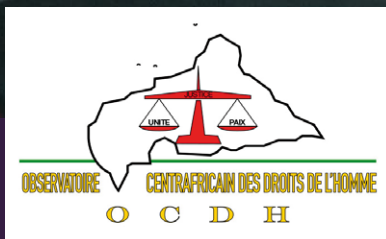




fidh



WHAT PROSPECTS FOR JUSTICE IN THE CENTRAL AFRICAN REPUBLIC?

Complementarity between national
and international mechanisms: status and challenges

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LIST OF ACRONYMS

| | |
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| APPR-RCA | <i>Accord Politique pour la Paix et la Réconciliation en République centrafricaine</i> (Political Agreement for Peace and Reconciliation in the Central African Republic) |
| CAR | Central African Republic |
| CVJRR | <i>Commission Vérité, Justice, Réparation et Réconciliation</i> (Truth, Justice, Reparation and Reconciliation Commission) |
| FACA | <i>Forces armées centrafricaines</i> (Central African Republic Armed Forces) |
| FIDH | International Federation for Human Rights |
| ICC | International Criminal Court |
| LCDH | <i>Ligue Centrafricaine des Droits de l'Homme</i> (Central African League for Human Rights) |
| MINUSCA | United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic |
| OCDH | <i>Observatoire Centrafricain des Droits de l'Homme</i> (Central African Observatory for Human Rights) |
| SCC | Special Criminal Court of the Central African Republic |
| UN | United Nations |
| UNDP | United Nations Development Programme |
| UNSC | United Nations Security Council |
| UNSG | United Nations Secretary-General |

I. Introduction

On 19 April 2022, after seven long years of waiting, the people of the Central African Republic (CAR) and the international community witnessed the opening ceremony of the first trial at the Special Criminal Court (SCC) of the Central African Republic (CAR). This hybrid court, composed of Central African and international judges, was created in 2015 to play a central role in the fight against impunity for crimes under international law and serious human rights violations committed in CAR since January 2003. The SCC thus joins the ordinary courts of CAR and the International Criminal Court (ICC), which has opened two investigations into the situation in CAR for crimes under international law committed in the context of the 2002/2003 conflict and the renewed violence since 2012.

In a country that has been plagued by conflict and violence for more than 20 years¹ and where impunity reigns, these various avenues of access to justice represent an unprecedented opportunity. As the UN High Commissioner for Human Rights, Michelle Bachelet, noted in March 2022, “Impunity for serious human rights violations and other crimes is at the heart of the violence in the Central African Republic” and “paves the way for further cycles of violence across the country”.² A system in which three levels of justice cooperate (domestic, hybrid and international) could contribute to fighting impunity in the country effectively and lastingly. To do so, it is important that this system is based on effective cooperation and complementarity at the institutional and operational levels. As noted in 2017 by various UN entities tasked with mapping human rights violations in CAR between 2003 and 2015, “Prosecuting alleged perpetrators of serious violations of human rights law and international humanitarian law committed will involve the ICC, the Special Criminal Court, regular courts of the Central African Republic and courts of foreign countries [...]. This underscores the need for attention [...] to complementarity between national courts and the ICC, jurisdiction-sharing among national courts, and cooperation [...]”.³ It is essential to ensure communication and exchange between the various judicial institutions with jurisdiction.

In 2020, CAR also established the *Commission Vérité, Justice, Réparation et Réconciliation* (Truth, Justice, Reparation and Reconciliation Commission - CVJRR), with a highly ambitious mandate. If given sufficient capacity, the Commission will complement this judicial trio and expand the possibilities for transitional justice in CAR. The existence of such a body can, in theory, compensate for the limitations of judicial proceedings, particularly criminal proceedings, by establishing the truth about the wider context of crimes perpetrated on Central African territory and by recognising the suffering of victims, survivors and affected communities. It can also play a central role in reparation and recommend institutional reforms to contribute to guarantees of non-repetition of past human rights violations.

This report considers the role played by these various institutions, judicial or otherwise, in the fight against impunity for crimes under international law and serious human rights violations in CAR. It begins by presenting these different institutions, their mandates, their composition and the key cases they have dealt with in recent years. This part also includes an analysis of the strengths of their mandates as well as the obstacles encountered, on the basis of long-term observations by local and international civil society, in particular the International Federation for Human Rights (FIDH) and its member organisations, the *Ligue Centrafricaine des Droits de l'Homme* (LCDH) and the *Observatoire Centrafricain des Droits de l'Homme* (OCDH). The report then focuses on an analysis of the complementarity between these institutions, as provided for in the texts and as implemented in practice. It ends with a series of recommendations from civil society.

1. See “Background”.

2. Statement by Michelle Bachelet at the 49th session of the Human Rights Council on the situation in the Central African Republic, 30 March 2022 (“Michelle Bachelet Statement 2022”), <https://www.ohchr.org/en/statements/2022/03/bachelet-updates-human-rights-council-central-african-republic>.

3. MINUSCA et al, *Report of the Mapping Project documenting serious violations of international human rights law and international humanitarian law committed within the territory of the Central African Republic between January 2003 and December 2015*, May 2017, p. 320 (“UN Mapping Report 2017”), https://www.ohchr.org/sites/default/files/Documents/Countries/CF/Mapping2003-2015/2017CAR_Mapping_Report_EN.pdf.

It is important to note that this analysis attempts to reflect the realities of the specific context of CAR, a territory marked by continuing instability and daily violence. In such a context, efforts to achieve justice face a number of obstacles of varying degrees of complexity. They also sometimes compete with, and are weakened by, other priorities such as peacekeeping, disarmament and the establishment of political stability. The notion of an ideal justice system has to be set against the reality of CAR's capacity to establish, maintain and operate such a system. Nevertheless, the instability in the country cannot be considered to represent a complete barrier to the prosecution of those responsible for crimes under international law and serious human rights violations, to the search for justice, and to the reparation of the thousands of victims who have suffered numerous attacks over the last 20 years. Even in this context, progress is possible, as the efforts of the last few years documented in this report have shown. These efforts can and must be strengthened. Combating impunity is essential in order to end the cycles of violence in CAR and must therefore complement any other peace-making or peacekeeping efforts.

II. Methodology

The prosecution of perpetrators and reparation for victims of crimes under international law and serious human rights violations committed in the Central African Republic has been a priority for FIDH since the early 2000s. FIDH's actions, in close collaboration with its member organisations, have resulted in numerous documentation missions, submission of information to various judicial institutions, including the International Criminal Court, advocacy at the national and international level, publication of reports on efforts to achieve justice in relation to the situation in CAR, in particular concerning several high-profile cases, as well as support to victims in judicial proceedings, particularly before the ordinary courts.⁴

This study is therefore part of a long-standing commitment to the fight against impunity in CAR. It is based on the following sources: the work carried out by FIDH and its member organisations since 2002 (on the situation in CAR specifically and on complementarity between the ICC and national jurisdictions more generally), including by monitoring the activities of the various judicial institutions mentioned in the report; the results of an in-depth analysis of relevant data available to our organisations (e.g. UN and civil society reports, legal texts and court documents, press articles and academic contributions, unpublished analyses by partners); and a series of consultations carried out in June and July 2022 by the FIDH International Justice Desk. The main objectives of this report are to provide some insight into the different institutions involved in the fight against impunity in CAR; to draw on the expertise of different actors involved at the local and international level to identify successes, shortcomings and possibilities for improvement; and - most importantly - to contribute to the overall efforts to achieve justice, aimed at ensuring that victims, who are still waiting, are heard, recognised and receive reparations for their suffering.

In the course of preparing this report, 21 individuals were consulted, including representatives of local and international civil society, journalists, academics, lawyers, judges, prosecutors and other staff of relevant judicial institutions. As a result of practical difficulties linked to the health and security context, and despite an initial intention to send representatives to CAR, the majority of interviews were conducted remotely, by telephone or video conference, and in a very limited number of cases in writing, due to logistical difficulties. Interviews were semi-structured. The information obtained is reflected throughout this report. For security reasons and in order to facilitate exchanges, the identities of the interviewees are not disclosed. Interviewees were given the opportunity to read the recommendations at the end of the report prior to publication.

The report is up to date as of 26 September 2022.

4. This report contains numerous references to documents published by FIDH and its member organisations in CAR, including reports, press releases, statements and other position papers.

III. Background



Central African Republic political map showing all provinces with their capital and capital of the country. © 2014 www.mapsofworld.com
<https://www.mapsofworld.com/central-african-republic/central-african-republic-political-map.html>

For the past 20 years, the Central African Republic has oscillated between armed conflicts, security crises and periods of relative calm. Numerous crimes under international law and serious human rights violations have been and continue to be perpetrated throughout the country by a wide range of individuals (both local and from neighbouring countries, such as Chad, Sudan, Uganda and Democratic Republic of Congo). Thousands of people have been subjected to all kinds of abuses and are waiting for justice.

The first major conflict took place between October 2002 (with General François Bozizé's attempted coup against Ange-Félix Patassé's administration) and March 2003 (when General Bozizé succeeded in overthrowing the Patassé government,⁵ despite support from the *Mouvement de Libération du Congo* (MLC) and its military leader Jean-Pierre Bemba).⁶ During this period, numerous abuses were perpetrated, both between enemy armed groups and against the Central African population, including rape, murder and pillaging.⁷ Although General Bozizé won the presidential election in May 2005⁸ becoming the legitimate President of CAR, the country remained in crisis, particularly in the northern part, where there were many deaths, as well as several thousand refugees and internally displaced people.⁹ After several failed peace initiatives, the signing of the Libreville Peace Agreement on 21 June 2008¹⁰ seemed to restore some calm to the country.

The presidential election of 23 January 2011 once again resulted in a strong majority for François Bozizé at the head of the Central African state.¹¹ Contesting the proper conduct of the electoral process, the opposition and representatives of armed groups - particularly from the north of the country - rapidly joined by Chadian and Sudanese mercenaries, formed a coalition, the Séléka ("Coalition" or "Alliance" in Sango), in August 2012. This politico-military organisation quickly proved to be very violent and multiple clashes with the government plunged the country into a new armed conflict and a situation of constant violence against the civilian population.¹² After a new, very short-lived deal, embodied in a new agreement signed in Libreville on 11 January 2013, the Séléka marched on Bangui and installed its representative Michel Djotodia as President of the Republic.¹³

5. FIDH, "FIDH condemns General Bozizé's military Coup and calls for respect of international humanitarian law", 17 March 2003, <https://www.fidh.org/en/region/Africa/FIDH-condemns-the-General-Bozize-s>.

6. FIDH, "Q&A on the Bemba case at the ICC", 22 March 2016, <https://www.fidh.org/en/region/Africa/central-african-republic/q-a-on-the-bemba-case-at-the-icc>.

7. See ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo, Judgment pursuant to Article 74 of the Statute*, 21 March 2016 ("Bemba Judgement"), paras 621-648. Although Jean-Pierre Bemba was acquitted on appeal of all charges brought against him by the ICC Office of the Prosecutor, the Appeals Chamber did not question that the crimes of murder, rape and pillaging were committed by MLC troops. However, the Chamber was not satisfied that he was responsible (as a superior) for the commission of such acts. See FIDH, "Acquittal of Jean Pierre Bemba on appeal: an affront to thousands of victims", 8 June 2018, <https://www.fidh.org/en/region/Africa/central-african-republic/acquittal-of-jean-pierre-bemba-on-appeal-an-affront-to-thousands-of>. See also, on the crimes committed during this period and until 2005, FIDH, *Forgotten, stigmatised: the double suffering of victims of international crimes*, October 2006, ("FIDH Report, Forgotten, Stigmatised, 2006"), <https://www.fidh.org/IMG/pdf/RCA457ang-2007.pdf>.

8. Le Monde, "François Bozizé remporte la présidentielle et les législatives en Centrafrique" (François Bozizé wins the presidential and legislative elections in CAR), 24 May 2005, https://www.lemonde.fr/afrique/article/2005/05/24/francois-bozize-remporte-la-presidentielle-et-les-legislatives-en-centrafrique_653511_3212.html.

9. FIDH, "The civilian population in northern Central African Republic is in great danger", 27 February 2006, <https://www.fidh.org/en/region/Africa/central-african-republic/The-Civilian-Population-in>; FIDH, "Urgence d'une intervention en République centrafricaine" (Urgent need for intervention in Central African Republic), 23 November 2006, <https://www.fidh.org/fr/regions/afrique/republique-centrafricaine/Urgence-d-une-intervention-en>.

10. *Accord de paix global entre le Gouvernement de la République centrafricaine et les Mouvements politico-militaires centrafricains désignés ci-après: Armée Populaire pour la Restauration de la Démocratie (APRD), Front démocratique du Peuple Centrafricain (FDPC) et Union des Forces Démocratiques pour le Rassemblement (UFDR)* (Comprehensive Peace Agreement between the Government of the Central African Republic and the following Central African politico-military movements: APRD, FDPC and UFDR), 21 June 2008, <https://www.justiceinfo.net/media/k2/attachments/RCA/2008-Accord-paix-global.pdf>.

11. Le Monde, "François Bozizé, vainqueur contesté de l'élection présidentielle en Centrafrique" (François Bozizé, disputed winner of the presidential election in CAR), 2 February 2011, https://www.lemonde.fr/afrique/article/2011/02/02/francois-bozize-vainqueur-conteste-de-la-presidentielle-centrafricaine_1474243_3212.html.

12. FIDH, *République centrafricaine un pays aux mains des criminels de guerre de la Séléka* (CAR: a country in the grip of the Séléka war criminals), September 2013, https://www.fidh.org/IMG/pdf/rapport_d_enque_te_rca-ld3.pdf.

13. *Idem*.

The Séléka soon committed numerous abuses (including rape, extra-judicial executions and looting), particularly in Bangui.¹⁴ A few months after coming to power, under pressure from the international community, Djotodia attempted to disband the Séléka.¹⁵ However, this initiative failed and the various groups that make up the Séléka continued to commit acts of violence and to exercise control over entire regions of the country, including through the creation of new armed groups. Observing the powerlessness of the new government to curb insecurity, some of the population took up arms and formed armed “self-defence” militias, known as the “anti-balaka” (meaning “anti-machetes” in Sango, or “anti-AK bullets”, according to different interpretations).¹⁶

As the country experienced bloody clashes between Séléka and anti-balaka groups, but also often between armed groups on the same side, President Djotodia was forced to step down.¹⁷ After his resignation in January 2014, Catherine Samba-Panza was elected Head of State by the National Transitional Council to ensure progress towards future democratic elections.¹⁸ Violence continued throughout the country, with numerous casualties, including among the civilian population, humanitarian organisations and the United Nations Stabilisation Mission in the Central African Republic (MINUSCA).

In early 2016, following fresh elections, Faustin-Archange Touadéra was elected President of CAR, generating a wave of hope among the population.¹⁹ FIDH and other Central African and international organisations took the opportunity to call on the new President and his government to make justice a priority.²⁰ Following several failed attempts to reach a peace agreement, on 6 February 2019, the *Accord politique pour la paix et la réconciliation en République centrafricaine* (Political Agreement for Peace and Reconciliation in CAR - APPR-RCA) was ratified by 14 armed groups and the Government.²¹ This agreement, which was welcomed by our organisations,²² is based on the commitment of the various parties to a number of pillars, including the establishment of an inclusive government, integrating members of armed groups, a disarmament, demobilisation, reintegration and repatriation process, and the establishment of a truth, justice, reparation and reconciliation commission. The fight against impunity is also, in theory, at the core of the

14. *Idem.* See also African Union, *Report of the Chairperson of the Commission on the situation in the Central African Republic*, 17 June 2013, <https://www.peaceau.org/en/article/report-of-the-chairperson-of-the-commission-on-the-situation-in-the-central-african-republic-1>.

15. BBC, “Centrafrique: la Séléka dissoute” (Central African Republic: Séléka disbanded), 13 September 2013, https://www.bbc.com/afrique/region/2013/09/130913_centrafrique_seleka.

16. According to the International Peace Information Service (IPIs), the term anti-balaka groups together distinct categories of actors: individuals forming part of the official anti-balaka movement; affiliated/loosely affiliated or unaffiliated local militias; groups described as “self-defence” groups; and criminal gangs. See IPIs and Danish Institute for International Studies, *Central African Republic: A Conflict Mapping*, September 2018, https://ipisresearch.be/wp-content/uploads/2018/09/1809-CAR-conflict-mapping_web.pdf.

17. Le Monde, “Centrafrique: démission du Président Michel Djotodia” (Central African Republic: resignation of President Michel Djotodia), 10 January 2014, https://www.lemonde.fr/afrique/article/2014/01/10/centrafrique-tractations-sur-le-sort-du-president-djotodia_4345813_3212.html.

18. Le Monde, “Catherine Samba-Panza, une femme à la tête de la Centrafrique” (Catherine Samba-Panza, a woman at the head of the Central African Republic), 20 January 2014, https://www.lemonde.fr/afrique/article/2014/01/20/centrafrique-un-nouveau-president-pour-securiser-le-pays_4350807_3212.html; UN Women, Statement by UN Women Executive Director Phumzile Mlanbo-Ngcuka, 23 January 2014, <https://www.unwomen.org/fr/news/stories/2014/1/press-statement-on-central-african-republic>.

19. RFI, “RCA: le nouveau Président Faustin-Archange Touadéra a prêté serment” (CAR: New President Faustin-Archange Touadéra is sworn in), 30 March 2016, <https://www.rfi.fr/fr/afrique/20160330-rca-nouveau-president-faustin-archange-touadere-prete-serment-bangui>.

20. FIDH, “Make justice a priority”, 21 April 2016, <https://www.fidh.org/en/region/Africa/central-african-republic/central-african-republic-make-justice-a-priority>.

21. *Political Agreement for Peace and Reconciliation in the Central African Republic*, February 2019 (“APPR-RCA”), https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2019_145_E.pdf.

22. FIDH, “L’accord de paix de Khartoum constitue une chance pour la paix, la justice et la réconciliation” (The Khartoum peace agreement is an opportunity for peace, justice and reconciliation), 20 February 2019, <https://www.fidh.org/fr/regions/afrique/republique-centrafricaine/l-accord-de-paix-de-khartoum-constitue-une-chance-pour-la-paix-la>.

commitments of the signatories.²³ Although this agreement led to some improvement in the situation in CAR, the country remains plagued by violence and clashes, while efforts to achieve justice have been limited.

In January 2021, President Touadéra was re-elected with a low turnout.²⁴ Faced with renewed violence in the country, he declared a unilateral ceasefire in October of that year. However, this only resulted in a short-lived period of respite, due to “the absence of tangible progress made with respect to political dialogue and continued violence”.²⁵ Very soon, clashes (between armed groups and with the national security forces) resumed with even greater intensity.²⁶ According to the final report of the UN Panel of Experts on the situation in CAR published in June 2022, the civilian population caught in the middle of the fighting was once again the victim of numerous abuses, including rape and other forms of sexual violence.²⁷

This situation was further aggravated by the presence of Russian forces on the territory, working alongside the national security forces and accused of numerous abuses against the civilian population. These Russian forces, and in particular the so-called Wagner Group (which also operates in other parts of the world), are reported to be in CAR in accordance with an agreement signed by the Russian and CAR Ministries of Defence on 21 August 2018 to provide instruction and training to the national security forces.²⁸ According to the Independent Expert on the situation of human rights in CAR, Yao Agbetse, the group is reported to have committed “sexual violence, acts of intimidation, destruction of housing, threats, racketeering”, but also “acts of torture [and] cruel, humiliating, inhuman and degrading treatment”.²⁹ These abuses were also documented by Human Rights Watch in findings published on May 2022.³⁰

23. APPR-RCA, *op. cit.* The preamble to the agreement recognises that, “[T]he impunity that reigns has fuelled the infernal cycle of violence, weakened the judiciary, led to large-scale violations of human rights and international humanitarian law, and fomented the people’s mistrust of the State.” However, few articles of the agreement provide for concrete measures to address this situation. Among the Government’s commitments, it undertakes to “[...] advance the consolidation of the judiciary in order to strengthen the rule of law throughout the country” (Article 4.p). In the section entitled “justice and national reconciliation”, there are some brief references to impunity, such as, “The Parties, while rejecting any idea of impunity and recognizing the principle of presumption of innocence, acknowledge the painful consequences and the wounds left by grave crimes on all citizens and communities in the Central African Republic” (Article 7). Beyond these provisions, the focus is on reconciliation and the other priorities of the agreement.

24. Le Monde, “Centrafrique: le Président Touadéra réélu mais seul un électeur sur trois a voté” (CAR: President Touadéra re-elected but only one in three voters cast a ballot), 18 January 2021, https://www.lemonde.fr/afrique/article/2021/01/18/centrafrique-les-rebelles-se-retirent-de-bangassou-apres-un-ultimatum-de-l-onu_6066630_3212.html.

25. United Nations Security Council (UNSC), *Central African Republic, Report of the Secretary General, S/2022/119*, 16 February 2022, para. 2 (“UNSG Report on CAR, February 2022”).

26. *Ibid.*, para. 21.

27. UNSC, *Final report of the Panel of Experts on the Central African Republic extended pursuant to Security Council resolution 2588 (2021)*, S/2022/527, 29 June 2022, pp. 13 et seq. and 17 et seq. See also *Ibid.*, paras 21-34.

28. Mandates of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Working Group on Enforced and Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Statement*, 25 March 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26305>.

29. United Nations, “RCA: l’ONU s’insurge des exactions commises par les rebelles et le groupe paramilitaire russe Wagner” (CAR: UN condemns abuses by rebels and Russian paramilitary group Wagner), 20 March 2022, <https://news.un.org/fr/story/2022/03/1117312>.

30. Human Rights Watch, *Central African Republic: Abuses by Russia-Linked Forces*, May 2022, <https://www.hrw.org/news/2022/05/03/central-african-republic-abuses-russia-linked-forces>.

IV. Who are the main actors involved in justice in CAR?

A) Ordinary courts: landmark cases despite a lack of capacity and independence

1. Structure of the ordinary justice system

Within the Central African judicial system, whose highest court is the Court of Cassation, the so-called “ordinary” criminal courts deal with criminal offences committed in the country. Under the Code of Criminal Procedure, the Criminal Court has jurisdiction over crimes contained in the Criminal Code (including war crimes, crimes against humanity and crimes of genocide), with the exception of those that come under the jurisdiction of special courts.³¹ The Criminal Court sits in Bangui but can conduct hearings or sessions at the seat of each Court of Appeal in the country.³² It is composed of a President, two associate judges and six jurors. It is assisted by a Registrar and cases are conducted by the Prosecutor-General or a delegated public prosecutor.³³

The Criminal Court is a non-permanent court which, under the Code of Criminal Procedure, should hold one ordinary session per six-month period in the jurisdiction of each Court of Appeal, i.e., Bangui, Bouar (Western zone) and Bambari (Eastern zone), or more if circumstances so require.³⁴ In practice, owing to various obstacles both internal and external to the judicial administration, including a significant lack of resources (with an insufficient and ever-decreasing budget for the justice system) and the continuing insecurity in the country, the number of sessions held each year is far from the six required by law. No sessions were held between February 2020 and April 2022, partly due to the COVID-19 pandemic, lack of funding and increased insecurity. The lack of regular sessions of the criminal court is particularly problematic in a country where violence is a daily occurrence and where the six scheduled sessions are in any case insufficient given the scale of the crimes committed and the number of perpetrators to be prosecuted. Despite this, the UN Secretary-General noted in his report on CAR that, as of 1 February 2022, “80 per cent of first instance and appellate courts were operational”.³⁵ Thus, sessions were to resume in 2022 in Bangui (April) and Bouar (July).³⁶

In recent years, the Prosecutor-General, Eric Didier Tambo, has been particularly active in prosecuting those responsible for crimes classified as, or that could be classified as, war crimes or crimes against humanity. Several cases have led to convictions, mainly on the basis of crimes under ordinary law but concerning acts likely to be of interest to the international justice system. In this context, despite the absence of a permanent criminal justice system, the country has made some notable progress.

31. CAR, *Loi n°10.002 portant Code de procédure pénale* (Law No. 10.002 establishing the Code of Criminal Procedure), 6 January 2010, Article 219 (“Code of Criminal Procedure”).

32. *Ibid.*, Article 209.

33. *Ibid.*, Article 210.

34. *Ibid.*, Article 220.

35. UNSG report on CAR, February 2022, *op. cit.*, para. 55.

36. MINUSCA, “La Cour d’appel de Bouar reprend ses sessions criminelles” (The Court of Appeal of Bouar resumes its criminal sessions), 15 June 2022, <https://minusca.unmissions.org/la-cour-d%E2%80%99appel-de-bouar-reprend-ses-sessions-criminelles>.

2. Cases: several emblematic prosecutions often tainted by irregularities

The case of **Rodrigue Ngaïbona, a.k.a General Andjilo, a former anti-balaka leader** who played a key role in the massacre of Muslims in Bangui in 2013 and committed other abuses between October 2014 and January 2015, demonstrated a new commitment on the part of the national justice system to end impunity in the country. This was the first conviction of an anti-balaka leader since the events of 2012.³⁷ Andjilo was arrested in 2015 and was tried in the January 2018 criminal court session for murder, illegal possession of military weapons and ammunition, criminal conspiracy, armed robbery and unlawful detention. FIDH and its member organisations were involved in the proceedings by supporting the *Collectif d'avocats pour la lutte contre l'impunité* (Collective of lawyers against impunity, "the Collective"), composed mainly of Central African lawyers, who assisted several victims in this case at the Criminal Court of Bangui. At the conclusion of the criminal session, Andjilo was sentenced to life imprisonment with hard labour and ordered to pay damages to the victims and a symbolic franc to the human rights organisations involved in the proceedings.³⁸ Although the charges against him were brought under ordinary criminal law, this case demonstrated a significant commitment by the national justice system.

While FIDH and its member organisations welcomed the "decisive first step" represented by this decision, they deplored some weaknesses in the proceedings, most of which are inherent to the Central African justice system. For example, the way in which the prosecution case was framed – failing to cover all the crimes allegedly committed by General Andjilo – and the lack of protection for victims and witnesses, some of whom did not testify for fear of reprisals.³⁹ The latter point was overwhelmingly raised during the consultations conducted for the preparation of this report in June and July 2022. In a country still facing a situation of ongoing violence where a high level of impunity reigns, the lack of genuine and effective protection for victims and witnesses constitutes a major obstacle to justice, as does the inadequate protection of judicial personnel. Depending on the case, the risks of testifying against, prosecuting or trying certain individuals may be, or may appear to be, much more significant than the potential outcome of the hearings, including a possible conviction.

In 2019, a further step forward was taken when **Colonel Abdoulaye Alkali Said, a senior member of the Séléka rebellion** and member of the *Mouvement Patriotique pour la Centrafrique* (MPC), was prosecuted on ten counts, including war crimes and crimes against humanity. During the September 2019 session, he was sentenced to six years in prison for criminal conspiracy. The other crimes were dismissed for lack of evidence.⁴⁰ In that case, the defence lawyer Célestin Nzala deplored the inadequacy of the procedure, alleging that he had only been allowed one week to study the case, which was particularly complex given the number of charges and their classification as international crimes, and two visits to his client before the short trial was held.⁴¹ According to Amnesty International, "there are some serious concerns over due process and fairness of these proceedings" in this case.⁴² Concerns about lack of fairness and respect for the rights of the defence are the subject of other recurring criticisms of the ordinary courts, which remain relevant in 2022. However, our consultations in June and July 2022 revealed some hope among civil society that fair trial practices would improve with the involvement of international staff in the Special Criminal Court. Interviewees considered that this would be likely to influence the practices of the Central African justice system more generally, including at the level of the ordinary courts, towards greater respect for international human rights standards.

37. FIDH, "Conviction of Andjilo: a first warlord trial and a decisive first step", 22 January 2018 ("FIDH, Conviction of Andjilo"), <https://www.fidh.org/en/region/Africa/central-african-republic/conviction-of-andjilo-a-first-warlord-trial-and-a-decisive-first-step>; TV5 Monde, "Vidéo – En Centrafrique, prison à vie pour le Général Andjilo, chef anti-balaka", <https://information.tv5monde.com/afrique/video-en-centrafrique-prison-vie-pour-general-andjilo-chef-anti-balaka-216080>.

38. FIDH, Conviction of Andjilo, *op. cit.*

39. *Idem.*

40. RFI, "Centrafrique: un haut-gradé de l'ex-Séléka condamné à six ans de prison ferme" (CAR: a senior ex-Séléka officer sentenced to six years in prison), 23 September 2019, <https://www.rfi.fr/fr/afrique/20190923-rca-abdoulaye-alkali-said-justice-condamnation-seleka-six-ans-prison-ferme>.

41. Justiceinfo.net, "À Bangui, la Cour criminelle double la CPI et la CPS" (In Bangui, the Criminal Court overtakes the ICC and the SCC), 26 September 2019, <https://www.justiceinfo.net/fr/42466-bangui-cour-criminelle-double-cpi-et-cps.html>.

42. Amnesty International, *Annual Report 2019*, Africa, Central African Republic, 8 April 2020, <https://www.amnesty.org/en/documents/afr01/1352/2020/en/>.

In 2020, another significant case was brought before the Bangui Criminal Court, against **anti-balaka militia leaders Kevin Bere Bere, Crépin Wakanam (a.k.a Pino Pino), Romarci Mandago, Patrick Gbiako, Yembeline Mbenguia Alpha** and 23 militia members under their command. This case was unprecedented in terms of the number of defendants, the seriousness of the charges and the length of the trial (in comparison with other cases held before the ordinary courts).⁴³ It concerned the violence that took place in May 2017 in the town of **Bangassou**, including killings, attacks on protected persons and widespread destruction. As in the case of General Andjilo, FIDH and its member organisations were involved in the proceedings, this time by appointing six lawyers within the Collective to represent 34 plaintiffs.⁴⁴ At the conclusion of a trial which lasted three weeks, the main defendants, who held positions of authority within the anti-balaka movement, were sentenced to life imprisonment with hard labour, including for war crimes and crimes against humanity, and were ordered to pay damages to the victims and a symbolic franc to the human rights NGOs involved in the case (notably FIDH, LCDH, OCDH, CEJP and ACAT).⁴⁵ This was the first conviction for crimes against humanity by a Central African court.

Despite the significance of the case for the ordinary justice system, our organisations, which closely followed its progress and hearings, again deplored a number of irregularities or difficulties in proceedings.⁴⁶ It seems that genuine adversarial hearings took place, with testimony from victims and witnesses, time for the defendants to respond, and the presentation of factual and visual evidence by the civil parties and the defence. However, a lack of fairness in the proceedings and inadequate protection for victims and witnesses were noted: defence lawyers (who were court-appointed) only had access to the case file a few days before the start of the trial and to their clients on the day of the opening of the hearing, considerably limiting the possibility of mounting a proper defence; defendants were handcuffed in the courtroom, which was criticised by both defence and civil party lawyers; there were alleged failings in the treatment of defendants during their detention; and the request made by civil party lawyers for anonymity of statements in order to limit reprisals against victims and witnesses was rejected. This, a fortiori, resulted in the absence of closed sessions, leading to a high level of exposure of the civil parties, in a situation where many combatants remained at large, and a greater risk to their safety and that of their families.⁴⁷

The “resumed” criminal court session that took place in Bangui between April and June 2022 tried around **fifty defendants, including former ministers and a retired General in the Forces armées centrafricaines** (Central African Republic Armed Forces - FACA). Among the twenty or so cases analysed, there were charges of criminal conspiracy, undermining state security, possession of arms and ammunition, murder and, more rarely, sexual violence. At the end of the session, 21 cases had been tried, six resulted in acquittal (including that of the former FACA General), 14 in fixed-term sentences of forced labour (between five and 15 years) and one in a prison sentence.⁴⁸ Several cases were adjourned to future sessions or referred to other institutions. Among the defendants concerned, Ibrahim Fofana, a minor at the time of the alleged offences, was referred to the Juvenile Court. It is interesting to note that he was the only defendant during the session to be charged with war crimes and crimes against humanity. He was accused of having been involved in the

43. Justiceinfo.net, “Centrafrique: La justice ordinaire a montré ses dents, pour les crimes de Bangassou” (CAR: The ordinary justice system has shown its teeth in relation to the crimes in Bangassou), 10 February 2020, <https://www.justiceinfo.net/fr/43745-centrafrique-justice-ordinaire-montre-dents-crimes-bangassou.html>.

44. FIDH, “The Central African justice system strongly condemns those responsible for the Bangassou massacre”, 7 February 2020, <https://www.fidh.org/en/region/Africa/central-african-republic/the-central-african-justice-system-strongly-condemns-those>.

45. Of the militia members, 19 were sentenced to 15 years of hard labour or 10 years of imprisonment and four were referred to the Juvenile Court as they were minors at the time of the events. They were all jointly and severally ordered to pay damages.

46. These concerns were also raised by Amnesty International. See in particular Amnesty International, *Central African Republic: “On trial, these warlords lowered their eyes”*, 2020, pp. 32-35 (“Amnesty International CAR Report 2020”), <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR1931852020ENGLISH.pdf>.

47. Observations made by our organisations and observers of the “Bangassou trial”.

48. Agence centrafricaine de presse, “Clôture des travaux de la première session criminelle de la Cour d’appel de Bangui” (Closure of the first criminal session of the Bangui Court of Appeal), 23 June 2022, https://www.acap.cf/Cloture-des-travaux-de-la-premiere-session-criminelle-de-la-Cour-d-appel-de-Bangui_a11725.html; Africa press, “Première session criminelle de 2022” (First criminal session of 2022), 25 June 2022, <https://www.africa-press.net/centrafricaine/politique/remiere-session-criminelle-de-2022>.

Bangassou massacre alongside Pépin Wakanam a.k.a Pino-Pino.⁴⁹ However, he was acquitted by the Juvenile Court.

In addition to the few emblematic cases mentioned above, the ordinary courts have also heard other cases involving both anti-balaka and Séléka members, including individuals in positions of responsibility.

3. Advantages and disadvantages of ordinary courts⁵⁰

In general, cases before the ordinary courts are widely broadcast on the radio, the internet and sometimes on television, which generates strong interest in the justice system and its appropriation by the population. According to a study by the Harvard Humanitarian Initiative on behalf of the United Nations Development Programme (UNDP) and MINUSCA, these broadcasts also lead to an increase in confidence in justice, including formal justice.⁵¹

While this demonstrates a determination to see justice done and to fight impunity, both among actors involved in justice and the population as a whole, many difficulties remain. These include a serious lack of financial, material and human resources and expertise, affecting the capacity of ordinary courts to fulfil their mandate. According to the consultations carried out for the purposes of this report in June and July 2022, constant reductions in the budget allocated to the justice system by the government has a major impact on the possibility of administering justice in CAR (including in terms of protection of victims and witnesses, as discussed above).⁵² Another important factor raised during our consultations is the lack of independence of the ordinary courts, which are heavily influenced by political alliances. A sectoral justice policy was developed in 2018-2019 by the Ministry of Justice to address this and the other above-mentioned challenges, including the protection of victims and witnesses, the need for a permanent justice system, access to justice - particularly with regard to crimes under international law and sexual and gender-based crimes - and procedural fairness. In order to ensure the implementation of this policy, a decree was adopted in January 2020.⁵³ This document, the first of its kind in CAR, was welcomed as a positive commitment, despite subsequent difficulties in implementation. It remains to be seen how this policy will be implemented and what its practical impact will be.

49. Bangui.com, "Centrafrique: la Cour criminelle renvoie le dossier d'Ibrahim Fofana devant le Tribunal pour enfants" (CAR: The Criminal Court refers Ibrahim Fofana's case to the Juvenile Court), 1 June 2022, <http://news.abangui.com/h/80070.html>; Agence centrafricaine de presse, "La cour se déclare incompétente dans l'affaire contre Ibrahim Fofana" (The court declares itself without jurisdiction in the case against Ibrahim Fofana), 31 May 2022, https://www.acap.cf/La-cour-se-declare-incompetente-dans-l-affaire-contre-Ibrahim-Fofana_a11674.html.

50. Table produced by FIDH and its member organisations in CAR on the basis of the analysis in this report.

51. MINUSCA, UNDP, Harvard Humanitarian Initiative, *Peace, Justice and Security Polls, Central African Republic – Report 4*, May 2019, p. 4, http://www.peacebuildingdata.org/sites/m/pdf/CAR_Poll4_EngLFinal.pdf; MINUSCA, UNDP, Harvard Humanitarian Initiative, Brigham and Women's Physicians Organization, *Peace, Justice and Security Polls, Central African Republic – Report 5*, November 2020, p. 31 ("CAR Polls 2020"), http://www.peacebuildingdata.org/sites/m/pdf/CAR_Poll5_ENG.pdf.

52. Amnesty International CAR Report 2020, *op. cit.* The report refers to "challenges and obstacles" that "are well documented and are recognized by the authorities themselves"; See also *Avocats sans frontières Belgium (ASF), Coopérer et se coordonner pour renforcer l'accès à la justice entre acteurs centrafricains: défis et réalités* (Cooperating and coordinating to strengthen access to justice among Central African actors: challenges and realities), March 2019, <https://www.asf.be/wp-content/uploads/2019/11/ASF-Coop%C3%A9rer-et-se-coordonner-pour-renforcer-lacc%C3%A8s-%C3%A0-la-justice-entre-acteurs-centrafricains.pdf>.

53. CAR, *Politique sectorielle de la justice 2020-2024* (Sectoral Justice Policy 2020-2024), approved on 18 September 2019; CAR, *Arrêté n° 005/MJDH/DIRCAB/CMRJM.20 portant création du dispositif institutionnel de coordination et de mise en œuvre de la politique sectorielle du ministère de la Justice et des Droits de l'Homme* (Administrative Order No. 005/MJDH/DIRCAB/CMRJM.20 on the creation of the institutional mechanism for the coordination and implementation of the sectoral policy of the Ministry of Justice and Human Rights), 16 January 2020; Amnesty International CAR Report 2020, *op. cit.* p. 30. The sectoral policy identifies five priority areas for the period concerned: "independence, accountability and morality of the judicial staff and justice system; strengthening the 'justice offer' including internal management and communication with public; strengthening the demand for justice and the access for all to the justice system, including through legal aid and protection of victims and witnesses; strengthening the criminal judicial system and the prison system, including transitioning to a permanent criminal justice system and improving security of prisons and conditions for detainees; respect of human rights and implementation of transitional justice, including fighting against impunity for crimes under international law through ordinary tribunals and the SCC."

| Advantages | Disadvantages |
|---|---|
| Proximity of justice and improved appropriation by the population | Lack of independence of judges and prosecutors, despite prosecutions of both anti-balaka and Séléka members |
| Knowledge of the judicial and social context | Lack of financial, material and human resources and expertise (particularly in the area of crimes under international law and the application of international law, which is currently inconsistent and uneven) |
| Visibility of cases | Lack of fairness in trial proceedings, lack of respect for the rights of the defence and inadequate protection of victims and witnesses |
| Rapidity of proceedings and relatively regular hearings (in theory) | Insufficient sessions to deal with all crimes/cases |

B) Special Criminal Court (SCC): a long-awaited hybrid court that has yet to prove its worth

1. SCC origins and mandate

The SCC is a special court within the Central African judicial system, with its seat in Bangui.⁵⁴ It is responsible for investigating serious violations of human rights and international humanitarian law committed on the territory of CAR since 1 January 2003, and for prosecuting and trying those responsible.⁵⁵ It focuses on the most serious crimes, including war crimes, crimes against humanity and genocide, and those who played a key role in their commission. It is a hybrid institution composed of national and international members.

The creation of the SCC reflects a general resolve, both of the population as a whole and of individuals particularly involved in local and international justice efforts, to establish an institution specifically mandated to deal with the most serious violence perpetrated in CAR, to deliver justice to the thousands of victims who are still waiting and to put an end to the deep-rooted impunity of those responsible. This institution was envisaged as a complement - more specialised and more independent - to the ordinary courts, which have limited capacity. By ensuring that justice is done, this institution is intended to foster the process of national reconciliation and, a fortiori, a return to lasting peace on the territory.⁵⁶ This determination was initially demonstrated by the establishment in April 2014 of a Special Investigation and Prosecution Unit with a mandate very similar to that of the SCC.⁵⁷ This was followed by an agreement in August 2014 between the transitional CAR Government and the United Nations on the creation of a special court.⁵⁸ The promulgation of the law on the establishment, organisation and operation of the Special Criminal Court by the Interim

54. CAR, *Loi n° 15.003 portant création, organisation et fonctionnement de la Cour Pénale Spéciale* (Law No. 15.003 on the establishment, organisation and operation of the Special Criminal Court), 3 June 2015, Article 2 ("Law on the establishment of the SCC"). The seat of the court may, however, "be transferred to any other place in the national territory, where exceptional circumstances or the requirements of the service so demand."

55. *Ibid.*, article 3.

56. FIDH, "What is Central African Republic's Special Criminal Court?", 19 July 2017, <https://www.fidh.org/en/region/Africa/central-african-republic/what-is-the-special-criminal-court>.

57. The Unit was created by presidential decree on 9 April 2014. FIDH and its member organisations had called for the establishment of such a body. See for example FIDH, OCDH and LCDH, *Central African Republic: "They must all leave or die"*, June 2014, <https://www.fidh.org/en/region/Africa/central-african-republic/15618-central-african-republic-they-must-all-leave-or-die>.

58. FIDH, "CAR: UN backed Special Criminal Court set-up to fight impunity", 17 September 2014, <https://www.fidh.org/en/region/Africa/central-african-republic/16048-car-un-backed-special-criminal-court-css-set-up-to-fight-impunity>.

President Catherine Samba Panza on 3 June 2015⁵⁹ confirmed this desire for justice, providing CAR with a long-awaited specialised court for which many, including FIDH and its member organisations, had been fighting.⁶⁰

The SCC was created for a period of five years (from its “effective establishment”, i.e., the inaugural session of 22 October 2018, until the end of 2023), which may be renewed “if necessary” (six months before the end of its mandate at the initiative of the Government of CAR, in consultation with the UN).⁶¹ It is supported in the exercise of its mandate by MINUSCA, particularly in operational security and arrests, and by UNDP in financial and logistical management.⁶² The SCC’s funding has been an important issue and a focus of criticism from the outset. It has substantial funds compared to the ordinary courts but an insufficient budget to fulfil its mandate. To date, it has been funded primarily through voluntary contributions, mainly from France, the Netherlands, the United States, the European Union and the United Nations, through MINUSCA and UNDP. This type of voluntary funding is problematic in that it does not provide the stability required by a judicial institution and can undermine its independence, as some of the funds provided are earmarked for a particular type of work, thus preventing a balanced distribution of resources according to actual needs.

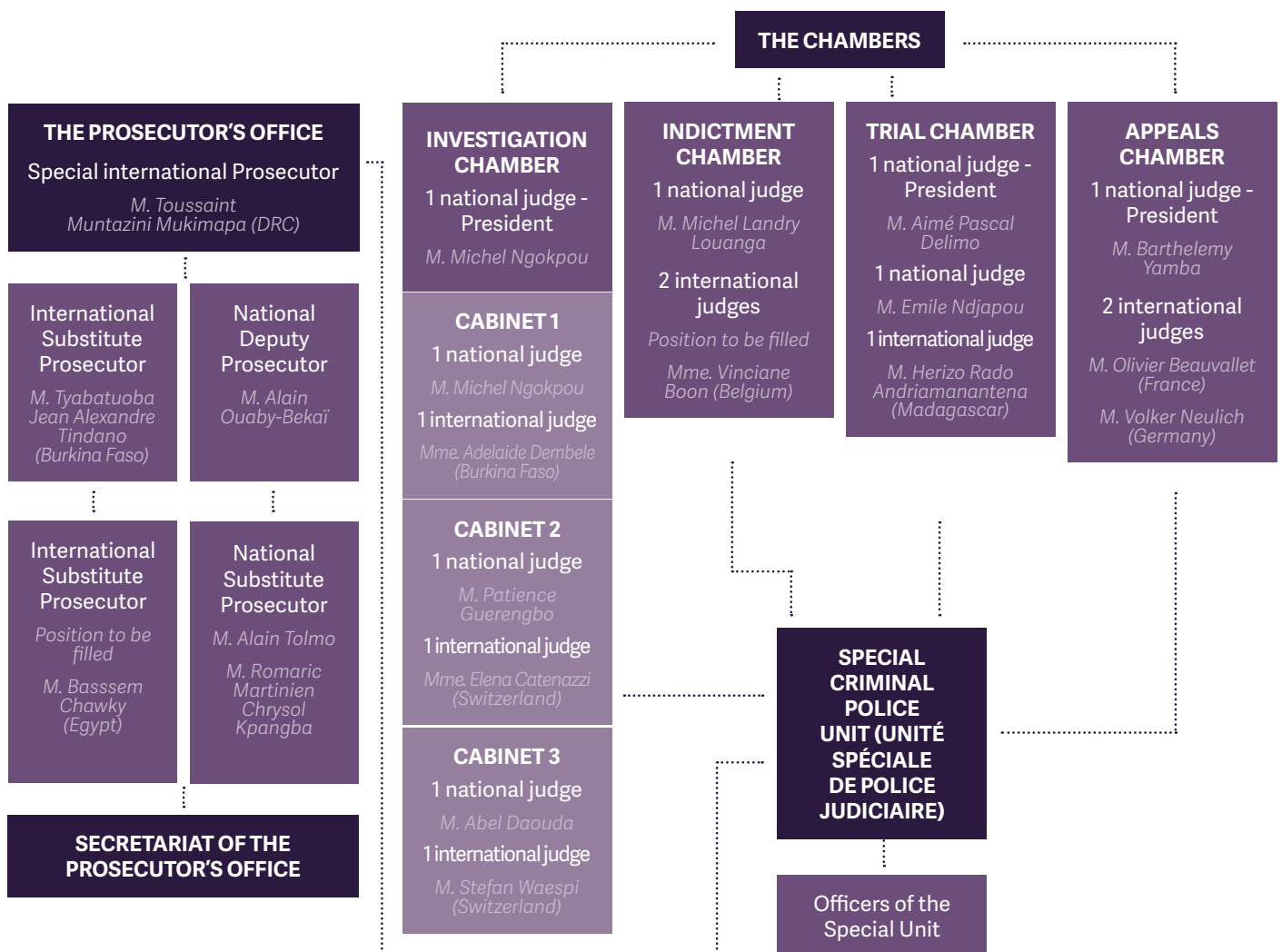
59. FIDH, “Special Criminal Court officially created”, 10 June 2015, <https://www.fidh.org/en/impacts/central-african-republic-special-criminal-court-officially-created>.

60. *Idem*; FIDH et al, “New Special Criminal Court: A Key Step Toward Justice”, 24 April 2015, <https://www.fidh.org/en/region/Africa/central-african-republic/new-special-criminal-court-a-key-step-toward-justice>; FIDH, “Why a Special Criminal Court for the Central African Republic Deserves Your Support”, 19 February 2015, <https://www.fidh.org/en/region/Africa/central-african-republic/17015-why-a-special-criminal-court-for-the-central-african-republic-deserves>.

61. Law on the establishment of the SCC, *op. cit.*, Article 70.

62. See for example CAR, MINUSCA, UN Women, UN Volunteers and UNDP, *Projet conjoint d'appui à la Cour pénale spéciale de la République centrafricaine* (Joint project to support the CAR Special Criminal Court).

2. SCC organs and their functions



(Organisation chart based on information collected up to 10 August 2022)

The SCC is chaired by Michel Landry Louanga from CAR.⁶³ It is composed of various organs, including the Presidency, the Registry, the Prosecutor's Office and the Chambers.⁶⁴ Investigations and prosecutions are carried out by the **Prosecutor's Office**, which comprises a Special (international) Prosecutor, Toussaint Muntazini Mukimapa (Democratic Republic of Congo), and deputy and/or substitute prosecutors,⁶⁵ guided by the prosecutorial strategy presented in December 2018.⁶⁶ The public prosecutor's office is supported in its investigative mission by the **Unité Spéciale de Police Judiciaire** (Special Criminal Police Unit).⁶⁷ The **judges** appointed to the Special Criminal Court are assigned to the various Chambers: *Chambre d'instruction* (investigation chamber),⁶⁸ *Chambre*

63. He was elected by his peers on 22 October 2018, initially for a two-year term. See MINUSCA, "Lancement officiel des activités de la Cour pénale spéciale, 'Une percée majeure pour la justice en RCA'" (Official launch of the activities of the Special Criminal Court, 'A major breakthrough for justice in CAR'), 24 October 2018, <https://minusca.unmissions.org/lancement-officiel-des-activités-de-la-cour-pénale-spéciale-«une-percée-majeure-pour-la-justice-en>.

64. Law on the establishment of the SCC, *op. cit.*, Articles 21 to 23 (on national staff) and 24 to 27 (on international staff).

65. *Ibid.*, Article 18.

66. SCC, *Stratégie d'enquêtes, de poursuites et d'instruction* (Prosecutorial strategy), presented at a press conference on 4 December 2018 ("SCC prosecutorial strategy"). The video of the press conference is available online. See "La Cour pénale spéciale lance sa stratégie d'enquête" (The Special Criminal Court launches its prosecutorial strategy), 5 December 2018, https://www.youtube.com/watch?v=70FN_pAcoVA.

67. Law on the establishment of the SCC, *op. cit.*, Articles 8 and 28 to 33.

68. *Ibid.*, Article 11: This chamber is "in charge of the preliminary investigation" and is composed of three offices.

d'accusation spéciale (indictment chamber),⁶⁹ *Chambre d'assises* (trial chamber),⁷⁰ and *Chambre d'appel* (appeals chamber)⁷¹. The procedure for investigations and prosecutions is set out in the Court's Rules of Procedure and Evidence, adopted on 2 July 2018.⁷²

In addition, the Law on the establishment of the SCC provides for the creation of a ***Corps spécial d'Avocats***, a list of lawyers approved to represent parties to proceedings,⁷³ who may be appointed by the court in the event of a party's indigence.⁷⁴ This *Corps spécial* is composed of Central African lawyers (initially numbering 32, admitted by decision of the Joint Body for the admission of candidates to the *Corps spécial d'Avocats* on 16 October 2020,⁷⁵ reduced to 30 at the time of writing this report) and international lawyers (16, mainly from African and European countries).⁷⁶ The creation of such an entity not only recognises the central role played by lawyers in court proceedings, but also strengthens their capacity by making available to Central African lawyers the expertise of their international colleagues who are often more specialised in crimes under international law.

However, the consultations conducted during the preparation of this report revealed that the lawyers admitted to the *Corps spécial* are not provided with the necessary means to carry out their work. This problem is said to affect all the lawyers. For victims' lawyers, the lack of resources affects their capacity to meet with victims, to talk to them - collectively and/or individually - particularly in the provinces, and to follow up on the various cases in progress. In the case of defence lawyers, this was reflected, for example, in a boycott of the opening of the first SCC trial, forcing the judges to adjourn the hearings. This was a significant move that raised many questions about the resources available to the Court and how they were allocated. Several interviewees pointed out that while much emphasis has been placed on operationalising the Court through the appointment of judges and prosecutors, considerable efforts still need to be made with regard to lawyers.

69. *Ibid.*, Article 12: This chamber "decides on appeals against orders made by the investigating judge's offices".

70. *Ibid.*, Article 13: This chamber is responsible for "deciding on the merits of cases referred to it by the Investigation Chamber and, in the event of an appeal against the orders of the latter, by the Indictment Chamber".

71. *Ibid.*, Article 14: This chamber is responsible for "ruling on appeals against decisions of the Assize Chamber and the Special Indictment Chamber".

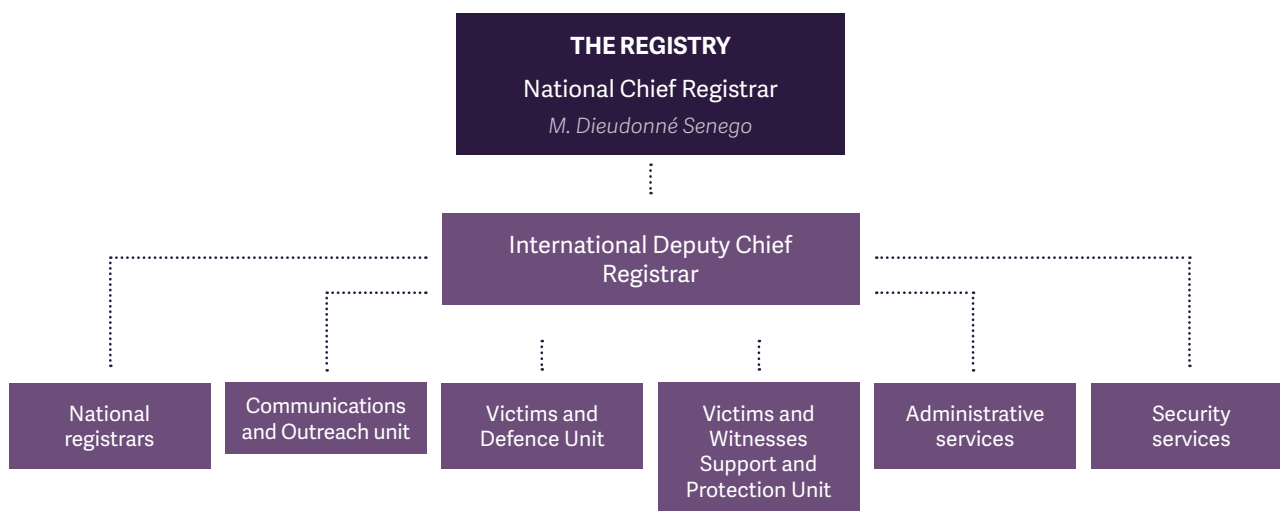
72. CAR, *Loi n° 18.010 portant règlement de procédure et de preuve devant la Cour pénale spéciale de la République centrafricaine* (Law No. 18.010 on the rules of procedure and evidence of the CAR Special Criminal Court), 2 July 2018, Part IV "Rules of Procedure" ("Law on the rules of procedure and evidence").

73. Law on the establishment of the SCC, *op. cit.*, Article 65.

74. *Ibid.*, Article 64.

75. CAR, *Décision (numéro 001/OPCPS/2020) portant admission des Avocats nationaux au Corps Spécial d'Avocats près la CPS* (Decision on the admission of national lawyers to the SCC-approved list of lawyers), 16 October 2020.

76. International staff are involved in "the most sensitive cases, especially those where the safety of national lawyers may be at risk". Law on the establishment of the SCC, *op. cit.*, Article 67.



(Organisation chart based on information collected up to 10 August 2022)

Finally, the SCC has a **Registry**. It is headed by the national Chief Registrar, Dieudonné Senego, assisted by a recently appointed international Deputy Chief Registrar and national registrars, working under the authority of the President and Vice-President of the Court.⁷⁷ The Registry is divided into several sections, including a Victims and Witnesses Support and Protection Unit, a Communications and Outreach Unit, an Information Management Unit, a Victims and Defence Unit, and administrative and judicial services, intended to “enable the organs of the Court to exercise their duties impartially, independently and effectively”.⁷⁸ All of these services play an important role in ensuring a more visible, stronger, fairer justice system, which respects human rights.

The Court’s **Communications and Outreach** unit, for example, is responsible for “defining and coordinating the Court’s communications policy”; “disseminating information to the public and media on the roles, operation and activities of the Court”; and “conducting outreach activities with those affected by the Court and, in particular, victims”.⁷⁹ This is a key service for the fulfilment of the SCC’s mandate. Like any judicial institution, in order to operate, the SCC requires the cooperation of various actors and the participation of victims and witnesses. This can only be achieved if the Court communicates adequately with the populations concerned and gains their trust. Despite the development of an outreach plan and undeniable efforts, the Court’s lack of transparency and communication during its first years of existence has led to criticism from victims, communities, civil society and actors involved in justice more generally.

While outreach activities have been conducted to explain the Court and its mandate, information about its judicial activities is very limited or non-existent. The consultations carried out for the purposes of this report indicated that this has led to a significant decline in confidence and interest in the Court’s work among a section of the population, particularly outside Bangui. There appear to be few resources available to improve the publicity and visibility of the work of the Court’s various organs. For example, although the SCC has a website, it contains little information and requires regular updating on important decisions affecting its operation, mandate and judicial activities. In addition, although a great deal of work has been done to produce paper documentation and radio interventions to raise public awareness of the SCC, there has not been enough focus on judicial activities. The population concerned therefore has to try to find an internet connection, which can be very difficult depending on the province, in order to access a website that is incomplete and

77. Law on the rules of procedure and evidence, *op. cit.*, Articles 42 and 43.

78. *Ibid.*, Article 42.B.

79. *Ibid.*, Article 45.D.

sometimes difficult to navigate. Yet, adequate communication, including about ongoing cases, is essential to ensure effective and informed participation of victims who wish to take part in ongoing justice efforts, including by joining proceedings as civil parties. The lack of information thus deprives part of the population of the possibility of participating in cases, even though they have much to contribute.

There is also serious criticism of the lack of information about those held in pre-trial detention since 2019, including on their conditions of detention and the charges they are facing. Although the Court is not obliged to make this information public at the investigation stage,⁸⁰ in particular on grounds of security (of victims, witnesses and also SCC staff) in a country where armed groups remain active and present over a large part of the territory,⁸¹ and although in principle there is a system in place to allow detainees to be assisted by a lawyer, the secrecy and opacity in this area is widely deplored. Civil society organisations, in particular, fear that this opacity could lead to violations of the rights of detainees.⁸²

In addition to informing victims of their rights in the proceedings, which is handled by the Victims and Defence Unit,⁸³ the Registry also plays a fundamental role in relation to victims and witnesses through the **Victims and Witnesses Support and Protection Unit**. This Unit is responsible for providing “administrative, logistical, security, medical, psychological and social assistance” to victims and ensuring “the safety, physical and psychological well-being, dignity and privacy” of victims and witnesses.⁸⁴ This is a crucial service within any judicial institution, but even more so when it operates in a situation of constant conflict, instability and/or insecurity, or with people in such situations. In CAR, any effort to achieve justice can only succeed if this reality is understood and results in concrete actions by all actors involved. The very existence of such a unit within the SCC Registry is a major step forward, as the lack of protection for victims and witnesses remains an obstacle before the ordinary courts. At the end of March 2022, the UN High Commissioner for Human Rights announced that at least 305 victims and witnesses had benefited from protection measures⁸⁵, a significant figure. However, the consultations carried out by FIDH in June and July 2022 revealed that there are still gaps in the implementation of protection measures and that there is a pressing need for improvement. To this end, it is essential that sufficient resources be made available to the Registry and to the various actors involved with victims and affected communities, such as civil society organisations and other victim support groups.

80. *Ibid.*, Article 71(b): “Without prejudice to the rights of the defence, the investigation shall be confidential.”

81. Julian Elderfield, “The rise and rise of the Special Criminal Court (Part II)”, *Opinio Juris*, 7 April 2021, <http://opiniojuris.org/2021/04/07/the-rise-and-rise-of-the-special-criminal-court-part-ii/>; Justiceinfo.net “Centrafrique: le chemin de croix de la cour pénale spéciale” (CAR: The uphill struggle of the SCC), 18 April 2022, <https://www.justiceinfo.net/fr/90854-centrafrique-chemin-croix-cour-penale-speciale.html>. This article contains a quote from the SCC President: “We are in a situation of crisis, of conflict situation, we have victims and witnesses that need to be protected. Publicising investigations puts the lives of these people at risk.”

82. Amnesty International CAR Report 2020, *op. cit.*, pp. 23-26.

83. Law on the rules of procedure and evidence, *op. cit.*, Article 47.B).a) and d).

84. *Ibid.*, Article 46.

85. Michelle Bachelet Statement 2022, *op. cit.*

3. Cases: from the delays of the early years to the opening of the first trial in 2022

In August 2021, in response to widespread criticism of the Court's lack of transparency in relation to its judicial activities, CAR President Faustin Touadéra and the Minister for Justice, Promotion of Human Rights and Good Governance, Arnaud Djoubaye-Abazene, met with the SCC's highest officials. On this occasion, the President of the SCC provided some details: between 2019 and August 2021, the Prosecutor's Office received 237 complaints, one case was at the preliminary investigation stage and 11 were under analysis, seven cases had been referred to the ordinary courts, 21 individuals were in custody and 25 arrest warrants had been issued.⁸⁶ At the end of March 2022, the UN High Commissioner for Human Rights shared similar figures.⁸⁷

Several developments have shed some light on the activities of the SCC. In September 2021, the Court announced the arrest and first appearance before the investigating judges of **Eugène Barret Ngaïkosset**, or "the butcher of Paoua",⁸⁸ accused of crimes against humanity.⁸⁹ **A former captain in the CAR Armed Forces and a former senior member of former President Bozizé's presidential guard, and later an anti-balaka leader**, Ngaïkosset had been on the international community's radar for several years for his role in the commission of war crimes and crimes against humanity in CAR, in particular in the Paoua massacres between 2005 and 2007, as well as for his involvement in the violence that erupted in Bangui in late September 2015.⁹⁰ He was included on the UN sanctions list on 17 December 2015, for "engaging in or providing support for acts that undermine the peace, stability or security of the CAR", and for being "involved in planning, directing, or committing acts that violate international human rights law or international humanitarian law, as applicable, or that constitute human rights abuses or violations, in the CAR, including acts involving sexual violence, targeting of civilians, ethnic- or religious-based attacks, attacks on schools and hospitals, and abduction and forced displacement," and for being "involved in planning, directing, sponsoring, or conducting attacks against UN missions or international security presences, including MINUSCA, the European Union Missions and French operations which support them".⁹¹ Ngaïkosset was arrested in 2015, but escaped from detention before being re-arrested. Although there has been very little information available since his appearance before the SCC judges, it seems that the case is ongoing.

A few weeks later, on 19 November 2021, **Hassane Bouba Ali, former member of the armed group *Unité pour la paix en Centrafrique* (UPC) who became Minister in charge of livestock and animal health**, was arrested as part of an investigation into crimes against humanity and war crimes.⁹² He was released several days later and escorted back to his home by the national gendarmerie, even though he was due to appear before the judges who were to rule on his pre-trial detention.⁹³ While the SCC, the Central African population and the international community⁹⁴

86. SCC, "Audience accordée par le Président de la République Chef de l'État, son Excellence le professeur Faustin Archange Touadéra, Président du Conseil Supérieur de la Magistrature à la CPS" (Audience granted by the President of the Republic Head of State, His Excellency Professor Faustin Archange Touadéra, President of the Higher Council of the Judiciary at the SCC), 31 August 2021, <https://cps-rca.com/detail-evenement.php?evenement=27>. In December 2020, the Court provided the following figures: 146 complaints received, 12 cases under analysis by the SCC Prosecutor's Office, one case at the preliminary investigation stage and three cases transferred to the ordinary courts. At the level of the *Chambre d'instruction*, the Court reported 22 complaints with civil parties joining proceedings and nine cases under investigation (including three relating to acts committed in Bangui, six relating to acts committed in prefectures outside Ombella M'poko, and two relating to acts of sexual violence). See SCC, *Bulletin d'information de la Cour pénale spéciale* (Newsletter of the Special Criminal Court), December 2020, p. 10, https://www.cps-rca.com/documents/NEWSLETTER_n_4_DECEMBRE_2020.pdf.

87. Michelle Bachelet Statement 2022, *op. cit.*

88. Town in north-western CAR, Paoua region, Ouham-Pendé prefecture.

89. SCC, "Comparution initiale d'Eugène NGAIKOSSET devant la CPS" (First appearance of Eugène NGAIKOSSET before the SCC), 10 September 2021, <https://cps-rca.com/detail-evenement.php?evenement=29>.

90. FIDH had also documented the role of Eugène Ngaïkosset in abuses in early 2006. See FIDH Report, *Forgotten, Stigmatised*, 2006.

91. UNSC, "Eugène Barret Ngaïkosset", <https://www.un.org/securitycouncil/sanctions/2127/materials/summaries/individual/eugene-barret-ngaikosset>.

92. SCC, "Communiqué de presse relatif à l'audience de débat contradictoire du 26/11/2021" (Press release on the adversarial hearing of 26/11/2021), 26 November 2021 [broken link].

93. SCC, "Communiqué de presse relatif à l'évasion du suspect Ali Bouba Hassan" (Press release on the escape of suspect Ali Bouba Hassan), 26 November 2021 [broken link].

94. See for example Office of the UN High Commissioner for Human Rights, "Central African authorities must return ex rebel leader to custody, and under jurisdiction of Special Criminal Court, UN expert says", 9 December 2021, <https://www.ohchr.org/en/press-releases/2022/01/central-african-authorities-must-return-ex-rebel-leader-custody-and-under>; FIDH, Tweet, 1 December 2021, https://twitter.com/fidh_fr/status/1465993940470054914.

were outraged by this open affront to the jurisdiction of the SCC and the independence of its mandate, Hassane Bouba was honoured by the President of the Republic with the National Order of Merit.⁹⁵ This event raised many questions about the capacity of the SCC to prosecute individuals linked to the government, particularly those in high office. It also reinforced well-established fears that the state, despite its rhetoric against impunity, only tolerates selective justice.⁹⁶ In July 2022, the UN Independent Expert on the situation of human rights in CAR, Yao Agbetse, deplored the slow progress made by the Central African authorities in giving full effect to President Touadéra's solemn commitment to make the fight against impunity a government priority.⁹⁷

At the end of 2021, a public hearing was finally held concerning the Koundjili and Lemouna⁹⁸ massacres of May 2019. At the conclusion of the hearing, the *Chambre d'accusation spéciale* decided to refer the accused, **Ousmane Yaouba, Tahir Mahamat and Issa Sallet Adoum (a.k.a "Bozize")**,⁹⁹ active members of the 3R group (*Retour, réclamation, réhabilitation* - Return, Reclamation, Rehabilitation), to the *Chambre d'assises* for crimes against humanity and war crimes. They were charged with murder and other inhumane acts committed during an attack by the 3R group on the villages of Koundjili and Lemouna.¹⁰⁰ On 19 April 2022, the date of the official opening of the trial, the defendants became the first individuals to be tried at the SCC. Although the hearings were immediately adjourned and did not resume until 16 May 2022,¹⁰¹ FIDH and its member organisations welcomed this development, as "a significant step [...] towards more comprehensive justice for Central African victims".¹⁰² According to the consultations carried out in preparation for this report, this view is shared by a section of civil society, who perceive it as confirmation of the SCC's capacity to fulfil its mandate. Some of those consulted see it as a key first step towards other cases concerning even higher-ranking individuals or individuals involved in even more significant events. Others, while recognising the symbolism of the case, in that the events concerned marked the first major breach of the February 2019 peace agreement signed by 14 armed groups (including the 3R group), expressed regret that the court had not begun by trying leaders of armed groups, which would have had an even greater impact. The hearings in this case ended on 19 August and a verdict is expected by 31 October 2022.¹⁰³

95. Corbeaunews, "La cour pénale spéciale peine à appliquer ses mandats d'arrêt" (The SCC struggles to enforce its arrest warrants), 27 December 2021, <https://corbeaunews-centrafrique.org/la-cour-penale-speciale-peine-a-appliquer-ses-mandats-darret/>.

96. For further information on the approach to justice and impunity in CAR, see Amnesty International CAR Report 2020, *op. cit.*, p. 16; FIDH Report, *Forgotten, Stigmatised*, 2006, *op. cit.*, pp. 28-39, in particular concerning pardon sessions.

97. Office of the UN High Commissioner for Human Rights, "Human Rights Council holds Interactive Dialogue with the Independent Expert on the Situation of Human Rights in the Central African Republic and begins Interactive Dialogue with the Independent Fact-Finding Mission on Libya", 6 July 2022, <https://www.ohchr.org/en/press-releases/2022/07/human-rights-council-holds-interactive-dialogue-independent-expert-situation>.

98. Villages in northwestern CAR, Paoua region, Ouham-Pendé prefecture.

99. SCC, "Communiqué de presse du Parquet spécial relatif à l'audience publique dans l'affaire des tueries de Koundjili et Lemouna" (Press release by the SCC Prosecutor's Office on the public hearing in the case of the Koundjili and Lemouna killings), 13 December 2021 [broken link]; SCC, "Communiqué de presse relatif à la décision de la chambre d'accusation dans l'affaire des tueries de Koundjili et Lemouna" (Press release on the decision of the indictment chamber in the Koundjili and Lemouna killings case), 20 December 2021 [broken link].

100. The SCC Prosecutor had announced in 2019 that the case had been referred to him by the Bangui Prosecutor's Office. The accused were handed over to the authorities by their leader Sadiki Abass. See SCC, "Communiqué du Bureau du Procureur près la Cour pénale spéciale" (Statement by the Office of the Prosecutor of the SCC), 6 August 2019 <https://cps-rca.com/actualites/COMMUNIQUE-DU-BUREAU-DU-PROCUREUR-PRES-DE-LA-COUR-PENALE-SPECIALE/20/>; For more information on the events of May 2019, see Human Rights Watch, "Central African Republic: Armed group kills 46 civilians", 18 July 2019, <https://www.hrw.org/news/2019/07/18/central-african-republic-armed-group-kills-46-civilians>.

101. The adjournments, which were apparently due to a disagreement between the SCC and defence lawyers over their salary conditions, have been criticised. It is essential that the conditions for a fair trial are respected, and that the working conditions of all those involved are in line with human rights standards. FIDH, "War crimes in CAR: Special Criminal Court's first trial", 15 May 2022, <https://www.fidh.org/en/region/Africa/central-african-republic/first-trial-war-crimes-court-central-african-republic>.

102. *Idem*.

103. Oubangui Medias, "CPS: le verdict des crimes de Koundjili et Lemouna est prévu au 31 octobre prochain" (SCC: verdict on the Koundjili and Lemouna crimes to be handed down on 31 October), 24 August 2022, <https://oubanguimedias.com/2022/08/24/cps-le-verdict-des-crimes-de-koundjili-et-lemona-est-prevu-au-31-octobre-prochain/>.

4. Advantages and disadvantages of the Special Criminal Court¹⁰⁴

These events and the many years of preparation leading up to the first trial in April 2022 have raised both hopes and some questions and challenges. Our consultations with local and international civil society revealed a shared perception of the SCC. With the benefit of a little hindsight, some question the real need for such an institution, in which significant human and financial resources have been invested, so far with limited results. Others, who followed the opening of the first trial in April 2022 with interest and optimism, have no doubt that such a need exists. Moreover, while some people continue to believe that there was real potential in 2015 to achieve the political and security stability required for the need for justice to be manifested, others consider that it was too early, too premature to create such an institution given the years of crisis in CAR. Despite the period of respite, the most sceptical already feared new crises that would affect the capacity of a special court to fulfil its mandate with sufficient resources and independence.

As the SCC's first mandate draws to a close, this division - which extends beyond civil society - is problematic. It could prevent the renewal of its mandate, rather than allow the strengthening of the capacity of this institution with great potential for the situation in CAR. According to our consultations, one of the core concerns behind the scepticism relates to the concrete capacity of the SCC to fulfil its mandate in a volatile and unstable political and security situation, in which some people seem to be untouchable, as shown by the Bouba case. For some, the SCC's independence, partly linked to its hybrid nature, was one of the reasons for its existence, in addition to the expertise of its staff in investigating and prosecuting crimes under international law. If such independence is not guaranteed, what makes it different from ordinary courts? If the SCC is to regain the confidence of the public and donors, it is essential to address these doubts and criticisms by being more transparent and bolder in future cases.

| Advantages | Disadvantages |
|--|---|
| Proximity of the justice system to the affected communities | Lack of transparency and communication on the Court's judicial activities |
| Hybrid system with the potential to be more independent and impartial, bringing specific expertise to cases involving crimes under international law | Persistent lack of resources and dependence on international financial and technical partners |
| Presence of a Registry, including a victim and witness protection mechanism, albeit with weaknesses | Political influence undermining justice efforts |

104. Table produced by FIDH and its member organisations in CAR on the basis of the analysis in this report.

C) International Criminal Court (ICC): a distant institution that has disappointed but still offers hope

1. Mandate and jurisdiction of the ICC

The International Criminal Court is a permanent court established to try “those bearing the greatest responsibility” for the crime of genocide, crimes against humanity, war crimes, and the crime of aggression.¹⁰⁵ It consists of a Presidency, Chambers, an Office of the Prosecutor, which has the power to investigate and prosecute, and a Registry.¹⁰⁶ The latter contains, inter alia, a Victims Participation and Reparations Section and a Victims and Witnesses Unit, as well as two independent entities, the Office of Public Counsel for Victims and the Trust Fund for Victims.¹⁰⁷ The Court therefore accords a central role to victims, who can participate in proceedings alongside the Prosecutor and the Defence,¹⁰⁸ and has a number of services aimed at ensuring that their rights are respected, particularly with regard to participation and reparations. While much remains to be done to ensure that victims can fully enjoy these rights,¹⁰⁹ the ICC is one of the most advanced judicial systems in this area.

Under its founding treaty, the Rome Statute, which was adopted on 17 July 1998 and entered into force on 1 July 2002, the ICC has jurisdiction over crimes committed in the territory of States Parties to the Statute or by nationals of those States. It can also have jurisdiction if a non-State Party has accepted its jurisdiction or if a particular situation has been referred to it by the UN Security Council.¹¹⁰ With its seat in The Hague, the Netherlands,¹¹¹ the ICC has the potential to exercise jurisdiction over the entire globe and to deal with crimes committed hundreds of kilometres from its courtrooms. This distance, which favours its independence, impartiality and the security of its staff, also creates a number of challenges. Among these, many underline the lack of ownership of ICC decisions by the populations in the situations concerned; the detachment of ICC staff based at headquarters from the realities of such situations; practical obstacles to the implementation of its mandate; and the Court’s dependence on states. As the Court does not have its own police force, it depends on the cooperation of states and other actors to carry out its investigations, arrest suspects, bring them before the judges, and to fulfil its mandate to assist victims and witnesses.

CAR ratified the Rome Statute on 3 October 2001, thereby recognising the ICC’s jurisdiction over crimes that may be committed on its territory or by its nationals from that date. It then referred the country’s situation to the Court on two occasions, calling on the Office of the Prosecutor to investigate crimes committed on its territory in different periods. The ICC is therefore currently considering two situations relating to the Central African Republic, “CAR I” and “CAR II”.

105. United Nations Plenipotentiary Conference, *Rome Statute*, Doc A/CONF.183/9, 17 July 1998, entry into force 1 July 2002, (“Rome Statute”), Article 5.

106. For more information on the composition of the ICC and the powers of each organ, see *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Rules of Procedure and Evidence*, ICC-ASP/1/3 and Corr.1, New York, 3-10 September 2002 (“Rules of Procedure and Evidence”), <https://www.icc-cpi.int/sites/default/files/RulesProcedureEvidenceEng.pdf>.

107. For more information on these different services and on the place and role of victims before the ICC more generally, see ICC, *Victims before the International Criminal Court: A guide for the participation of victims in the proceedings of the ICC*, https://www.icc-cpi.int/sites/default/files/itemsDocuments/vprs/abd-al-rahman/VPRS-Victims-booklet_ENG.pdf.

108. Rome Statute, *op. cit.*, Article 68.

109. For an analysis of victims’ rights before the ICC, particularly their application by judges, see FIDH, *Whose Court is it? Judicial handbook on victims’ rights at the International Criminal Court*, April 2021, https://www.fidh.org/IMG/pdf/fidh_whose_court_is_it_en.pdf; See also the analysis in FIDH and Kenya Human Rights Commission, *The victims’ mandate of the International Criminal Court: disappointments, concerns and options for the way forward - Observations and recommendations for the Independent Expert Review*, June 2020, <https://www.fidh.org/IMG/pdf/cpiang752.pdf>.

110. Rome Statute, *op. cit.*, Articles 12 and 13; For more information on the International Criminal Court, see ICC, *Understanding the International Criminal Court*, 2020, <https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf>.

111. Rome Statute, Article 3.

2. Cases: from the fiasco of the Bemba case to a stronger involvement in the CAR II situation

- “CAR I” situation

The CAR I situation was referred to the ICC by the Government of the Central African Republic in December 2004, concerning war crimes and crimes against humanity allegedly committed since 1 July 2002, in the context of an upsurge of violence on its territory. After a preliminary examination which lasted approximately two and a half years, the Office of the Prosecutor decided to open an investigation, on the basis that there were reasonable grounds to believe that numerous crimes had been committed during this period, particularly rape, murder and pillaging. To date, this investigation has led to only one case,¹¹² that of **Jean-Pierre Bemba Gombo**, which resulted in an acquittal.

In 2002-2003, Bemba led the *Mouvement de Libération du Congo* (MLC), an armed group and political party in DRC, which borders CAR. Following an appeal from CAR President Ange-Félix Patassé, Bemba and his Movement came to assist the CAR national army to fight the rebellion. During this intervention, numerous abuses were committed by his troops, leading the ICC Office of the Prosecutor to issue an arrest warrant (under seal) against him.¹¹³ Bemba was immediately arrested on 24 May 2008 by the authorities in Belgium where he was located¹¹⁴ and a few months later he was surrendered to the ICC.¹¹⁵ This arrest was particularly significant for three reasons: it was the first in the CAR situation; the first to target a former high-ranking official, in this case a former Vice-President of a State; and the arrest warrant mentioned numerous sexual crimes, which at that time were drastically under-prosecuted before the ICC. The ICC Prosecutor, Luis Moreno-Ocampo, said in a statement that “Mr Bemba’s arrest is a warning to all those who commit, who encourage, or who tolerate sexual crimes. There is a new law called the Rome Statute. Under this new law, they will be prosecuted”.¹¹⁶

On 15 June 2009, the judges partially confirmed the charges against Bemba and committed him to trial.¹¹⁷ A little under seven years later, on 21 March 2016, Jean-Pierre Bemba was found guilty, as a superior (i.e., for crimes committed by his troops), of the crimes against humanity of murder and rape and the war crimes of murder, rape and pillaging.¹¹⁸ He was sentenced on 21 June 2016 to 18 years’ imprisonment.¹¹⁹ This was the Court’s first conviction for sexual crimes. However, this victory was short-lived as Bemba was eventually acquitted on appeal on 8 June 2018.¹²⁰ FIDH and its member organisations, who were heavily involved in this case,¹²¹ considered this acquittal is an “affront to the thousands of victims”.¹²²

112. In fact, two cases were opened against the same person. The second case, which is less relevant here, resulted in the conviction of Jean-Pierre Bemba as well as Kilolo Musamba, Mangenda Kabongo, Babala Wandu and Arido for offences against the administration of justice for the use of false testimonies in the main case against Jean-Pierre Bemba. See ICC, “Bemba et al. case: ICC Trial Chamber VII finds five accused guilty of offences against the administration of justice”, 19 October 2016, <https://www.icc-cpi.int/news/bemba-et-al-case-icc-trial-chamber-vii-finds-five-accused-guilty-offences-against>.

113. ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo, Urgent – Warrant of arrest for Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, 23 May 2008, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2008_03303.PDF.

114. ICC, “ICC arrest Jean-Pierre Bemba – massive sexual crimes in Central African Republic will not go unpunished”, 24 May 2008 (“ICC press release on Bemba’s arrest”), <https://www.icc-cpi.int/news/icc-arrest-jean-pierre-bemba-massive-sexual-crimes-central-african-republic-will-not-go>.

115. ICC, “Remise de Jean-Pierre Bemba Gombo à la Cour pénale internationale” (Surrender of Jean-Pierre Bemba Gombo to the ICC), 3 July 2008, https://www.icc-cpi.int/Pages/item.aspx?name=surrender%20of%20jean_pierre%20bemba%20to%20the%20international%20criminal%20court&ln=fr.

116. ICC press release on Bemba’s arrest, *op. cit.*

117. ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo, Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute on the charges of the Prosecutor against Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, 15 June 2009.

118. ICC, Bemba judgement, *op. cit.*

119. ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo, Decision on Sentence pursuant to Article 76 of the Statute*, ICC-01/05-01/08, 21 June 2016.

120. ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III’s “Judgment pursuant to Article 74 of the Statute”*, ICC-01/05-01/08, 8 June 2018.

121. For more information on FIDH’s work in CAR, see FIDH, Q&A on the Bemba case at the ICC, *op. cit.*, in particular “7. What part did FIDH play in this case?”; FIDH and LCDH, *The ICC verdict in the Jean-Pierre Bemba Case: 15 years of FIDH action: from field investigations to Prosecutor’s conclusions*, March 2016, <https://www.fidh.org/IMG/pdf/bemba673angbassdefweb.pdf>; FIDH, *Report of the FIDH Legal Action Group (LAG), FIDH and the situation in the Central African Republic before the International Criminal Court: The case of Jean-Pierre Bemba Gombo*, July 2008, <https://www.fidh.org/IMG/pdf/CPIaffbemba502ang2008.pdf>.

122. FIDH, “Acquittal of Jean Pierre Bemba on appeal: an affront to thousands of victims”, *op. cit.*

- “CAR II” situation

In May 2014, the Central African government, overwhelmed by the conflict between the anti-balaka and Séléka groups devastating its territory, referred the situation to the ICC for the second time.¹²³ Following this referral, and a very quick preliminary examination by the Office of the Prosecutor, Fatou Bensouda, lasting only a few months, an investigation was officially opened into war crimes and crimes against humanity committed in CAR from 2012 onwards. In a statement, Prosecutor Bensouda commented that “The list of atrocities is endless,” and included murder, rape, forced displacement, persecution, pillaging and other serious crimes covered by the Rome Statute. She concluded that she “cannot ignore these alleged crimes.”¹²⁴ Under this investigation, three cases are currently ongoing.

The first case emerging from the situation in CAR II involves **anti-balaka leaders Alfred Yekatom and Patrice-Édouard Ngaïssona**, for whom arrest warrants were issued on 11 November¹²⁵ and 7 December 2018 respectively.¹²⁶ Both were arrested less than a week later: Yekatom by the Central African authorities and Ngaïssona by the French authorities.¹²⁷ On 20 February 2019, the two cases were joined, and eight months later, the Court partially confirmed the charges and the defendants were committed to trial. Trial proceedings began on 16 February 2021.¹²⁸ At the time of writing, the trial was underway, and the prosecution was presenting its evidence and witnesses.

Alfred Yekatom held the rank of *caporal-chef* (Chief Corporal) in the FACA and was a member of Parliament in CAR. He was placed on the UN sanctions list in August 2015 for his contribution to “acts that undermine the peace, stability or security of the Central African Republic.”¹²⁹ Patrice-Édouard Ngaïssona is a former anti-balaka commander. Both are accused of the war crimes of intentionally directing attacks against the civilian population, intentionally directing attacks against buildings dedicated to religion, murder, displacement of the civilian population, torture and cruel treatment; and the crimes against humanity of murder, deportation or forcible transfer of population, torture and other inhumane acts, imprisonment or other forms of severe deprivation of physical liberty and persecution. Yekatom is also charged with the additional war crimes of conscription and enlistment of children under the age of 15 and their use to participate actively in hostilities. Ngaïssona is charged with the additional war crimes of destruction of the property of an adversary, pillaging and rape and the crime against humanity of rape.¹³⁰

The second case arising from the situation in CAR II involves **former Séléka militia leader Mahamat Said Abdel Kani (Said)**, who was surrendered to the ICC on 24 January 2021, less than three weeks after the issuance of an arrest warrant (under seal) against him.¹³¹ As a senior member of the Séléka assigned to the *Office central de répression du banditisme* (Central Office for the Repression of Banditry - OCRB) and then to the *Comité extraordinaire pour la défense des acquis démocratiques* (Extraordinary Committee for the Defence of Democratic Achievements - CEDAD), Said is alleged to have participated (directly or through his subordinates) in the commission of crimes against

123. For further details about the conflict, see “Background”.

124. ICC, “Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on opening a second investigation in the Central African Republic”, 24 September 2014, <https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-fatou-bensouda-opening-second-investigation>.

125. ICC, Situation in the Central African Republic II, *Public Redacted Version of “Warrant of Arrest for Alfred Yekatom”*, ICC-01/14-01/18-1-US-Exp, 11 November 2018 (public redacted version dated 17 November 2018).

126. ICC, Situation in the Central African Republic II, *Public Redacted Version of “Warrant of Arrest for Patrice-Edouard Ngaïssona”*, ICC-01/14-02/18, 7 December 2018 (public redacted version dated 13 December 2018).

127. ICC, “Situation in Central African Republic II: Alfred Yekatom surrendered to the ICC for crimes against humanity and war crimes”, 17 November 2018, <https://www.icc-cpi.int/news/situation-central-african-republic-ii-alfred-yekatom-surrendered-icc-crimes-against-humanity>; FIDH, “Major protagonist of the crisis in the Central African Republic arrested in France following ICC request”, 12 December 2018, <https://www.fidh.org/en/region/Africa/central-african-republic/major-protagonist-of-the-crisis-in-the-central-african-republic>.

128. For more information on the proceedings and the opening of the trial, see ICC, *Questions and Answers - Opening of the trial in the Yekatom and Ngaïssona case at the ICC*, update: 9 February 2021 (“ICC Q&A on Yekatom and Ngaïssona Case”), <https://www.icc-cpi.int/sites/default/files/itemsDocuments/yekatom-ngaissona-q-a-start-trial-eng.pdf>.

129. UNSC, “Alfred Yekatom”, <https://www.un.org/securitycouncil/sanctions/2127/materials/summaries/individual/alfred-yekatom>.

130. ICC Q&A on Yekatom and Ngaïssona Case, *op. cit.*

131. ICC, Situation in Central African Republic II, *Public Redacted Version of “Warrant of Arrest for Mahamat Said Abdel Kani”*, ICC-01/14-01/21-2-US-Exp, 7 January 2019 (public redacted version dated 17 February 2021).

humanity (imprisonment or other forms of severe deprivation of liberty, torture, persecution and other inhumane acts), and war crimes (torture and cruel treatment), perpetrated in particular between April and November 2013.¹³² FIDH and its member organisations, LCDH and OCDH, welcomed this arrest, stating that “Mr Said is the first ex-Séléka to be held accountable for his acts before the judges of The Hague, an important first step towards recognising the responsibility of all sides for the crimes committed in CAR in 2013 and 2014.”¹³³ On 9 December 2021, Pre-Trial Chamber II partially confirmed the charges against Said, committing him to trial.¹³⁴ While the judges considered that the link between the accused and the crimes perpetrated at the CEDAD was not sufficiently established, thus dismissing related charges,¹³⁵ Counts 1 to 7 were confirmed, namely imprisonment or other severe deprivation of physical liberty, torture, other inhumane acts and persecution, as crimes against humanity; and torture, cruel treatment and outrages upon personal dignity, as war crimes, perpetrated at the OCRB between 12 April 2013 and 30 August 2013.¹³⁶ The trial began on 26 September 2022.¹³⁷

Finally, **Maxime Jeoffroy Mokom Gawaka (Maxime Mokom)** is the fourth defendant to appear before the ICC judges. Arrested in February 2022 by the Chadian authorities under an arrest warrant issued under seal by the ICC in December 2018, Maxime Mokom was surrendered to The Hague on 15 March 2022¹³⁸ and appeared before the judges one month later. Again, our organisations consider this arrest and transfer a further step forwards in the fight against the impunity of those considered to bear the greatest responsibility for the crimes committed on Central African territory.¹³⁹ Maxime Mokom, alleged former National Coordinator of Operations of the **anti-balaka**, who became Minister of Disarmament, Demobilisation, Reintegration and Repatriation in February 2019, is suspected of having committed, ordered, aided or abetted the commission of numerous crimes against humanity and war crimes, including murder, torture, forcible transfer of population and attacks intentionally directed against the civilian population. These crimes were allegedly perpetrated against the Muslim civilian population and persons perceived to be linked to the Séléka group, between at least December 2013 and December 2014, including Bangui, Bossangoa, Yaloké, Gaga, Bossemtélé, Boda, Carnot, Berberati and Lobaye prefecture.¹⁴⁰ The opening of the confirmation of charges hearing has been scheduled for January 2023.¹⁴¹

132. ICC, *The Prosecutor v. Mahamat Said Abdel Kani, Corrected Version of “Public Redacted Version of ‘Document Containing the Charges, ICC-01/14-01/21-144-Conf’, dated 16 August 2021”, ICC-01/14-01/21-144-Red, dated 17 October 2021*, ICC-01/14-01/21, 27 October 2021.

133. FIDH, “An ex-Séléka at the ICC: Towards equal accountability for crimes committed in Central African Republic”, 26 January 2021 (“FIDH Press Release on the arrest of Said”), <https://www.fidh.org/en/region/Africa/central-african-republic/an-ex-seleka-at-the-icc-towards-equal-accountability-for-crimes>.

134. ICC, *The Prosecutor v. Mahamat Said Abdel Kani, Decision on the confirmation of charges against Mahamat Said Abdel Kani*, ICC-01/14-01/21, 9 December 2021.

135. *Ibid.*, paras 135, 153.

136. *Ibid.*, p. 60-61.

137. ICC, “Said trial opens at International Criminal Court”, 26 September 2022, <https://www.icc-cpi.int/news/said-trial-opens-international-criminal-court>.

138. ICC, “Situation in Central African Republic II, Maxime Jeoffroy Eli Mokom Gawaka surrendered to the ICC for crimes against humanity and war crimes”, 14 March 2022, <https://www.icc-cpi.int/news/situation-central-african-republic-ii-maxime-jeoffroy-eli-mokom-gawaka-surrendered-icc-crimes>.

139. FIDH, “Troisième anti-balaka à la CPI: la lutte contre l’impunité en République centrafricaine continue” (Third anti-balaka at the ICC: the fight against impunity in the Central African Republic continues), 15 March 2022, <https://www.fidh.org/fr/regions/afrique/republique-centrafricaine/troisieme-anti-balaka-a-la-cpi-la-lutte-contre-l-impunite-en>.

140. For more information on the Mokom Case, see ICC, “Mokom Case”, <https://www.icc-cpi.int/carII/mokom>.

141. ICC, “Maxime Jeoffroy Eli Mokom Gawaka makes first appearance before the ICC: confirmation of charges hearing scheduled for 31 January 2023”, 22 March 2022, <https://www.icc-cpi.int/news/maxime-jeoffroy-eli-mokom-gawaka-makes-first-appearance-icc-confirmation-charges-hearing>.

3. Advantages and disadvantages of the International Criminal Court¹⁴²

The ICC Office of the Prosecutor has been particularly active in the situation in the Central African Republic II. For a number of years, while the activities of the ordinary courts remained limited and the SCC was not yet operational or was only starting its activities, the ICC played a key role in the fight against impunity in CAR. The resounding failure of the Bemba case and the lack of outreach and explanations by the ICC to the victims and affected communities about the case and the consequences of the acquittal (notably in terms of reparations) left its mark on Central African victims and significantly impacted the image of the ICC.¹⁴³ However, despite this and other factors, including the length of proceedings and the distance between the Court and the affected communities, the ICC remains a genuine option for justice, complementary to national courts. According to the consultations conducted for the preparation of this report, the attention paid by the ICC to the situation continues to have a deterrent effect on certain influential figures, notwithstanding clear limitations preventing them from being brought to trial in The Hague.

While the ICC enjoys greater independence in terms of investigation and prosecution, it remains dependent on the cooperation of states to arrest suspects. Accordingly, during our consultations several interviewees expressed the view that the ICC is as restricted as national courts by the absence of political will of the Central African government. The arrests of Alfred Yekatom and Maxime Mokom, for example, are said to be the result of shifting alliances and political opportunism. Meanwhile, the imbalance in terms of the number of prosecutions of anti-balaka and Séléka members remains heavily criticised. Our organisations have repeatedly stressed the need for comprehensive justice covering all those responsible for crimes.¹⁴⁴ The prosecution of one side alone, in any situation,¹⁴⁵ inevitably results in impunity for the other parties involved, the absence of justice for victims who have suffered as a result of their actions, and the impossibility of establishing the truth about the events and of moving into a phase of reparation and reconciliation. This situation also undermines the credibility of the ICC in the eyes of the populations concerned and reduces public confidence in the Court.

142. Table produced by FIDH and its member organisations in CAR on the basis of the analysis in this report.

143. FIDH, "Acquittal of Jean Pierre Bemba on appeal: an affront to thousands of victims", *op. cit.* Following his conviction in 2016, FIDH published a note summarising its 15 years of action in CAR. FIDH and LCDH, 15 years of FIDH action, *op. cit.*; see also FIDH, "All I want is reparation" - Views of victims of sexual violence about reparation in the Bemba case before the International Criminal Court, November 2017 ("FIDH Bemba Reparation Report 2017"), <https://www.fidh.org/IMG/pdf/rca705ang.pdf>.

144. FIDH Press Release on the arrest of Said, *op. cit.*

145. Our organisations have also raised this issue in relation to the situation in Côte d'Ivoire. See FIDH, "Les victimes oubliées de la Côte d'Ivoire" (The forgotten victims of Côte d'Ivoire), 7 March 2018, <https://www.fidh.org/fr/regions/afrique/cote-d-ivoire/les-victimes-oubliees-de-la-cote-d-ivoire>; FIDH, "Towards total impunity for 2010-2011 crimes after acquittal of Laurent Gbagbo and Charles Blé Goudé", 15 January 2019, <https://www.fidh.org/en/issues/international-justice/icc-cote-d-ivoire-towards-total-impunity-for-2010-2011-crimes-after>.

| Advantages | Disadvantages |
|--|---|
| Respect for procedural rights and international fair trial standards | Distance of justice from the situation and, a fortiori, the victims and affected communities |
| Investigation and prosecution of “those bearing the greatest responsibility” without immunity before the ICC | Some imbalance in those prosecuted to date (in terms of the various parties to the conflict), with the risk of creating a perception of a two-tiered justice system |
| Permanent court | Length of proceedings |
| Independence of the institution in selection of proceedings | Dependency for arrests and other cooperation measures |

D) Other actors involved in justice

In addition to the ordinary courts, the SCC and the ICC, as the three central institutions in the fight against impunity in CAR, there are a range of other actors who have played or could play a role in the pursuit of truth and justice for crimes perpetrated on the territory or by Central African nationals.

1. The Commission Vérité, Justice, Réparation et Réconciliation (Truth, Justice, Reparation and Reconciliation Commission - CVJRR)

The CVJRR, established in April 2020,¹⁴⁶ has a mandate of four years (from the date the commissioners were sworn in),¹⁴⁷ renewable once for a maximum period of 24 months,¹⁴⁸ to “investigate, establish the truth and locate responsibilities for serious national events that have taken place between 29 March 1959 [...] and 31 December 2019.”¹⁴⁹ Its main objectives are to establish the truth, pursue justice, restore the dignity of victims and contribute to national reconciliation.¹⁵⁰ To do so, it has “administrative, financial, legal and technical autonomy, and independence of action in relation to the other Institutions of the Republic.”¹⁵¹ This highly ambitious mandate is the result of the emphasis on the need for justice and truth raised in public consultations organised by the Government in 2015, confirmed at the Bangui Forum which followed,¹⁵² and manifested in the APPR-RCA of 6 February 2019.¹⁵³ After a series of national consultations, a draft bill on

146. Central African Republic, *Loi n°20.009 portant création, organisation et fonctionnement de la Commission Vérité, Justice, Réparation et Réconciliation* (Law No. 20.009 on the establishment, organisation and operation of the Truth, Justice, Reparation and Reconciliation Commission), 7 April 2020 (“Law establishing the CVJRR”).

147. The 11 commissioners, including five women, were appointed by a selection committee composed of nine prominent figures from the National Assembly, the Government, civil society, the African Union and the United Nations. See Central African Republic, *Décret 20.435 entérinant la désignation des membres de la Commission Vérité, Justice, Réparation et Réconciliation* (Decree 20.435 approving the appointment of the members of the Truth, Justice, Reparation and Reconciliation Commission), 30 December 2020. The commissioners were sworn in on 2 July 2021. See MINUSCA, *Rapport Mensuel: Analyse de la situation des droits de l'Homme* (Monthly Report: Analysis of the human rights situation), July 2021, https://minusca.unmissions.org/sites/default/files/rapport_mensuel_ddh_juillet_21_final.pdf.

148. Law establishing the CVJRR, *op. cit.*, Article 4.

149. *Ibid.*, Article 1.

150. *Ibid.*, Article 5.

151. *Ibid.*, Article 2.

152. *Pacte républicain pour la paix, la réconciliation et la reconstruction en République centrafricaine* (Republican Pact for Peace, Reconciliation and Reconstruction in the Central African Republic), May 2015 (“Bangui Forum Pact 2015”), <https://hdcentre.org/wp-content/uploads/2016/06/The-Republican-Pact-May-2015.pdf>; Central African Republic, Ministry for Humanitarian Action and National Reconciliation, “Commission Vérité, Justice, Réparations et Réconciliation” (Truth, Justice, Reparation and Reconciliation Commission), <https://www.reconciliation.gouv.cf/projet/15/cvjrr>. For more information on the Bangui Forum, see Amnesty International, CAR Report 2020, *op. cit.*, p. 14-15.

153. APPR-RCA, *op. cit.* In the preamble to the agreement, the parties recognise that “[T]he impunity that reigns has fuelled the infernal cycle of violence, weakened the judiciary, led to large-scale violations of human rights and international humanitarian law, and fomented the people’s mistrust of the State.” Several articles call for the immediate establishment of the CVJRR (e.g. Articles 4.s and 9).

the establishment of this institution was officially submitted to President Faustin Touadéra in January 2020,¹⁵⁴ before being adopted by a vote in the National Assembly. The law establishing the CVJRR was promulgated in April 2020.

Although it is not a judicial mechanism,¹⁵⁵ this new institution has the potential to join the ordinary courts, the SCC and the ICC as a key player in CAR's justice system. In addition to hearings on specific crimes, the CVJRR is empowered to organise "thematic hearings on the main violations committed, in order to identify the root causes and the role played by state or private institutions, such as the Army, the Police, the justice system, education, the financial sector, the media, political parties and their affiliated movements, religious denominations, associations, armed groups and other organisations."¹⁵⁶ With a view to promoting reconciliation, it can also organise rituals "in accordance with the prevailing customs or practices in the region concerned," facilitate an amicable reparative process with the consent of both parties, and propose a series of recommendations, mainly to the Central African state.¹⁵⁷ Such recommendations can focus in particular on measures to "maintain a climate of national reconciliation and tolerance," "reforms necessary to prevent the recurrence of the acts denounced," and "the adoption of a national reparation plan for victims [...], whether in the form of restitution, compensation, rehabilitation, satisfaction or guarantees of non-repetition."¹⁵⁸ This last aspect is particularly important and will be developed further below, in the part focusing on an analysis of the complementarity between the various institutions with jurisdiction.

To fulfil its mandate, the CVJRR has three main bodies, namely: 1. the Plenary Commission, which is the "design, guidance and decision-making body," composed of all the commissioners;¹⁵⁹ 2. the Bureau, which is the body "in charge of coordinating the activities of the CVJRR," composed of the Chairperson and the two Vice-Chairpersons;¹⁶⁰ and 3. the sub-commissions, which are the "working groups in charge of examining issues related to each of its four pillars," i.e. truth, justice, reparation and reconciliation.¹⁶¹ The law establishing the CVJRR also contains a number of provisions on support to be provided to the Commission, notably through so-called administrative and technical support services and the recruitment of national and international experts.¹⁶² The law also provides for the establishment of a victim and witness protection and support unit, which is particularly important for the proper operation of such an institution, comprised of security, legal, gender and psychosocial support experts.¹⁶³

At the time of writing, the CVJRR, based in Bangui,¹⁶⁴ had not yet started its fact-finding activities and was still in a preparatory phase. At best, this demonstrates a disengagement by the government, whose priorities lie elsewhere, and which is not interested in the logistical and practical establishment of the Commission. At worst, it is a sign of deliberate obstruction of its mandate. In any case, victims and affected communities, who are aware of the Commission's existence, remain in limbo and cannot be heard.

154. Justiceinfo.net, "Central African Republic: Ambitious Truth Commission plans", 6 February 2020, <https://www.justiceinfo.net/en/43733-central-african-republic-ambitious-truth-commission-plans.html>.

155. In practical terms, however, the procedure is fairly similar to that of a judicial body, with the possibility to file a complaint, the power to act on its own motion, public or closed testimony depending on the circumstances, the possibility to request searches and to hear "any person likely to facilitate its work aimed at establishing the facts". Amicable settlements reached between the parties have the force of *res judicata*, so that failure to respect or implement them may lead to referral to courts and tribunals with jurisdiction. Law establishing the CVJRR, op. cit, Articles 44, 54, 51, 55 and 59.

156. *Ibid.*, Article 57.

157. *Ibid.*, Articles 61 and 59.

158. *Ibid.*, Article 65.

159. *Ibid.*, Article 22. The law establishing the CVJRR provides that commissioners must be "public figures recognised for their reputation, their commitment to peace, their moral integrity as well as their ability to transcend divisions of any kind. They must have expertise in the area of human rights protection, conflict resolution, history and anthropology, gender issues and child protection" or any related area (Article 8). They may have a background in civil society, the Bar Association, academia, religious associations, victims' associations, women's associations and youth representation.

160. *Ibid.*, Article 27.

161. *Ibid.*, Articles 30 and 31.

162. *Ibid.*, Articles 33 and 34.

163. *Ibid.*, Article 36.

164. *Ibid.*, Article 3. However, the CVJRR seems to have only been provided premises at a very late stage, in August 2022.

These difficulties were widely raised during the consultations conducted for this report, along with a general reflection about whether such an institution could function in a context of continuing crisis, with serious security risks for those who speak out, and with limited political commitment. The scope of the mandate also raises some doubts, with crimes still being perpetrated on a daily basis. Some also argued that this institution, like the Special Criminal Court, was established too early, deploring the false hope given to victims by a commission that will, in reality, face significant difficulties working in the current context. The same interviewees also raised the important question of whether the Commission was truly the result of the popular will or just one of the international community's traditional tools applied to any supposed post-crisis situation, and thus whether there was any likelihood that Central Africans would have a sense of ownership of the institution.

For others, however, the existence of the CVJRR is viewed as an opportunity and they welcome the progress made since its establishment in early 2020. In October 2021, a “workshop to approve the basic texts of the CVJRR” was held in Bangui. Participants in the workshop are reported to have worked on “finalising and adopting draft 01 of the Rules of Procedure, finalising and adopting the commission’s organisational chart, proposing and adopting the commissioners’ pay scale, drawing up and adopting a provisional work plan and approving the framework of the national strategy.”¹⁶⁵ In early 2022, the CVJRR’s Vice-Chairperson shared an overview of the Commission’s recent activities, including the preparation of various documents such as the intervention strategy handbook, the annual operating budget, the annual work plan and the activity report covering the period July–December 2021. He announced that an “immersion trip to South Africa [had been conducted] to understand the mechanism of transitional justice and the truth commission,” which gave members of the Commission a better understanding of the benefits, limitations and constraints of transitional justice.¹⁶⁶ The results of our consultations also suggest that, provided its mandate is implemented in an effective and meaningful way, the CVJRR can contribute to efforts to achieve justice in CAR. The population is aware that it would be impossible to prosecute all those responsible for crimes perpetrated in the numerous Central African crises and holds out hope that the Commission will contribute to establishing the truth and to reconciliation within communities.

2. Informal or traditional justice

In remote areas where the formal justice system is limited and/or dysfunctional, “[t]raditional justice has played a role in settling cases before, during, and after the conflict.”¹⁶⁷ It “brings together reconciliation, mediation, and arbitration among conflicting parties.”¹⁶⁸ Traditional justice is mainly delivered by village and customary chiefs. It contributes to filling the gaps and offers an option that is often quicker, cheaper, closer to communities and less complex than formal justice. In this context, the place and role of traditional justice are themes that often emerge in discussions and reflections on peace and the fight against impunity in CAR.¹⁶⁹

165. Réseau des journalistes pour les droits de l’Homme RJDH – Centrafrique, “Centrafrique: Vers la validation des textes de base de la CVJRR” (Central African Republic: Progress towards the approval of the basic texts of the CVJRR), 6 October 2021, <https://www.rjdhrca.org/centrafrique-vers-la-validation-des-textes-de-base-de-la-cvjrr/>.

166. Oubanguimedias, “Centrafrique: La CVJRR fait un aperçu sur ses récentes activités” (Central African Republic: The CVJRR outlines its recent activities), 4 February 2022, <https://oubanguimedias.com/2022/02/04/centrafrique-la-cvjrr-fait-un-apercu-sur-ses-recentes-activites/>.

167. International Center for Transitional Justice (ICTJ), “A drop of water on a hot stone,” *Justice for victims in the Central African Republic*, March 2021, p. 26 (“ICTJ, Justice for victims in CAR”), https://www.ictj.org/sites/default/files/ICTJ_Report_CAR_EN.pdf.

168. *Ibid.*, p. 22.

169. See for example Bangui Forum Pact 2015, *op. cit.*; CAR, Ministry of Justice and Human Rights, “Étude sur les mécanismes et les acteurs de la justice informelle en Centrafrique” (Study on the informal justice mechanisms and actors in the Central African Republic), July 2018; CAR, Ministry of Justice and Human Rights, “La Justice Informelle en République Centrafricaine: Un Champ qui nécessite un Engagement Prioritaire” (Informal Justice in the Central African Republic: a sector requiring priority engagement), July 2018; CAR, Sectoral Justice Policy 2020–2024, *op. cit.*

In practice, however, while it appears that customary chiefs are sometimes called upon to hear criminal cases (including cases of sexual violence),¹⁷⁰ their interventions mainly focus on civil and family disputes.¹⁷¹ This is due to the lack of skills and resources, but also the insecurity and risk for those involved in cases concerning armed groups, including victims and witnesses as well as religious leaders themselves.¹⁷² Recently, several initiatives have been developed, aimed at ensuring improved coordination and complementarity between formal and informal justice mechanisms, building the capacity of traditional leaders, and setting limits to their interventions.¹⁷³

3. Military courts

In parallel to the ordinary courts, CAR has military courts that have been operational since July 2020. Article 1 of the Central African Military Justice Code, adopted in March 2017, provides that “Military justice is dispensed throughout the national territory by military courts, courts martial, courts of appeal and the Court of Cassation.”¹⁷⁴ In theory, these military courts only have jurisdiction over offences perpetrated by military personnel or those assimilated to military personnel. Article 22 of the Military Justice Code thus provides that “ordinary courts retain [...] jurisdiction where one of the co-perpetrators or accomplices is not subject to the jurisdiction of the military courts, including minors.”¹⁷⁵

However, articles on the jurisdiction of military courts in peacetime¹⁷⁶ and wartime¹⁷⁷ are open to broad interpretation that could give rise to conflicts of jurisdiction with ordinary courts, including in relation to crimes perpetrated by and against civilians. In peacetime, military courts can therefore hear both “purely military” offences, as defined in the Central African Military Justice Code, and offences under ordinary law “committed by military personnel or persons assimilated to military personnel during the course of their work.”¹⁷⁸ In times of war or siege, these courts have jurisdiction over “crimes, misdemeanours, offences and hostile acts against any military or assimilated person,” perpetrated by “any civilian or military person.”¹⁷⁹ The list of persons who can be qualified as “assimilated” includes “any civilian who has taken up arms or who has participated in an armed organisation against the Republic.”¹⁸⁰ These provisions raise the risk of extensive and biased military justice. These concerns were raised during our consultations, but also in recent reports by Amnesty International,¹⁸¹ according to which the first sessions of the military courts held in Bangui in September 2021 concerned crimes against civilians.¹⁸²

170. According to a survey conducted in 2020, most victims of sexual violence tend to first approach the village chief. CAR Surveys 2020, *op. cit.*, p. 26.

171. ICTJ, Justice for victims in CAR, *op. cit.*, p. 26-27, 22. See also Radiondeluka.org, “Centrafrique: la justice traditionnelle, principal moyen de conciliation du village Ndangala” (CAR: traditional justice, the main tool for conciliation in Ndangala village), 12 July 2021, <https://www.radiondeluka.org/actualites/societe/37177-centrafrique-la-justice-traditionnelle-principal-moyen-de-conciliation-au-village-ndangala.html>.

172. ICTJ, Justice for victims in CAR, *Ibid.*, p. 12.

173. See for example MINUSCA, “Préfecture de Mbomou: mise en place d’un cadre de concertation sur les mécanismes informels et formels de la justice” (Prefecture of Mbomou: development of a consultation framework on informal and formal justice mechanisms), 20 December 2021, <https://minusca.unmissions.org/pr%C3%A9fecture-du-mbomou-mise-en-place-d%E2%80%99un-cadre-de-concertation-sur-les-m%C3%A9canismes-informels-et>; MINUSCA, “Rafai: 20 acteurs de la justice informelle, formés et sensibilisés sur l’accès à la justice” (Rafai: 20 informal justice actors trained and made aware of access to justice), 19 March 2022, <https://minusca.unmissions.org/rafai%C2%A0-20-acteurs-de-la-justice-informelle-form%C3%A9s-et-sensibilisés-sur-l%E2%80%99accès-à-la-justice>.

174. CAR, *Loi n° 17.012 portant code de justice militaire centrafricain* (Law No. 17.012 establishing the Central African Military Justice Code), 24 March 2017, Article 1.

175. *Ibid.*, Article 22.

176. *Ibid.*, Article 21.

177. *Ibid.*, Article 23.

178. *Ibid.*, Article 21.

179. *Ibid.*, Article 23.

180. *Ibid.*, Article 26.

181. See in particular Amnesty International, CAR Report 2020, *op. cit.*, p. 35-36; Amnesty International, *One step forward, two steps backwards – Justice in the Central African Republic*, 2021, p. 13 (“Amnesty International CAR Report 2021”), <https://www.amnesty.org/en/documents/afr19/5038/2021/en/>.

182. Amnesty International CAR Report 2021, *Ibid.*, p. 13.

Such extensive jurisdiction of military courts is contrary to international law, as reflected in the UN Principles Governing the Administration of Justice Through Military Tribunals, or “Decaux Principles” after the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights who drafted them.¹⁸³ Two of these principles are particularly relevant in this context:

Principle 5 “Military courts should, in principle, have no jurisdiction to try civilians. In all circumstances, the State shall ensure that civilians accused of a criminal offence of any nature are tried by civilian courts.”

Principle 9 “In all circumstances, the jurisdiction of military courts should be set aside in favour of the jurisdiction of the ordinary courts to conduct inquiries into serious human rights violations such as extrajudicial executions, enforced disappearances and torture, and to prosecute and try persons accused of such crimes.”

The latter principle is also included in the “Updated set of principles for the protection and promotion of human rights through action to combat impunity”, which states that “The jurisdiction of military tribunals must be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalized criminal court.”¹⁸⁴

4. Foreign courts and the principle of universal jurisdiction

The principle of universal or extraterritorial jurisdiction provides that a state may try those responsible for the most serious crimes, irrespective of where the crimes were committed, and irrespective of the nationality of the perpetrator or that of the victims. This jurisdiction, which varies according to the legislation applicable in each state, is often exercised when the person is present on the territory of the state in question.

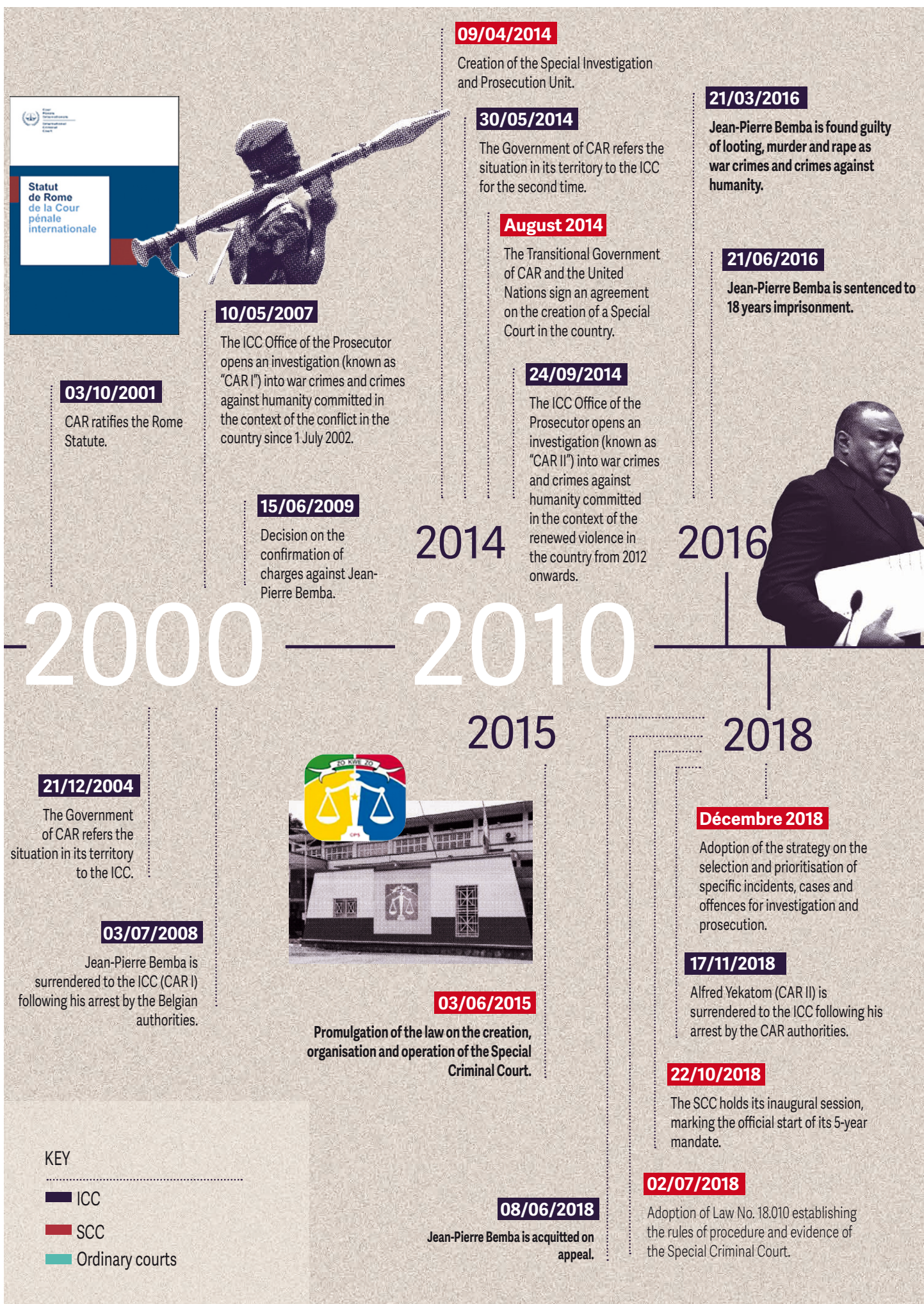
There have been few cases in foreign courts concerning the situation in Central African Republic. In France, a case against **anti-balaka** militia leader **Eric Danboy Bagale**, former head of François Bozizé’s presidential guard, is underway. Bagale was arrested on 15 September 2020 and indicted a few days later. He is accused of torture, enforced disappearances, crimes against humanity, war crimes and complicity in these crimes committed in CAR between 2007 and 2014.¹⁸⁵ The case is ongoing.

183. Commission on Human Rights, *Civil and political rights, including the question of independence of the judiciary, administration of justice, impunity, Issue of the administration of justice through military tribunals, Report submitted by the Special Rapporteur of the Sub-Commission on the promotion and protection of human rights, Emmanuel Decaux*, E/CN.4/2006/58, 13 January 2006, <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=E/CN.4/2006/58&Lang=E>.

184. Commission on Human Rights, *Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, E/CN.4/2005/102/Add.1, 8 February 2005, Principle 29, <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=E/CN.4/2005/102/Add.1&Lang=E>.

185. Trial International et al, *Universal Jurisdiction Annual Review 2022*, 2022, p. 39, https://www.fidh.org/IMG/pdf/trial_ujar_25_03_2022_digital.pdf.

Universal jurisdiction, as complementary to national and international courts with direct jurisdiction to try crimes perpetrated in CAR, can be a useful tool to combat impunity, especially in cases where those allegedly responsible for serious crimes under international law are present on the territory of third countries, and are therefore beyond the reach of Central African justice.



23/01/2019

Patrice-Edouard Ngaïssona (CAR II) is surrendered to the ICC following his arrest by the French authorities.

23/09/2019

Abdoulaye Alkali Said is found guilty of criminal conspiracy and sentenced by the Bangui Criminal Court. The charges filed against him by the Prosecutor-General included war crimes and crimes against humanity.



11/12/2019

Decision partially confirming charges against Alfred Yekatom and Patrice-Edouard Ngaïssona.

24/01/2021

Mahamat Said Abdel Kain (Said – CAR II) surrendered to the ICC following his arrest by the CAR authorities.

16/02/2021

Opening of the trial against Alfred Yekatom and Patrice-Edouard Ngaïssona.

10/09/2021

Eugène Ngaïkosset appears before the Investigating Chamber.

November 2021

Hassan Bouba, Minister of Livestock, is arrested, then escorted back to his home a few days later, in violation of ongoing judicial proceedings.

December 2021

Ousman Yaouba, Tahir Mahamat and Issa Sallet Adoum are prosecuted before the *Chambre d'assise* for their involvement in the May 2019 killings in Koundjili and Lemouna. This case is the SCC's first trial.

09/12/2021

Decision partially confirming charges against Said.

2020

2020

13/11/2020

Inauguration of the SCC's premises.



07/02/2020

Anti-balaka militia leaders Kevin Bere Bere, Romaric Mandago, Crépin Wakanam (a.k.a Pino Pino), Patrick Gbiako and Yembeline Mbenguia Alpha, as well as 23 other militia members under their command, are convicted by the Bangui Criminal Court, including on counts of war crimes and crimes against humanity, for events that took place in Bangassou in May 2017.

2022

26/09/2022

Opening of the trial against Mr Said.



19/04/2022

Official opening ceremony of the trial against Ousman Yaouba, Tahir Mahamat and Issa Sallet Adoum. Proceedings are adjourned immediately after the opening, with the trial only resuming on 16 May 2022.

March 2022

Maxime Jeoffroy Eli Mokom Gawaka (CAR II) is surrendered to the ICC following his arrest by the Chadian authorities.

CENTRAL AFRICAN REPUBLIC

20 YEARS OF EFFORTS TO ACHIEVE JUSTICE

V. Analysis of complementarity

In theory, CAR has sufficient tools to fight impunity of those responsible for crimes under international law and serious human rights violations perpetrated on its territory. Very few other situations have courts at several levels (national, hybrid, international), in addition to a truth and reconciliation commission, with the possibility of hearing a large number of cases. In practice, however, as mentioned above, the various courts face numerous obstacles that weaken the fight against impunity and the pursuit of truth in the country. It is therefore all the more essential that they respect the principle of complementarity, in order to cover as many crimes, perpetrators and cases as possible, in a timely manner, while respecting international human rights standards and the rights of victims to full participation in proceedings.

A) Complementarity as specified in the mandates

1. Ordinary courts

Complementarity between ordinary courts and the Special Criminal Court is provided for in the texts governing the SCC (see below).

In relation to complementarity between the ordinary courts and the ICC, Article 344 of the Code of Criminal Procedure provides that CAR “shall participate in the repression of offences and cooperate with this Court”.¹⁸⁶ The modalities of such cooperation are specified in the subsequent articles.¹⁸⁷ The Code defines procedures governing mutual legal assistance,¹⁸⁸ the arrest and surrender of suspects,¹⁸⁹ and the enforcement of sentences (fines, forfeiture and/or imprisonment) and reparation measures issued by the ICC.¹⁹⁰ On this last aspect, the Code of Criminal Procedure specifies, for example, that following “authorisation by the criminal court to enforce [the ICC’s request]”, the competent authorities may “transfer the proceeds of fines and forfeited property or the proceeds of their sale to the Court or to the Trust Fund for Victims” or directly “allocate them to the victims, if the court so decides and has designated them”.¹⁹¹

2. Special Criminal Court

The issue of complementarity between the SCC and other courts with potential jurisdiction to prosecute those responsible for crimes falling under its mandate has been raised since the institution’s inception. In its prosecutorial strategy, the SCC asserts, in general terms, that “[t]he selection of cases by the SCC must take into account the role of other courts with concurrent jurisdiction to that of the SCC, and the rules of primacy of jurisdiction and complementarity that govern them”.¹⁹²

186. Code of Criminal Procedure, *op. cit.*, Article 344.

187. *Ibid.*, Part XIV, “On cooperation with the International Criminal Court”.

188. *Ibid.*, Articles 345 to 347. The articles on mutual legal assistance are very vague, with the exception of Article 347, which specifically refers to the implementation of provisional measures, as provided for in the Rome Statute (Article 93(1)(k)), namely “[t]he identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture”.

189. *Ibid.*, Articles 348 to 358. The Code of Criminal Procedure outlines the applicable procedure and time limits and recognises, in Article 358, that “any person detained in the territory of the Central African Republic may, if he/she consents, be transferred to the International Criminal Court for the purpose of identification or hearing or in application of any other indictment.”

190. *Ibid.*, Articles 359 to 363.

191. *Ibid.*, Article 360.

192. SCC, Stratégie d’enquêtes, de poursuites et d’instruction, *op. cit.*, para. 21.

The law establishing the SCC, as reflected in the prosecutorial strategy, provides for the primacy of the SCC's jurisdiction over the ordinary courts "to investigate and prosecute cases under its mandate".¹⁹³ Within this framework, the Special Prosecutor of the SCC, who is responsible for the initiation of prosecutions,¹⁹⁴ determines whether a case falls within the jurisdiction of the Court or of ordinary criminal courts, and can, on this basis, request the opening of an investigation, the removal of the case from the Prosecutor's Office to which it was initially referred in the event that an investigation has already been opened,¹⁹⁵ or the transfer of the case to the ordinary courts.¹⁹⁶ Thus, the SCC has primacy of jurisdiction over ordinary courts to conduct investigations and prosecutions,¹⁹⁷ but does not replace them.¹⁹⁸ This strategy was adopted on the basis of the SCC's temporary status, and therefore the impossibility for it to have sole jurisdiction over the most serious crimes committed in the country.¹⁹⁹

However, the law also provides that the SCC must decline jurisdiction over any case already under consideration by the ICC Prosecutor,²⁰⁰ thereby establishing the primacy of the ICC's jurisdiction. This approach, described by some as reverse complementarity,²⁰¹ appears to contradict the principle of complementarity in the Rome Statute (see below).

3. International Criminal Court

The situation in CAR has been referred to the ICC, which may hear further cases against those suspected of bearing greatest responsibility for the crimes under the Rome Statute which have been committed in CAR, i.e. those persons "who appear to be the most responsible for the identified crimes".²⁰² According to the Preamble and Article 17 of the Rome Statute, however, the ICC only intervenes as a court of last resort.²⁰³ It complements the jurisdiction of national courts, which retain primacy of prosecution. Thus, CAR has primary responsibility to investigate and prosecute crimes committed on its territory. It is only in cases where Central African national courts (ordinary courts and/or the SCC) have not done so, or are unwilling or unable to do so, that the ICC can intervene and exercise jurisdiction.

Article 17 of the Rome Statute provides that:

1. [...] a case is inadmissible where:

- a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
- b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted

193. Law establishing the SCC, *op. cit.*, Article 36. See also Articles 3 and 35.

194. *Ibid.*, Article 35.

195. *Ibid.*, Article 36.

196. *Ibid.*, Article 35.

197. SCC, Stratégie d'enquêtes, de poursuites et d'instruction, *op. cit.*, paras 10, 22 and 23.

198. *Ibid.*, para. 24.

199. *Ibid.*, para. 10.

200. *Ibid.*, para. 25; Law establishing the SCC, *op. cit.*, Article 37.

201. See, for example, Patryk Labuda, "The Special Criminal Court in the Central African Republic. Failure or Vindication of Complementarity?," *Journal of International Criminal Justice*, vol. 15, 2017, p. 175-206; Jules Guillaumé, "La Cour pénale spéciale en République Centrafricaine: un modèle novateur de justice internationale?" (The Special Criminal Court in the Central African Republic: an innovative model of international justice), in Julian Fernandez (dir.), *Justice pénale internationale* (International criminal justice), Paris: CNRS Éditions, 2016, p. 297.

202. ICC, Office of the Prosecutor, *Policy paper on case selection and prioritisation*, 15 September 2016, p. 15, https://www.icc-cpi.int/sites/default/files/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf.

203. The preamble recalls "that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes", and emphasises that "the International Criminal Court [...] shall be complementary to national criminal jurisdictions". See Rome Statute, *op. cit.*, Preamble.

from the unwillingness or inability of the State genuinely to prosecute;

c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under Article 20, paragraph 3 [...].

In relation to the unwillingness and inability of a state, Article 17 provides that:

2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in Article 5;

b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;

c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

In accordance with these provisions, the ICC has jurisdiction over crimes under the Rome Statute committed in CAR by individuals bearing the greatest responsibility, where domestic courts have decided not to investigate or prosecute such crimes. If, on the other hand, the ICC is interested in a person in relation to whom an investigation or prosecution is already underway in national courts, the ICC Office of the Prosecutor is required to conduct an analysis of the genuine ability and willingness of the Central African courts to carry out such investigations and prosecutions in accordance with international standards. In the event that such analysis shows that national courts are able and willing to do so, the ICC should declare that it has no jurisdiction to hear the case. If the contrary is established, the ICC is entitled to exercise jurisdiction.

Based on the Rome Statute and interpretation of its provisions, the ICC has a dual approach to the principle of complementarity: vigilance and partnership. On the one hand, the Court reminds states of their obligations and threatens to intervene if they do not fulfil them, or do not do so "properly". On the other hand, the Court, and in particular the Office of the Prosecutor, can support national authorities in their pursuit of justice through various forms of assistance.²⁰⁴ The latter approach is called "positive complementarity" and involves closer cooperation between the Court and states, sharing experience and assisting efforts at the national level. In May 2022, at a high-level conference on cooperation and complementarity organised by the ICC, Deputy Prosecutor Mame Mandiaye Niang underlined the importance of this approach for the Office of the Prosecutor, "one where the ICC contributes to building the capacities of national authorities and is in constant communication with them to reduce as much as possible the impunity gap".²⁰⁵

204. See for example ICC, Office of the Prosecutor, *Informal expert paper: The principle of complementarity in practice*, 14 September 2006, https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2009_02250.PDF.

205. ICC, "ICC holds high-level regional conference on cooperation and complementarity in Senegal", 25 May 2022, <https://www.icc-cpi.int/news/icc-holds-high-level-regional-conference-cooperation-and-complementarity-senegal>.

4. CVJRR

The law establishing the CVJRR provides that the Commission may “issue recommendations on the transfer of cases to the Special Criminal Court and other courts with jurisdiction.”²⁰⁶ It adds that “in the fulfilment of its mandate, the CVJRR shall benefit from the collaboration of all national and international institutions, as necessary. In its pursuit of truth and justice, the CVJRR shall collaborate with the SCC and national courts. A formal framework for collaboration shall be established to ensure the effectiveness of their respective actions”.²⁰⁷ At the time of writing, it appeared that no such framework for collaboration had been developed.

B) Complementarity in practice

During the consultations held in June and July 2022 for the preparation of this report, the issue of complementarity between the various institutions with jurisdiction to deal with crimes under international law and serious human rights violations in CAR was considered central. Interviewees, members of civil society and staff of the relevant institutions, provided an overview of the implementation of complementarity in practice and raised many key questions and concerns.

1. Interaction between the ICC and the SCC: a relationship under construction

The issue of complementarity between the ICC and the SCC arose in the case of Alfred Yekatom, currently on trial before the ICC. Following the confirmation of charges decision committing the accused to trial, the defence challenged the Court's jurisdiction in this case on the basis of the principle of complementarity. Several arguments were put forward, including the assertion that since the SCC's inception, the authorities in CAR were now in a position to hear such cases.²⁰⁸ The defence argued that this institution should be given the opportunity to take up the case and, a fortiori, that the ICC should declare the case inadmissible so as not to impede proceedings at the national level.²⁰⁹ The judges dismissed the defence request, considering it irrelevant in that case to consider the willingness or ability of national authorities, where there was inaction at the time of proceedings when the analysis had to be made.²¹⁰ The mere existence of a national institution with jurisdiction does not remove a case from the ICC's jurisdiction, nor does it render the case inadmissible before the Court. The institution must be active in relation to the case in question, in accordance with Article 17 of the Rome Statute.

While this decision provides some insight into the relationship between the ICC and the SCC, the consultations revealed that understanding the division of cases between the two institutions remains difficult. At this stage, it is almost impossible to predict which individuals will be tried by one institution rather than the other and on what basis. It is important to bear in mind the need to ensure confidentiality of investigations carried out by both institutions, which entails the impossibility of sharing certain information that would contribute to a better understanding of the distribution of cases. Yet, confidentiality is not the only reason for the lack of understanding. In the absence of clear criteria or a written document explaining the procedure for deciding on the distribution of cases, the basis for these decisions remains unclear. While the mandates and prosecutorial policy and strategy documents presented above offer some answers, they are insufficient to explain the reason, for example, that an official considered to bear relatively low responsibility such as Mahamat Said ended up before the ICC judges in The Hague, rather than the SCC judges in Bangui.

206. Law establishing the CVJRR, *op. cit.*, Article 65.

207. *Ibid.*, Article 38.

208. ICC, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona, Decision on the Yekatom Defence's Admissibility Challenge*, ICC-01/14-01/18-493, 28 April 2020, para. 5; ICC, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona, Yekatom Defence's Admissibility Challenge – Complementarity*, ICC-01/14-01/18-456, 17 March 2020.

209. *Ibid.*, para. 6.

210. *Ibid.*, paras 19-21.

This issue is particularly relevant in the context of the discussions underway on the possibility of holding some hearings in this case in Bangui, including in SCC's premises. The consultations revealed very mixed views about this. While civil society, including FIDH and its Central African member organisations, are generally in favour of bringing the ICC closer to the situations it deals with, in order to reduce the distance in relation to victims and affected communities, this case may not be the best starting point. Several issues were raised, including: the risk of escape; the security of the staff involved in efforts to achieve justice; the practical difficulties for the SCC (the SCC has only one courtroom which would therefore be requisitioned) and in terms of resources (it would entail an investment of financial and human resources, an accompaniment and support system which would be diverted to the ICC) at a time when the SCC is finally starting its own hearings, following a long wait. Several members of civil society also raised problems related to the perception of victims, affected communities and the population as a whole. Why relocate this case and not another? Why only a case involving a member of the Séléka? If it were to be held outside SCC's premises (e.g. in a local hall, according to some rumours), what location would be chosen and why? If it were to be held at the SCC, how can the fact that the accused is being prosecuted by the ICC be justified, or at least explained?

Furthermore, given that the ICC has been investigating the situation for longer, it has obviously already investigated a number of incidents, and even individuals, of interest to the SCC. How, then, do the institutions avoid duplication of work? As investigations are confidential on both sides, and each has a mandate that gives primacy to the other, how will a potential conflict be resolved? How to avoid the duplication of interviews with the same victims and witnesses, potentially leading to retraumatisation in breach of the "do no harm" principle?²¹¹

All these questions were repeatedly raised during consultations. However, answers are limited. It appears that there has been some dialogue between the different organs of the ICC and the SCC (in particular the Prosecutors' Offices, the investigating judges and the Registries), in addition to several exchange and capacity building workshops and training sessions. According to interviewees, including from the institutions concerned, informal and formal requests for cooperation have also been made in both directions, some of which have been successful. This is one aspect of the "positive complementarity" mentioned above. Despite this, obstacles to fully effective cooperation remain. Each institution is governed by different internal procedural requirements and an even more different timeframe, leading to disparities between the expectations of one and the capacities of the other. During consultations, for example, regrets were expressed by some in the SCC that the ICC's responses to requests for cooperation were slow, hindering some investigations and creating delays that pose serious problems given the SCC's short mandate. These slow responses also place SCC investigators in a difficult situation, re-interviewing victims who have already shared their experience with the ICC, while such victims do not necessarily perceive the difference between the SCC and the ICC, especially in the provinces. From the ICC's perspective, concerns focused on victim and witness protection (see below), which remains an obstacle to information sharing with the SCC.

Cooperation difficulties between the ICC and national courts, notwithstanding some progress in recent years, continue to be a source of widespread criticism. Although the Court places a strong emphasis on so-called positive complementarity, exchanges remain limited, particularly in terms of sharing information gathered in preliminary examinations and investigations. While it is essential to ensure that the disclosure of information to other judicial institutions does not put victims and witnesses at risk, the failure to share information significantly weakens efforts to achieve justice at the national level, where resources and expertise are often more limited. In general, such criticisms are mainly related to situations where a preliminary examination has been closed without investigation or where incidents investigated by the Office of the Prosecutor have not been included in the charges confirmed for trial. The information and evidence gathered, especially where it is not used, should be shared with other relevant courts, including, as a matter of priority, those of

211. This principle "is a key ethical principle and obligation that guides any humanitarian, human rights or accountability interventions. It imposes upon intervening actors the duty to analyse the possible negative impacts of their actions, particularly on victims, witnesses, and affected populations, and to accordingly put in place measures to prevent or minimise such harm". FIDH, *Sexual and gender-based violence: A glossary from A to Z*, 2020, "Do no harm" principle, pp. 52-53, https://www.fidh.org/IMG/pdf/atoz_en_book_screen.pdf.

the country concerned if they can demonstrate a sufficient degree of independence.²¹² It emerged from our consultations, but also from other activities recently conducted by our organisations in situations under investigation or preliminary examination by the ICC, that there is lack of “two-way” cooperation between the ICC, which makes cooperation strictly conditional, and national courts, which more readily pass on information to the Court.

2. Multiplicity of actors involved in the fight against impunity: need for effective complementarity and cooperation

- Ensuring more equitable consideration of national courts

In theory, ordinary courts have jurisdiction to try those responsible for crimes, including war crimes and crimes against humanity, and have shown their capacity to do so. In reality, as discussed at the beginning of this report, such prosecutions are particularly complex and are not necessarily adapted to the sporadic nature and short duration of criminal sessions in CAR,²¹³ as well as to the limited capacity of most ordinary courts. Thus, some consider the creation of a specialised institution to try such crimes, the SCC, as a necessary support to the Central African justice system, without precluding the jurisdiction of ordinary courts. For others, the significant human and financial resources allocated to the SCC have diverted efforts aimed at strengthening the capacity of the ordinary justice system, or at least have deprived it of the resources that are essential to its proper operation. Several interviewees also reported a certain degree of animosity between judges, prosecutors and other judicial staff in the ordinary courts and those involved in the SCC, partly due to differences in working conditions.

In light of these divisions, and in order to build a strong and sustainable justice system, it is essential to ensure that complementarity, not only between the ICC and the SCC, but between all courts with jurisdiction, is effective. Consultations revealed that major doubts exist concerning the division of cases between the SCC and the ordinary courts. The only point about which all interviewees seemed clear is that the SCC Prosecutor’s Office controls this distribution. Although its status gives it primacy over ordinary courts, any decision to refer a case must be properly reasoned to avoid further frustration.

Only a well-established system of complementarity between the various courts will make it possible to hold accountable a maximum number of perpetrators and to contribute to combating impunity in CAR. Despite existing obstacles and clear needs for improvement, the central role played by ordinary courts in CAR should be recognised. At the end of the SCC’s mandate, they will be required to pursue investigations and prosecutions against those responsible for ordinary crimes, as well as crimes under international law and serious human rights violations. Thus, it cannot and should not be the case that all efforts are concentrated on the SCC - an ad hoc justice mechanism for a crisis situation - to the exclusion of other courts. It is important to develop training programmes, capacity-building initiatives and sharing of expertise among all individuals involved in efforts to achieve justice in CAR, particularly in relation to crimes under international law and serious human rights violations. The appointment of international lawyers to work with the SCC’s *Corps spécial* and share their expertise is a good example of a system that could be extended for the benefit of lawyers practising in ordinary courts.

212. This issue was also raised by the independent experts reviewing the performance of the ICC. See *Independent Expert Review of the International Criminal Court and the Rome Statute System, Final Report*, ICC-ASP/19/16, 30 September 2020, para. 735. The experts note that “[s]haring information and evidence could be used to catalyse additional prosecutions, beyond the limited scope of the OTP”.

213. On the difficulties associated with the sporadic nature of sessions and the need for a permanent justice system, see in particular Amnesty International, CAR Report 2020, *op. cit.*, p. 27 et seq.

- Ensuring clarification of roles and greater cooperation between truth-telling mechanisms, criminal courts and national authorities

Beyond these courts, it is also important for the actors involved in the justice system to consider the CVJRR, in order to ensure that the Commission can fulfil its mandate. The CVJRR will hear victims and those responsible for crimes perpetrated during the successive crises in CAR, including crimes under the jurisdiction of the above-mentioned courts. Given that its mandate provides for the power to “make recommendations on the measures to be taken [in relation to those responsible for violations],”²¹⁴ and even to refer cases to the SCC and other courts with jurisdiction, it is essential to clarify the procedure and the relationship with the other courts. This is also crucial in order to ensure that all stakeholders are involved in dialogue. In the absence of clarification of the practical consequences of testifying, it is highly unlikely, as repeatedly emphasised during consultations, that those responsible for crimes and other violations will agree to do so, thereby undermining efforts to establish the truth. On the other hand, it is equally important to ensure that there are limits on potential agreements, so that these do not allow individuals to escape justice and to use the Commission as a way out. While the law establishing the CVJRR does not mention amnesties,²¹⁵ one of its tasks is to “put in place a programme of actions to promote forgiveness and reconciliation”.²¹⁶ In many conflict and post-conflict societies, “forgiveness and reconciliation” are manifested in a form of impunity. Furthermore, as noted above, amicable settlements can be reached before the Commission, and these have the force of *res judicata*.²¹⁷ Although the law specifies that such arrangements concern “compensation or settlement”, it is essential to clarify the interaction between them and potential criminal proceedings.

In order to increase the budget allocated to the justice system, to ensure that increased financial and human resources are allocated to the fight against impunity, and to guarantee effective state commitment, Central African authorities, including local political leaders, should be involved in the various efforts to achieve justice, while respecting the principles of independence and impartiality of judicial institutions. In this regard, we welcome the initiative shared in June 2022 by the ICC Office of the Prosecutor to partner with national authorities, the Argentine Forensic Anthropology Team and the Columbia Law School Human Rights Clinic, in order to conduct forensic examination, including autopsies, the analysis of artefacts and sampling, on the remains of victims in CAR.²¹⁸ While, as Prosecutor Khan pointed out, this initiative contributes to the ongoing ICC investigation, it will also help to provide answers to the families and build the capacity of national authorities (police, medical and judicial) in the area of forensic investigation.²¹⁹ This is an example of application of the principle of positive complementarity, whose effects can extend beyond specific courts, and a good example of cooperation with local authorities. Such initiatives could, in the long term, lead to the creation of a body of professional experts who could intervene independently in the various courts in CAR.

214. Law establishing the CVJRR, *op. cit.*, Article 6.

215. FIDH and its member organisations underline that amnesties for war crimes, crimes against humanity, genocide and other serious human rights violations violate international law. Under the main international and regional human rights instruments, states have an obligation to prosecute those responsible for such crimes and violations and to ensure the respect of victims’ rights to truth, justice and reparation.

216. *Idem*.

217. *Ibid.*, Article 59.

218. ICC, “Office of the Prosecutor of the International Criminal Court partners with national authorities and international experts in the forensic analysis of remains of victims in the Central African Republic”, 23 June 2022, <https://www.icc-cpi.int/news/office-prosecutor-international-criminal-court-partners-national-authorities-and-international>.

219. *Idem*.

- Ensuring a victim-centred approach in efforts to achieve justice and close interaction with civil society

Civil society plays a central role in efforts to achieve justice, whether at the national, regional or international level. Its activities should therefore be supported and protected, and it should be consulted and informed by justice mechanisms, particularly where these organisations work with victims and affected communities. NGOs take many risks to ensure victims' access to justice, to reach communities in provinces to which the authorities and/or personnel of judicial institutions do not travel, to inform victims and affected communities of existing proceedings in which they could participate and to support them in the event of participation. Often, they also intervene to ensure the respect of victims' rights during proceedings, including by making sure that victims play a central role at all stages of proceedings. In this way, civil society provides crucial support to justice mechanisms, which, in some cases, heavily rely on these actors to fulfil their mandate. Civil society should therefore receive support – particularly financial support – from both national authorities and the international community.

3. Victim protection and reparation measures: the need for a comprehensive and harmonised approach

Victim and witness protection during judicial proceedings in CAR (before the ordinary courts and the SCC) was an issue at the centre of the consultations conducted for the preparation of this report. This is a core concern in CAR, which needs to be addressed urgently. While there has been some progress, particularly at the level of the SCC, which has a specific programme and a Victim and Witness Protection and Support Unit, civil society and several members of the judiciary interviewed remain concerned by the level of protection offered, which they consider to be highly inadequate in a crisis situation, such that in CAR.

Since guaranteeing adequate and sustainable protection for victims and witnesses is a primary necessity of any justice effort, it should be considered as a whole, rather than dealt with separately by each institution. A discussion should be held with a number of key actors in the fight against impunity in CAR, on minimum standards of protection, the means at the disposal of each institution, the obstacles encountered, and other practical issues. This discussion should bring together representatives of the various judicial institutions (judges/prosecutors and lawyers) but also CVJRR commissioners, Central African authorities (including local authorities), UN entities present in the country (in particular UNDP and MINUSCA), representatives of affected communities and members of civil society. This aspect of complementarity may be less visible, but it is just as crucial as exchange of information and/or expertise. Victims and witnesses are at the heart of judicial processes. They testify, provide evidence, inform investigations and fight for justice, sometimes risking their (physical or mental) health and even their lives. As our organisations pointed out in 2017, "Threats and reprisals can often lead victims to withdraw their complaints and to the non-appearance of key witnesses. They can create a climate of fear and discourage other victims and witnesses from filing complaints and testifying for fear of being the target of similar actions".²²⁰ Ensuring the protection of victims and witnesses throughout the proceedings, from preliminary investigations to reparations, is therefore essential.

In the area of **reparation**, consultations revealed a need for cooperation between the various actors involved in the fight against impunity in CAR, including a form of complementarity between reparations ordered in judicial proceedings, granted to victims of crimes where the perpetrators have been found guilty, and those granted to survivors of crimes and serious human rights violations more generally, independently of any judicial sentence (non-judicial reparations, which also allow for other forms of collective and/or non-financial reparation). These discussions are partially reflected in the findings of an in-depth analysis conducted in 2021 by Enrica Picco, with the support of UN Women, MINUSCA and UNDP, on "options and modalities for reparations in the

220. FIDH, LCDH, OCDH and REDRESS, *Intégrer les droits des victimes dans les procédures de la Cour pénale spéciale en République centrafricaine (Integrating victims' rights in the proceedings of the Special Criminal Court in the Central African Republic)*, September 2017, p. 16, https://redress.org/wp-content/uploads/2017/12/CAR_Paper_Rules_FINAL_FRENCH.pdf.

Central African Republic.”²²¹ Given the impossibility of prosecuting all those responsible for crimes committed during the successive crises in CAR, it is essential that the relevant actors reflect on the means of repairing the harm suffered by the thousands of victims who are still waiting, in Bangui and in the provinces.

The above-mentioned study and the consultations carried out for the preparation of this report raise the possibility of setting up a fund for victims, as provided for in the law establishing the CVJRR.²²² In addition to not being limited to exclusively judicial reparations, such a fund would allow for the recognition of the responsibility of the state, which would be in charge of its creation (by adopting a law) and its financing (with a specific item in the state budget and a call for contributions from international partners, but also by appropriately managing the property forfeited from those found responsible). At the same time the state would have to ensure that the fund is an independent and impartial body, free from discrimination and political influence in the allocation of reparations.²²³ The above-mentioned study proposes three main options to establish a reparations programme adapted to the CAR context:

- The first option takes into account the harm suffered by each victim and provides individual reparation, in accordance with the material and human losses declared during the identification of victims;
- The second option also refers to individual harm, but provides reparation on the basis of a predetermined scale in relation to each type of harm;
- The third option takes into account all the harm suffered by victims of the same event and provides collective reparation through victims’ associations.²²⁴

Whichever option is chosen from among the three identified above or otherwise, the issue of reparation should be included in all discussions on the fight against impunity, at the earliest possible stage. Although reparations are awarded, if at all, at an advanced or final stage of any proceedings, they should be considered from the outset, if possible, at the preliminary stage of proceedings. While it is essential to ensure that unrealistic expectations are not created among victims and affected communities, this issue cannot be left aside or improvised, at the risk of undermining its implementation and rationale. As FIDH emphasised in a report published in 2017,²²⁵ pending the determination of reparations following Jean-Pierre Bemba’s conviction at first instance by the ICC (prior to his acquittal), reparations are essential for victims and must be adapted to their needs, while respecting international standards (which identify five forms of reparation, namely restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition).²²⁶ The report highlights a number of testimonies collected by FIDH from victims involved in the Bemba case, reflecting an urgent need for reparation measures to ensure that they effectively recover from the crimes suffered.

Ideally, these measures should be timely and include both individual and collective benefits.²²⁷ Many of those interviewed at the time, mainly victims of sexual violence, were still suffering from the physical and psychological consequences of the crimes committed against them. A large majority stressed the need to address this suffering before considering any other type of more sustainable and collective reparation. Building a school or training centre for the community is a good idea only if the people concerned are still alive or if their health allows them to access it.²²⁸ Victims also

221. Enrica Picco, *Étude sur les options et les modalités de réparations en République Centrafricaine (Study on options and modalities for reparations in the Central African Republic)*, July 2021, unpublished (“CAR Reparation Study 2021”).

222. Law establishing the CVJRR, *op. cit.*, Article 6.

223. CAR Reparation Study 2021, *op. cit.*, p. 44-45.

224. *Ibid.*, p. 6 and 67-71.

225. FIDH Bemba Reparation Report 2017, *op. cit.*

226. *Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law*, adopted by UN General Assembly Resolution 60/147, 16 December 2005.

227. FIDH Bemba Reparation Report 2017, *op. cit.*, p. 24-26.

228. *Ibid.*, p. 26, 28-35.

stressed the need to adapt measures to the reality of the situation in CAR. Again, building a hospital for the community is a good idea if it can be ensured that it will not be looted, destroyed or targeted by rebel groups in the coming months, if its staff is not threatened and forced to leave, or if the government does not use this opportunity to charge the population for public services.²²⁹ In short, the FIDH report emphasises that in order for reparations to have a real impact on their beneficiaries, victims must be properly consulted about their needs and expectations. This is time-consuming and requires preparation. Consultations highlighted some concerns in this area in relation to the SCC. As the Court is expected to soon issue its first decision, in the case of Issa Sallet Adoum (a.k.a Bozize), Yaouba Ousman and Mahamat Tahir, the reparations strategy remains unclear. As mentioned above, the work carried out with victims by lawyers has been severely limited by the lack of resources. It is therefore difficult to imagine that any effective consultation has taken place with victims on this issue, which, at the time, was not considered a priority.

Finally, several interviewees consulted in June and July 2022 highlighted the importance of not substituting reparations for other measures, such as humanitarian assistance or aid. While all measures can potentially provide valuable assistance to those affected, their impact and meaning vary significantly. Reparation measures by their very nature imply a recognition of the crime suffered and the suffering associated with it, and demonstrate an effort by the justice system or the authorities to do the right thing in relation to victims and survivors. This symbolism will always be absent from assistance measures and other humanitarian aid, however useful and welcome they may be.

229. *Ibid.*, p. 25-26. See also p. 46 on difficulties associated with issuing reparation measures in a context of high insecurity in which crimes continue to be committed and beneficiaries may be put at risk.

Recommendations

To the Central African authorities:

Independence and cooperation

- Respect the independence of national courts, including the SCC, and international courts combating impunity, and any other justice and truth-telling mechanisms, and avoid political interference in the exercise of their mandate;
- Execute arrest warrants issued by national and international courts and arrest, in accordance with the law, individuals present on Central African territory who are suspected of having committed or contributed to the commission of crimes under international law and serious human rights violations;
- Ensure the protection of all persons involved in efforts to combat impunity, including staff of judicial institutions and civil society representatives working with victims and affected communities.

Resources

- Increase the budget allocated to the justice sector; in particular, guarantee the allocation of sufficient financial and human resources to ensure that annual criminal court sessions provided for in the Central African Penal Code are effectively held, that the capacities of ordinary courts are strengthened, that a sustainable system of legal aid is put in place, and that international standards on the fairness and impartiality of proceedings are respected;
- Facilitate implementation of the CVJRR's mandate, while respecting its independence;
- Establish or strengthen mechanisms to ensure access to justice throughout the Central African Republic, particularly in the provinces, and establish a clear procedure following the filing of a complaint (including practical aspects related to the transportation of the complaint and/or the victim to Bangui, protection of individuals and/or preservation of evidence, and follow-up of the case);
- Provide financial support and security guarantees to local civil society for their actions and initiatives with victims and affected communities throughout the country, in the area of access to justice and the fight against impunity.

Reform of the justice system

- Establish a task force, composed of independent and expert judicial personnel, to reform the justice system and establish a permanent criminal justice system, instead of ad hoc criminal court sessions which are too sporadic to respond to the magnitude of the offences/to deal with the countless and continuous offences under the jurisdiction of national courts; alternatively, increase the number of annual criminal court sessions;
- Establish a national framework for the protection of victims and witnesses (and their families) involved in judicial proceedings at the national, regional and/or international level, or in any other truth-telling mechanism, ensuring the allocation of an adequate budget and independent monitoring and implementation mechanisms;
- Adopt a national reparations programme for victims and survivors of serious human rights violations in CAR, that complements reparations processes linked to national and international judicial proceedings, with a permanent dedicated budget line; and pay particular attention to the specific needs of victims and survivors of sexual and gender-based violence;
- Reform the Military Justice Code to exclude the jurisdiction of military courts over offences committed against and by civilians;
- Renew the mandate of the Special Criminal Court in due course, as provided for in the law establishing the Special Criminal Court.

To states and the international community

To the UN:

- Promote the gradual transition of the SCC's technical and financial management from UNDP to the Registry in order to increase the independence of the institution in the management of its mandate and the confidentiality of its cases; set up capacity-building workshops for the bodies involved to ensure an effective transition;
- Cooperate in executing arrest warrants issued by national and international courts and encourage the relevant authorities to carry out arrests, in accordance with the law, of individuals present on CAR territory, suspected of having committed or contributed to the commission of serious human rights violations;
- Call on the CAR Government to renew the SCC's mandate, as provided for in Article 70 of the Law establishing the SCC.

To states:

- Provide funding to ensure capacity building of all national courts (the SCC and ordinary courts) in the investigation and prosecution of those responsible for crimes under international law and serious human rights violations;
- Establish a mentoring system through the deployment of international experts to national courts, including the SCC (for the term of its mandate) and ordinary courts (on an ongoing basis), in line with needs identified by these institutions;
- Provide financial support to the various courts with jurisdiction to prosecute the most serious crimes perpetrated on Central African territory, in particular the ordinary courts in CAR, the SCC and the ICC;
- Support the establishment of a national legal framework for the protection of victims and witnesses, including capacity building and financial contributions;
- Provide sustainable support to local and international civil society for its actions and initiatives with victims and affected communities in the area of access to justice and the fight against impunity;
- Fully cooperate with the ICC; including through contributions to the annual budget, the execution of arrest warrants issued by the Court and the tracing, freezing, seizure and recovery of assets linked either to the commission of crimes under international law or to individuals accused of such crimes.

To justice and truth-telling mechanisms

To the ICC:

- React strongly and publicly to any political interference with the independence of judicial institutions with jurisdiction to deal with crimes under international law and serious human rights violations in CAR; take such interference into consideration in any analysis of complementarity in relation to specific cases to determine their admissibility before the ICC;
- Organise joint training and practice-sharing workshops with staff of ordinary courts and the SCC, including on international standards on the investigation and prosecution of those responsible for crimes under international law and serious human rights violations;
- Investigate and prosecute those responsible for crimes under the Court's jurisdiction, from all sides of the conflict, in order to limit the risks of perception of selective justice at the national level;
- Respond to requests for information and cooperation from national courts in a timely manner, respecting internal authorisation procedures, but mindful of the limitations of the SCC's non-permanent mandate and the impact of a delayed response on ongoing investigations;

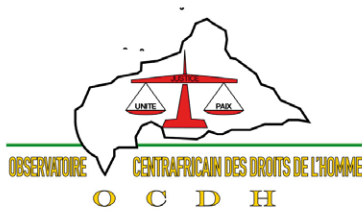
- Facilitate the sharing of information and evidence with the relevant courts demonstrating a sufficient degree of independence;
- Encourage the sharing of expertise through short-term deployments of staff from the Office of the Prosecutor to the SCC or the establishment of a medium- to long-term mentoring system.

To the SCC:

- Adopt and implement an improved, more transparent communication and outreach strategy around the Court's judicial activities, including by:
 - developing communication tools adapted to populations throughout CAR;
 - regularly updating the Court's website to include information on ongoing cases, relevant and up-to-date figures and statistics, accessible explanations, in clear language, of the proceedings to facilitate victims' access to the Court, initiatives on access to justice and the fight against impunity, and access to all judicial decisions, even in redacted form; and
 - making public the names of persons in detention, or where security considerations related to the armed conflict situation make this impossible (necessity of protecting victims and witnesses from potential reprisals and judicial personnel from intimidation and influence), inform the population and civil society of the number of persons detained, the period of detention and the measures and mechanisms in place to ensure respect for their rights;
- Implement the prosecutorial strategy by prosecuting individuals with a high degree of responsibility for offences which particularly characterised the conflict (including sexual and gender-based crimes);
- Ensure that budget distribution among the various court entities adequately reflects the needs associated with their mandates, including in particular participation and representation of victims and the defence.

To the various judicial institutions and other justice mechanisms:

- Adopt a clear cooperation and complementarity framework specifying the distribution of jurisdiction on the basis of the complementarity approach of each institution, the possibilities for cooperation and the options for conflict resolution; make it publicly available, in full or in part, to improve understanding of the population concerned, including victims and witnesses, civil society and donors;
- Define, within this framework of cooperation, minimum standards on the protection of victims and witnesses and possible joint actions to ensure the safety of individuals involved in judicial proceedings before the SCC and/or ICC;
- Maintain or develop ongoing communication to strengthen the fight against impunity for crimes under international law committed in CAR, including through exchange of information, joint investigations where the situation allows, and sharing of expertise and human resources;
- Ensure that the issue of reparation is included in all discussions on the fight against impunity and the establishment of the truth, from the preliminary stages of any proceedings, whether judicial or otherwise; ensure, in this context, that victims and affected communities are adequately consulted on their needs and expectations;
- Support the actions and initiatives undertaken by local and international civil society for victims and affected communities, in relation to situations and cases pending before the relevant courts.



Observatoire Centrafricain des Droits de l'Homme (Central African Observatory for Human Rights - OCDH)

OCDH is a national, non-partisan, non-governmental organisation registered under Central African law, established in Bangui on 29 July 1995. Its objectives are the promotion and protection of human rights, in particular through education and dissemination of information on human rights and fundamental freedoms; observation and monitoring of these rights and freedoms, including in the context of electoral processes; studies and research on human rights; humanitarian action and legal and judicial assistance in favour of victims of armed conflict.



Ligue Centrafricaine des Droits de l'Homme (Central African League for Human Rights - LCDH)

LCDH is a non-governmental association, established on 11 June 1991 and recognised by the CAR state. Its mission is the promotion, protection and defence of human rights, including by fighting impunity. With its headquarters in Bangui, it has committees (at district, prefectural and sub-prefectural level) and focal points throughout a large part of the country, including in areas still ravaged by conflict. It also strives to ensure that transparent and violence-free elections are held throughout the country.



Ministry of Foreign Affairs of the
Netherlands

This document was produced with the support of the *Agence française de développement* (AFD) and the Ministry of Foreign Affairs of the Netherlands. The sole responsibility for the content of this publication lies with FIDH, LCDH and OCDH and it cannot be considered to reflect the views of AFD or the Ministry of Foreign Affairs of the Netherlands.

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For FIDH, transforming societies relies on the work of local actors.

The Worldwide Movement for Human Rights acts at national, regional and international levels in support of its member and partner organisations to address human rights abuses and consolidate democratic processes. Its work is directed at States and those in power, such as armed opposition groups and multinational corporations.

Its primary beneficiaries are national human rights organisations who are members of the Movement, and through them, the victims of human rights violations. FIDH also cooperates with other local partner organisations and actors of change.

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international human rights
NGO
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from 117 countries

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ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

A universal movement

FIDH was established in 1922, and today unites 192 member organisations in 117 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

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