

Amnesty Must Not Equal Impunity

On May 7, 2009, President Joseph Kabila of the Democratic Republic of Congo (DRC) signed and thereby put into effect an Amnesty Law. It applies to Congolese living in the DRC or abroad and covers acts of war and insurrection committed in the eastern provinces of North and South Kivu from June 2003 to the date of signing. On the surface, the amnesty is of limited temporal and geographic scope, explicitly excludes genocide, war crimes, and crimes against humanity from its reach, and does not preclude reparations. In practice, however, it perpetuates Congo's pattern of rewarding violence and creates a blanket amnesty for scores of crimes perpetrated by rebel groups, Congolese armed forces (FARDC), militias, and police alike. After a decade of failed peacemaking efforts, it is clear that only a major effort to combat impunity in the African Great Lakes region will bring a sustainable end to the cycle of violence and mass killings plaguing eastern DRC.

A COMPROMISE BETWEEN JUSTICE AND PEACE

Transitional societies emerging from armed conflict or authoritarian rule often adopt amnesty laws to consolidate fragile peace or fledgling democracy. In these volatile contexts, amnesty is sought to guarantee that acts committed under duress of war or political tensions will not be prosecuted.

Amnesty laws should be adopted only along with transitional justice measures that promote truth-seeking, criminal accountability, institutional reform, and reparations to promote peace and reconciliation effectively. International treaties and customary law require states to prosecute certain serious international crimes – such as genocide, war crimes, and crimes against humanity. Amnesties must therefore not extend to such crimes.

BACKGROUND TO THE 2009 DRC AMNESTY LAW

Elections in 2006 brought a decade of conflict in the DRC to a formal

close. But rebel groups, particularly the CNDP led by General Laurent Nkunda, continued to threaten peace in eastern Congo. Despite the January 2008 Goma peace accords, violence continued between the CNDP, FARDC, and militias throughout 2008. The DRC and Rwanda reached a political and military rapprochement in January 2009, leading to joint military operations and the dismantling of the CNDP, including the removal of Nkunda and his being placed under house arrest in Rwanda.

AMNESTIES IN THE DRC

Prior legal measures codifying amnesty in the DRC include:

- **Presidential Decree N°03-001 of April 15, 2003** – granted amnesty by temporary executive order as per the 2002 Global and All-Inclusive Agreement; amnesty covered acts of war, political breaches of the law, and crimes of opinion for the period of August 2, 1998 to April 4, 2003 but excluded genocide, war crimes, and crimes against humanity from its reach.
- **Law N°05/023 of December 19, 2005** – passed by the Congolese transitional parliament to abrogate the 2003 Presidential Decree; it codified an amnesty over the crimes enumerated in that Decree, but altered the timeframe to include acts committed from August 20, 1996 to June 20, 2003; this law allowed for the retroactive pardon and commutation of convictions for the acts falling under the amnesty law.

The January 2008 Goma peace agreements called for an amnesty law, and the Congolese National Assembly adopted a bill on July 12, 2008. But fighting resumed before the Senate could consider it. The March 23, 2009 accord between the DRC and the CNDP again called for swift adoption of an amnesty. When the Senate first reviewed the bill, opposition politicians successfully rejected it, claiming that an amnesty should have a broader geographic and substantive scope. The bicameral Joint Harmonization Commission approved a text adopted by parliament. President Kabila signed and promulgated the Amnesty Law on May 9, 2009.

BLANKET AMNESTY

Eastern Congo remains a theater of ongoing military operations with disastrous humanitarian consequences. From January to March 2009, the Rwandan and Ugandan armies joined the FARDC to combat foreign rebels of the Democratic Liberation Forces of Rwanda (FDLR) and Lord's Resistance Army (LRA) on Congolese soil. The FARDC continues to pursue military operations against the FDLR and LRA assisted by the United Nations peacekeeping force, MONUC.

The Congolese government has placed alleged and convicted warlords in command positions of the FARDC. They include Bosco Ntaganda,

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wanted by the International Criminal Court (ICC) and others such as convicted criminal Jean-Pierre Biyoyo and Col. Innocent Kayna (alias “India Queen”) who had been detained in Kinshasa awaiting criminal charges but was released and is now commanding troops in North Kivu. The international community acquiesced to the rapid integration into the FARDC of CNDP and other rebels who have neither been registered nor screened for committing human rights abuses or crimes such as rape and sexual violence.

Given the limitations of the Congolese justice system and the culture of impunity that enables ongoing violence and the commission of further crimes, the new law risks functioning as a blanket amnesty for all crimes committed by any Congolese purporting to have operated in the context of war and insurrection in the Kivus.

BREAKING THE CYCLE OF IMPUNITY

With respect to the Amnesty Law:

- **Implementing regulations** – The Justice Minister should promptly issue a legal memorandum defining the narrow scope of the Amnesty’s Law application to avoid abusive and overbroad interpretation of this law.
- **February 9, 2009 letter** – In this letter, the Congolese Minister of Justice ordered all investigations and prosecutions against armed groups and CNDP members in North and South Kivu to be suspended. The Amnesty Law renders these instructions inoperative.
- **Rape and sexual violence** – Sexual crimes against women and girls have been endemic to the conflict in eastern DRC, but not all incidents qualify as grave international crimes. As most sexual crimes are not subject to amnesty, judicial authorities should put special emphasis on investigating and prosecuting these crimes to end impunity for violence against women and girls in eastern DRC.

With respect to additional measures:

The 2009 DRC Amnesty Law cannot stand in isolation if lasting peace through meaningful justice is to prevail. The DRC government should commit to undertake and the international community should pressure for the following measures:

- **Transitional justice process** – The Congolese government has yet to initiate a meaningful transitional justice process to address Congo’s legacy of massive human rights violations, despite sustained civil society advocacy to do so. Given the scale of past abuse, choices must be made as to the appropriate balance of criminal prosecutions at the national and international levels, non-judicial truth-seeking measures, institutional reform initiatives, and reparations programs that would best address Congo’s unique context.

- **Bosco Ntaganda** – Bosco Ntaganda is subject to an ICC arrest warrant for war crimes committed in Ituri from 2002 to 2003 and allegedly perpetrated serious international crimes as CNDP chief of staff since 2006. The Congolese government must respect its obligations under the Rome Statute to collaborate with the ICC in securing Bosco Ntaganda’s arrest and transfer to the court.
- **Laurent Nkunda** – The international community should place sustained pressure on the DRC and Rwanda to end Nkunda’s house arrest in Rwanda and extradite and prosecute him for the serious international crimes he has allegedly committed.
- **Security system reform** – The Congolese government has yet to demonstrate political will to undertake comprehensive security system reform, which has enabled the volatile environment for armed movements to thrive. International assistance and pressure must be brought to bear on the Congolese government to undertake meaningful reforms in the security system.

2009 DRC AMNESTY LAW*

Article 1

Amnesty is granted to all Congolese living in the territory of the Democratic Republic of Congo or abroad for acts of war and insurrection committed in the provinces of North Kivu and South Kivu.

Article 2

This Law defines:

- Acts of war as acts related to military operations authorized by the laws and customs of wars, which caused injury to others in the context of war;
- Acts of insurrection as acts of collective violence likely to endanger the institutions of the Republic or to impair the integrity of national territory.

Article 3

The present amnesty does not apply to the crime of genocide, war crimes and crimes against humanity.

Article 4

This Law shall not preclude civil damages or restitution of movable and immovable property or other rights due the victims of the amnestied acts.

Article 5

The acts amnestied are those committed during the period from June 2003 to the date of enactment of this Law.

Article 6

The Minister of Justice is responsible for the implementation of this Law which enters into force on the date of promulgation.

Signed in Kinshasa, 7 May 2009
Joseph KABILA KABANGE

**ICTJ translation*

2009