs. The third agreement was signed in Libreville on May 3, 2008, while the fourth, the Global peace accord of June 21,

2008, was signed under the mediation of the Gabonese president between the CAR government, APRD and UFDR politico-military groups. This agreement provided for the promulgation of an amnesty law.

The first draft of the amnesty law submitted to the CAR parliament on August 1, 2008, received criticisms from stakeholders of the CAR conflict. While the SPRD had renounced the ceasefire agreement of June 2008, UFDR criticised the draft amnesty law for lacking the necessary provisions for national reconciliation and genuine inclusive political dialogue³. The coalition of opposition parties in the CAR under the banner of Union of the Living Forces of the Nation slammed the draft amnesty law for granting self-amnesty to Bozize and his soldiers for atrocities committed during the 2003 coup and subsequent violations. The final draft of the general amnesty law was adopted by parliament on September 29, 2008, and promulgated into law by Bozize on October 13, 2008.

The scope of the amnesty covered all crimes pending before national courts and committed by members of the defence and security forces, civilians and military authorities within the framework of maintaining order and defence of the CAR territory from March to October 2008. The specificity of this general amnesty law, as opposed to 2003, is the explicit outlawing and exclusion of amnesty for international crimes contained in the Rome statute and other offences falling within the subject matter jurisdiction of the ICC (ART. 2, Amnesty law 2008). While this move aligned with the principle of international law, no investigations were however launched for international crimes in the CAR during the amnesty period. The provisions of Article 7 of the law indicate that the amnesty law covered international crimes committed before the adoption of the law (Banale, 2020).

While Article 4 of the law stipulated that it did not prejudice the civil right of victims to claims, Banale (2020) argues that the amnesty law was wrongly framed from the political, social and security perspectives as some of its provisions were manifestly unrealistic. For instance, the two-month period accorded for armed groups to be cantoned and disarmed was insufficient (FIDH). Stating a deadline without a roadmap of measures attests that the amnesty was a mere declaration of intention void of feasible impact.

The amnesties, as discussed above, were framed as part of the pacification measures of the peace process in order to promote national reconciliation in the CAR. These amnesties however, present a negative outcome of their impact on achieving peace, reconciliation and inclusive dialogue in the CAR because they were not designed as part of the transitional process with accompanying measures. Also, amnesty laws have been repeatedly adopted as a tool of political power and impunity, designed without considering the affected population and victims, and not accompanied by transitional justice measures. Close (2020) argues that amnesties derive their legitimacy from the level of popular support, achievable through public consultations and parliamentary deliberations. Existing empirical literature on the CAR attests that little or no popular consultations have been carried out before the adoption of a general

amnesty in the country (Ndiyun, 2022b; Banale, 2020). Amnesties are generally the outcome of political settlements in the CAR. Francois Bozize issued the 2003 amnesty without consulting the population or the parliament; meanwhile, that of 2008 easily sailed through the parliament because it was dominated by the presidential majority.

The CAR population has often rejected any move by the state that promotes impunity. The acceptability of amnesties by the national and international communities depends on whether they are general, cover serious crimes, necessitate the beneficiaries to fulfil certain conditions, or are connected with other initiatives that aim at achieving accountability, truth-seeking or reparation (Mallinder, 2008; Freeman, 2009; Close, 2019). Given the failure of the tried amnesty options, should impunity trample over the rights of victims when there are other promising options for dealing with the past and restoring the rule of law and the dignity of victims?

4.2. Justice mechanisms in the CAR

The CAR government, prior to the 2012 conflict, opted mainly for political compromise with armed groups through amnesty laws and other political approaches to addressing the conflict in the country. A justice approach to address conflict atrocities in the CAR has been far-fetched due to the weak justice system, inadequate judicial personnel and the lack of political will to prosecute wrongdoers (Ndiyun, 2022b). Francois Bozize initiated the first judicial step to address the CAR conflict on December 21, 2004, through a referral of the situation in the CAR to the ICC under Article 14(1) of the Rome statute for the court to probe and prosecute international crimes committed in the CAR from July 2002 (Bagayoko, 2018). The ICC prosecutor launched an investigation into crimes allegedly committed by the *Movement pour la Liberation du Congo* (MLC) of Jean Pierre Bemba in the CAR between 2002 and 2003. On May 24, 2008, Bemba was arrested in Belgium and handed over to the ICC for crimes against humanity and war crimes. His trial began on November 21, 2010, and ended on March 21, 2016, with a penalty of 18 years imprisonment for crimes committed between 2002 and 2003 in the CAR as leader of the MLC. The Appeal Chamber of the ICC, however discharged and acquitted Bemba in 2018.

The ICC prosecutor opened a second investigation into the situation in the CAR in August 2014 based on a second referral of the situation of atrocities in the CAR from August 1, 2012, issued by the transitional president, Catherine Samba Panza. This second referral with no end date, gives the ICC the powers to investigate the alleged international crimes committed in the CAR so far as violence continues in the country (ICC, 2014). The outcome of this second investigation has led to the arrest and prosecution of Three anti-Balaka leaders – Alfred Yekatom, Patrice-Edouard Ngaissona and Maxime Jeoffroy Eli Mokom Gawaka – and one former Seleka commander, Mahamat Said Abdel Kanim. The trial of these individuals is ongoing at the ICC for numerous counts of war crimes and crimes against humanity. Despite the court's role in fighting the impunity, its major focus on the prosecuting Africans has raised

some controversies. The ICC has also received criticisms on its inability to appropriately sequence peace and justice in its interventions in the peacebuilding processes (Jalloh & Bantekas, 2017).

While the ICC investigations and prosecutions are ongoing in the CAR, The CAR government and the UN mission in the country signed a memorandum of intent, leading to the establishment of a hybrid Special Criminal Court with a seat in Bangui, and mandated to investigate, try and punish domestic and international crimes defined by the penal code of the CAR, including crimes against humanity, genocide and war crimes (Art. 3 Organic Law of the SCC, 2015). The SCC operates in complementarity with the ICC and national criminal courts, investigating crimes committed on the CAR territory since January 1, 2003. This constitutes a novel criminal justice experiment in addressing crimes wherein the ICC, a hybrid court and national courts are investigating similar offences covering the same period and over the same geographical space (Ndiyun, 2022b).

Law No. 10.001 of January 6, 210, to lay down the CAR Penal Code of 2010 bestowed on national criminal courts the competence to investigate and prosecute international crimes. The CAR's constitution, guided by the monist approach, stipulates that duly ratified international treaties override national laws. Despite the legal framework of the CAR empowering its criminal courts to prosecute conflict-related crimes, the country's judicial system is weakened by inadequate human, financial and infrastructural resources, making it incapable of investigating and prosecute international crimes (UNHCR, 2017). Hazan (2015) and Musila (2016) contend that the persistent conflict and its devastating effect in the CAR indicate the clear inexistence of state authority out of Bangui and a destroyed judiciary. The organic law of the SCC, by bestowing the primacy of the SCC over national courts in its Article 36, affirms the existence of a functional national criminal court system. These courts have investigated and prosecuted conflict-related offences (Amnesty International, 2020). The criminal courts of Bangui in early 2018 prosecuted and sentenced 12 former Seleka rebels to life imprisonment for rebellion, conspiracy, offences against the state's internal security and illegal possession of war weapons (Ndiyun, 2022b). The courts, on January 22, 2018, also sentenced Rodrigue Ngaibona, an anti-Balaka leader, to life imprisonment for conflict-related offences. A similar move occurred on February 19, 2020, where the Bangui Criminal court sentenced five anti-Balaka commanders to life imprisonment and 22 of its combatants to up to 15 years imprisonment for war crimes, crimes against humanity and other offences governed by the country's Penal Code (El Gantri & Yaliki, 2022).

The selective prosecution approach of the ICC indicates that it will only prosecute high-level perpetrators in the CAR. In a country which has experienced conflict since its independence, the number of perpetrators abounds, and the weak judicial system in the CAR, marked by corruption, and partiality, added to a lack of personnel, cannot guarantee the trial of all offenders of conflict-related violations in the CAR. The creation of the SCC brought high hopes to the victims of accountability by a hybrid independent and impartial tribunal. However, the

slow pace taken by the court to take off and the various funding and logistics difficulties encountered by the court with a limited lifespan leave more to be desired.

Despite all the peace and justice measures adopted in the CAR, alleged criminals enjoy total impunity while victims and their families perished in the pool of their sorrow. While justice is essential to console victims of atrocities in the CAR, it should, however be carried out in a way as not to weaken the already fragile social fabric of the country; the tendency in the CAR has been that of promoting repressive justice for foreign warlords and mercenaries in the country, and verbal justice and the promotion of political stability through the sharing of state power (through the formation of governments of national union) with prominent political actors in the country, including armed group leaders (Akandji-Kombe, 2018). For instance, while the ICC indicted Bemba for international crimes committed in the CAR in 2003, the CAR political leaders who invited the intervention of Bemba and his MLC benefitted from an amnesty law voted by the CAR parliament in October 2008.

The CAR is reputed for organising inclusive political dialogues at the end of each crisis, which culminates with concessions shielding armed group leaders and their fighters from criminal justice on the one hand and a system of sharing state power with armed groups on the other hand. This demarche still holds, even when the initiative of resolving the crisis is at the behest of sub-regional organisations (CEMAC – Economic and Monetary Community of Central African States or ECCAS – Economic Community of Central African States) or the African Union, as justified in the African Peace Initiative roadmap (Akanji, 2018). This practice promotes de facto amnesty for armed group leaders who commit atrocities to enjoy impunity by integrating the government through appointments into top-ranking government positions.

5. Reconciling the amnesties and justice approaches in resolving the CAR's protracted conflict

Managing the various conflicts in the CAR has favoured a durable culture of impunity. The adoption of amnesty laws in the past decades has benefited the country's political leaders and warlords (Brabant, 2015). Several empirical research conducted on the CAR conflict has revealed that most of the country's population rejects impunity through general amnesty (Picco, 2019; Ndiyun 2022a; El Gantri & Yaliki, 2022). Most victims prioritise security and desire justice (Picco, 2019). However, most victims also indicate their interest in telling their stories, and their sorrow recognized (El Gantri & Yaliki, 2022). In the course of the conflicts in the CAR, atrocities have been committed by armed groups against the civilian population, causing some to leave their original settlements because they were set ablaze or destroyed. Others became victims of severe crimes in the course of fleeing conflict. As such, it becomes difficult to identify the individuals responsible for their grief with precision. This underscores the necessity to document the atrocities and the contexts in which they were perpetrated to establish the right to truth for victims and ensure the establishment of a shared conflict narrative in the CAR.

There is a general consensus that accountability for crimes is essential to end the culture of impunity and the cycle of violence in the CAR. The trend in the post-2012 conflict in the CAR has placed justice as a central pillar of the country's peace process. Djotodia, in 2013, promised to probe into allegations of human rights violations, a move reiterated by Samba Panza and contained in the Bangui Forum that justice is non-negotiable in the CAR. A vast arsenal of criminal justice mechanisms – ICC, SCC, national courts – has been deployed to achieve this goal in the CAR. However, criminal justice institutions face numerous limitations: insecurity to conducting investigations and collect evidence in armed groups-controlled areas, the large number of individuals to be investigated, limited space accorded to victims during the criminal process and lack of inter-communal reconciliation. The ICC has been present in the CAR for nearly two decades but has prosecuted just one person, with four others undergoing trials, and has failed to stimulate domestic criminal prosecutions in the country effectively. The ICC intervention in precarious peacebuilding processes has been controversial, with mixed outcomes (Sriram, 2009b). For instance, the court's intervention in the Ugandan peace process, opposing the amnesty act adopted with massive support from victims of human rights violations has been subjected to criticisms for jeopardising the peace process. According to Bantekas (2017), the ICC's decision to prosecute al-Bashir a sitting head of state jeopardised delicate peace processes in Sudan.

Although the option of amnesty has since 2012 been proposed several times during peace negotiations (Labuda, 2019), the CAR and its international partners have taken the resolve to rule out any possible amnesty option, irrespective of the degree of perpetuation. This stance, however, clashes with the challenge of attaining durable peace, a priority of the transitional justice process in the CAR. Finding a way forward to the CAR requires responding to the following: can one option – criminal trials – achieve the goal of transitioning the CAR to a peaceful democracy? The option of considering conditional amnesties within the Truth Commission in place has the potential of reducing the ongoing violence and acting as an incentive for rebels to surrender their weapons. Penman (2007), citing the case of post-apartheid South Africa holds that Amnesties provide a safeguard to perpetrators and offers a conducive avenue for truth to emerge, thereby fostering collective and genuine reconciliation. Amnesties in this context could be framed to complement or run sequentially with justice and non-judicial accountability mechanisms in achieving the CAR's human rights obligations. Such conditional amnesties designed to put in place security and institutional basis for adequate and sustainable human rights protection will necessitate that individual wrongdoers engage with other transitional justice measures already in place to achieve truth, accountability, and reparations for victims.

These joint approaches, with conditional amnesty are likely to render some accountability and truth for individuals who committed lower-degree violations for which prosecutions have not been earmarked. The option of conditional amnesty will focus on the country's limited resources for the prosecution of high-level perpetrators and those who do not abide by the requirements of amnesty. Equally, blending amnesty with accountability in the CAR can result

in a wide range of conflict transformation objectives rather than focusing on trials. Igreja (2009) holds that some non-political strategies like spiritual healing at the individual and community levels can effectively address collective trauma, promote reconciliation and social harmony. An integrative and comprehensive approach to the dealing with the past in the CAR has the potentials of promoting what Malan (2008) considered as transformative transitional justice. Opting for conditional amnesty in the CAR would permit the country to be consistent with its international law obligations than blanket amnesty, which is inconsistent with international norms as it prevents all possible trials.

6. Conclusion

The CAR with its troubled past and ongoing cycles of violence has been a fertile space for massive human rights violations and other heinous acts, prompting the adoption of various approaches to address the situation, including amnesty and justice mechanisms. An analysis of these mechanisms and their outcome has revealed that the set goals have not been attained, as similar violations persist in the country, with impunity. The lack of popular consultations and state-imposed amnesties have been identified as contributory to the failed amnesties in the country. On the other hand, the weak judicial system, persistent violence and insecurity, inadequate resources, selective prosecution by the ICC and the sluggish take off of the SCC have led to the slow-paced justice in the CAR. Overall, the lack of political will has been considered in this research as one of the factors for the failed transitional justice strategies in the CAR.

The discussions have followed that while it is critical to understand the features of each conflict, keen analysis and examination have unearthed specific merits in support of achieving justice as a component of the post-conflict settlement. Critically, this paper affirmed that a limited understanding of negative peace and corrective or retributive justice results in an untrue incongruity between justice and peace. On the contrary, a broad interpretation of positive peace as durable and sustainable with a particular focus on restorative justice unravels this false paradox. This holistic view of peace reveals that most post-conflict peacebuilding efforts need a kind of justice to foster reconciliation adequately. Consequently, the paper argued that impunity initiatives endorsing blanket amnesties have not achieved peace and, in some contexts, stimulated further violence. On the contrary, prosecuting authors of atrocities implies their marginalisation and delegitimation, which can facilitate peace negotiations and further the achievement of broad reconciliation initiatives as significant factors of the peacebuilding process. This research thus emphasises on an integrative and comprehensive approach of justice which considers conditional amnesty for low level offenders as an incentive to their participation in the peacebuilding process.

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Notes:

¹ This group comprised of a coalition of armed groups based in north-eastern CAR, particularly the Democratic Front of the Central African People (FDPC), the Convention of Patriots for Justice and Peace (CPJP), the Union of Democratic Forces for Unity (UFDR), and the Patriotic Convention for the Country's Salvation (CPSK).

² The Union for Peace in the Central Africa (UPC) OF Ali Darassa, Popular Front for the Rebirth of Central Africa (FPRC) of Noureddine Adam, and the Central African Patriotic Movement (MPC) of Ali Katim

³ UFDR Declaration of August 8, 2008.