



Florent Geel, Stephen Rapp, Christian Londoumon, Patryk L. Labuda, Fabrizio Hochschild, Sofia Candeias and Netsanel Belay

SIDE EVENT CENTRAL AFRICAN REPUBLIC
STRENGTHENING THE CENTRAL
AFRICAN REPUBLIC'S JUSTICE
SYSTEM AND OPERATIONALISING
THE SPECIAL CRIMINAL COURT

16 NOVEMBER 2016
HOTEL SILKEN BERLAYMONT |
BRUSSELS

With the financial support of the

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EXECUTIVE SUMMARY

On 16 November 2016, the Wayamo Foundation, the International Nuremberg Principles Academy and the Africa Group for Justice and Accountability (AGJA) co-hosted a roundtable in Brussels, Belgium. Entitled "Strengthening the Central African Republic's justice system and operationalising the Special Criminal Court", the event afforded an opportunity to discuss recent developments in the region and challenges facing the national justice system, and the proposed Special Criminal Court (SCC) in particular.

Inaugurated by the Minister of Justice of the Central African Republic (CAR), Flavien Mbata, the roundtable brought together CAR government and judicial officials, diplomats, NGO representatives, and members of international organisations,

especially the UN's Multidimensional Integrated Stabilisation Mission in the Central African Republic (MINUSCA). Held on the sidelines of the European Union (EU)'s donor conference on the CAR, the roundtable helped clarify the most pressing needs of the country's government and the type of technical and financial assistance that the international community could provide to the national justice sector.

"Justice for serious crimes is necessary for sustainable peace in the Central African Republic," said the Justice Minister. "The fight against impunity is a means of ensuring national reconciliation, which would break with past practices that encouraged chaos and violence." In his keynote address, the Minister discussed various challenges facing the justice sector, and what role the SCC and the international community could

play in restoring peace and security in the CAR. He concluded by reiterating the CAR government's firm commitment to the fight against impunity.

Speaking on behalf of Hassan Bubacar Jallow, AGJA member and former Chief Prosecutor of the International Criminal Tribunal for Rwanda, Didier Preira – AGJA expert consultant – welcomed the CAR government's continuing efforts to establish the SCC and encouraged it to take advantage of the conference to accelerate the hybrid court's operationalisation.

The roundtable brought together a variety of perspectives. Netsanet Belay of Amnesty International and Florent Geel of the International Federation for Human Rights, laid stress on the importance of victim participation and effective outreach, to ensure that the CAR population had realistic expectations of the SCC. Drawing on her work in the Office of the UN's Special representative on sexual violence, Sofia Candeias spoke about the need for accountability for sexual- and gender-based violence in the specific historical and political context of the CAR. For their part, Fabrizio Hochschild, Deputy Special Representative of the Secretary General and Resident Representative of UNDP in the CAR, and Stephen Rapp, former US Ambassador-at-Large for War Crimes, drew attention to the benefits and limitations of a hybrid court in a post-conflict zone, and in particular the SCC's relationship vis-à-vis the CAR's justice system. Various panellists discussed recent progress in establishing the SCC, with Christian Londoumon, President of the CAR Court of Cassation, giving a detailed update of the recruitment of the Court's international and national staff, and the Minister of Justice answering questions from the floor about the government's policies on international criminal justice.



■ Flavien Mbata, Justice Minister of the Central African Republic

DETAILED REPORT

INTRODUCTION

The side event was opened by **Bettina Ambach**, Director of the Wayamo Foundation, and **Klaus Rackwitz**, Director of the International Nuremberg Principles Academy, who explained their organisations' respective mandates and how they related to the CAR government's efforts to combat impunity. **Didier Preira**, AGJA expert consultant, intervened on behalf of **Hassan Bubacar Jallow**, AGJA member and former Chief Prosecutor of the International Criminal Tribunal for Rwanda, emphasising the Africa Group's continued support for the CAR government. Building on the AGJA's visit to Bangui in September 2016, Mr Preira welcomed the government's work to operationalise the SCC, and proposed to **accelerate the Court's establishment**, which would be an essential means of ensuring justice for CAR victims of atrocity crimes.

In his keynote address, the CAR **Minister of Justice, Mr. Flavien Mbata**, explained the historical and political context of his country's current crisis, including the widespread atrocities that had taken place since 2013. He emphasised that justice was essential to peace and that earlier episodes of impunity in CAR had encouraged the commission of war

crimes and crimes against humanity. Justice, he stressed, would be a strong signal that there would be no more tolerance for serious crimes.

The Minister noted that the justice system faced a **wide range of problems** in the shape of damaged or destroyed infrastructures, particularly court buildings, offices and prisons, as well as insufficient human resources. The Ministry's 2009 **justice reform plan** had been interrupted by the 2012 crisis, which reversed

rights, ensuring development, providing justice, and guaranteeing investment. The plan included 5 main components:

- 1) operationalising the SCC,
- 2) rehabilitating the penitentiary and corrections system,
- 3) equipping the judicial services,
- 4) protecting human rights and establishing a national human rights commission, and,
- 5) training justice sector personnel.

With regard to the SCC, the Minister reminded his audience that this would be the first time in the history of transitional justice that a **special tribunal operated**

FLAVIEN MBATA: The law establishing the SCC sends a strong signal in the fight against impunity and will contribute to long-term stability, crime prevention and national reconciliation.

gains that had already been achieved. An emergency plan conceived during the 2014-2015 transition was never implemented, due to a lack of resources and a tenuous security situation, with armed groups continuing to operate in many regions of the CAR. Adopted in June 2015, **the law establishing the SCC** sent a strong signal in the fight against impunity, and it was hoped, added the Minister, that it would also contribute to long-term stability, crime prevention and national reconciliation.

Mr. Mbata presented his government's **new sectorial plan on justice reform**, aimed at consolidating peace, protecting human

in a conflict zone, and he underscored the fact that the CAR authorities had accomplished this in just 9 months. Integrated into the national judiciary for 5 years, the SCC would apply CAR law and prosecute the most serious crimes in conformity with the Roman-Germanic judicial tradition. The SCC would **co-operate with the ICC**, but for this to become a reality the CAR government still needed the necessary infrastructure, qualified staff, and financial and political support. The aim, he explained, was to integrate external support progressively and to strengthen the national system over the long term.



■ Marie-Thérèse Keita Bocoum, Independent Expert on the situation of human rights in Central African Republic, and Fabrizio Hochschild, Deputy Special Representative of the Secretary General, Resident Coordinator of the United Nations System, Humanitarian Coordinator, and Resident Representative of UNDP in the Central African Republic

Mr. Mbata went on to stress that **the Government had pledged** to create the SCC, which would operate impartially across the entire territory of the CAR, so as to reassure the population. Justice, he insisted, was at the centre of **President Faustin Touadéra's** political platform. The Minister confirmed that he had **personally taken charge** of operationalising the Court, a task that included hiring national staff and co-operating with external actors and the UN.

The Minister then mentioned the **project document** of August 2016, in which the UN, the US and France pledged to strengthen technical and financial support for the SCC, and provide funding for the first 14 months of its work. He also noted recent progress in recruiting the **SCC's staff**, and in particular the UN's call for qualified candidates, with Senegal and Belgium already indicating a willingness to participate.

There had been **several recent developments** in this area: the SCC's infrastructure

would be provided by the CAR authorities, with Bangui's *Tribunal de Grande Instance* being earmarked for the purpose, a security plan had been transmitted to the UN to ensure that both national and international staff would be protected; the MINUSCA was in the process of mapping crimes committed since 2003, which should allow the Special Prosecutor to start investigations as soon as he or she was appointed; the government was preparing cases for trial before the national courts, an experts' roadmap for victim- and witness-protection before the SCC and the ordinary courts ought to be finished by December 2016; an expert was being hired to draft the SCC's Rules of Procedure and Evidence, France, the USA, The Netherlands, MINUSCA and UNDP had contributed to the budget for the first 14 months of phase 1 but funding for the remainder of the estimated US\$37m for the Court's five-year budget was still outstanding.

Turning to the **ordinary justice system**, the Minister emphasised that the courts

and other judicial organs were in dire need of support: key infrastructures were missing, especially outside of Bangui. Even in the capital, the **five most prominent courts** – the Constitutional Court, the Supreme Court of Justice, Court of Cassation, State Council and Court of Auditors – would all need to be built or renovated. There was a lack of housing for judicial personnel, which raised serious security concerns and prevented magistrates from doing their work. The **penitentiary system** needed to be completely overhauled and rebuilt from the ground up. Several bills relating to human rights, peace, good governance and development were with the Ministry and would shortly be transmitted to the National Assembly for debate and enactment.

The Minister concluded his speech by reiterating that, while the challenges in the CAR were both numerous and complex, the government's **firm commitment to the fight against impunity** would help ensure a better future for all.

Roundtable

Netsanet Belay, Africa Director at Amnesty International, began by thanking the Minister of Justice for his candid assessment of the situation in the CAR, an assessment with which his organisation mostly agreed. He then highlighted several challenges facing the SCC and the CAR justice system:

- 1) the **security situation** had deteriorated considerably since September 2016,
- 2) **impunity** remained a serious problem; members of armed groups and militias were at large, and some people accused of human rights violations now held positions of power;
- 3) the justice sector suffered from insufficient human and financial resources and a lack of basic infrastructures;
- 4) the government had failed to protect **victim and witnesses**,

as evidenced by the last criminal session in Bangui where very few Central Africans agreed to testify in court. Mr. Belay noted that there was little doubt that a vicious **cycle of impunity** was fuelling **cycles of violence** in the CAR.

Mr. Belay emphasised that, given the scale of the challenges facing the CAR, the country needed more than the SCC alone. The entire justice system had to be overhauled, yet there was still some confusion in the CAR, where people thought that the SCC was independent of the national judiciary. Mr. Belay reminded his listeners that the hybrid court was integrated into the national judicial system, which was an innovation that should be supported. He made the following recommendations:

- 1) **sustainable funding**. Lessons should be learnt from the flawed funding processes in Sierra Leone and Cambodia. The current budget was based on optimistic readings of the SCC's needs;
- 2) a **transparent and merit-based recruitment process** for international and national staff. Mr Belay noted that civil society should have a role to play in this process;
- 3) the CAR's **victim- and witness-protection** framework needed to be fundamentally overhauled with the help of international actors;
- 4) developing **Rules of Procedure and Evidence** for the SCC was an important task, and civil society should be involved;
- 5) **outreach** to victims was essential, so that their expectations were realistic. At the same time, the political ramifications of high-level prosecutions had to be well understood by the general population; and,
- 6) co-ordination between the SCC and the proposed **Truth and Reconciliation Commission (TRC)** still needed to be worked out, and rules on information-sharing had to be developed.

Sofia Candeias, Judicial Affairs Officer in the Team of Experts on Sexual Violence in Armed Conflict, reminded all those present that the CAR had been one of the **first countries to be visited** by the current Special Representative of the Secretary General (SRSG) on sexual violence in armed conflict, Zainab Hawa Bangura. In December 2012, the then government and the UN had signed a **Memorandum of Understanding** to prevent sexual violence and provide services to survivors of sexual violence, but unfortunately violence had erupted shortly after Ms. Bangura's departure. Her office had gone back on a few occasions and confirmed that **all parties to the conflict in CAR were responsible** for conflict-related sexual

SOFIA CANDEIAS: Outreach would help Central Africans understand what sexual violence is, why it is a crime, and how the SCC could reduce harm already suffered by victims.

violence, with current estimates suggesting that there were thousands of victims of these routinely underreported crimes. Ms. Candeias noted that the ongoing mapping of crimes by the CAR Office of the High Commissioner for Human Rights should provide a clearer picture of the situation, which might in turn encourage greater accountability.

Insofar as the SCC was concerned, Ms Candeias underscored the fact that the Court would have limited resources and would thus be **unable to investigate and prosecute** every single perpetrator. A prosecutorial strategy was essential and had to be driven by rigorous, clear-cut mapping of the "crime scene", which could provide an accurate reflection of the quantitative and qualitative dimensions of criminality in the CAR. Ms. Candeias laid stress on the **importance of communicating** the SCC's work to victims, who had to understand and accept prosecutorial choices and priorities. She also highlighted why victims of sexual violence faced daunting obstacles in the CAR, where distrust of the judiciary, social stigma and security concerns all prevented victims from coming forward to testify against perpetrators of sexual violence. It was essential that the SCC had adequate facilities, well-trained investigators and prosecutors, and security protocols in place to ensure anonymity to the greatest extent possible. She also noted that **outreach** would help Central Africans understand what sexual violence was, why it was a crime, and how the SCC could reduce harm already suffered by victims.

Mr Fabrizio Hochschild emphasised that the 2013 crisis had had a **devastating impact** on the CAR justice system. "Where the rule of law disappears", he said, "other forces fill the void", and he pointed out that recent massacres in the CAR had been committed in the name of the rule of law. The CAR justice system was already **very**

weak, with a very low budget, when the 2013 crisis had erupted. The UN had been working on the justice system since 2004, and the MINUSCA currently had a strong justice-support mandate, which allowed it to participate in a range of activities.

On the role of SCC, Mr. Hochschild underlined that it was a **landmark achievement**, which would hopefully have knock-on effects and strengthen the entire national justice system. The SCC's greatest strength was that it would allow the authorities to focus on those most responsible for serious crimes. Mr. Hochschild also noted that, despite the financial support of the international community, it had proven difficult to elicit interest in the

CAR penitentiary and corrections system, which urgently needed more support. Arrests were not happening today,

he said, because

there was no physical capacity or political will to detain people. "The system is only as strong as its weakest link", Mr. Hochschild said. He encouraged donors to look at the CAR as not just a challenge but also as an opportunity; the government was candid about the challenges and there was political will to establish this **new and innovative court**, which could serve as an example to the world.

Christian Londoumon, President of the CAR Court of Cassation, reminded the audience that the country had experienced violence for decades and that justice would be needed in order to overcome impunity, which was how the idea of a specialised tribunal had originally been born.

Mr. Londoumon explained the **legal framework** of the SCC: it would be a hybrid court composed of international and national judges, and the law establishing the court sometimes derogated from CAR law and procedure. In cases of conflict between ordinary courts and the SCC, the hybrid tribunal had **priority to investigate and prosecute**. There would also be special rules for victim- and witness-protection, which were not yet integrated into ordinary domestic law. The **death penalty** would not be applicable in the SCC, despite the fact the CAR Penal Code allowed for this.

Mr. Londoumon highlighted the fact that the SCC would have a mixed staff of 12 local and 11 international judges. Different **recruitment procedures** were in place for international and national staff, with the **MINUSCA**, the peacekeeping mission, spearheading efforts to hire international personnel, while the **Ministry of Justice** was responsible for ensuring a transparent and competitive recruitment process for CAR candidates. He also sounded a reminder that the current budget only covered a part

■ Sofia Candeias, Judicial Affairs Officer, Team of Experts, Office of the United Nations Special Representative of the Secretary-General on Sexual Violence in Conflict, and Netsanet Belay, Africa Director, Research and Advocacy, Amnesty International, Johannesburg



of phase 1 of the SCC's operations and that **more funding** would be needed in due course. Mr. Londoumon ended his address with a plea: the ordinary justice system should not be forgotten because it would also need support, if the entire country was to experience a holistic recovery.

Stephen Rapp, former US Ambassador-at-Large for War Crimes Issues in the State Department, discussed the **benefits and drawbacks** of hybrid courts. He began by saying that the rule of law was key to the sustainability of peacebuilding efforts in the CAR. If armed groups were allowed to operate with impunity, all the money that international donors pledged to the SCC would be lost. Mr. Rapp said that when he had visited Bangui, the prosecutors had told him that they were not investigating the 2013 violence because, in their words, "we can't touch people from the armed groups; we have no capacity to protect ourselves or our witnesses."

Mr. Rapp said that the ICC was playing an important role in the CAR and that the Court would eventually charge 2-4 people. However, many more perpetrators needed to be held accountable, which was why the SCC was so important, argued Mr. Rapp. There were those who suggested that the **ordinary justice system** should be the justice-reform priority, but the hope was that reform and best practices would spread from SCC into the ordinary system. Drawing on his work at the International Criminal Tribunal for Rwanda and the **Special Court for Sierra Leone**, he noted that there would always be benefits and drawbacks, and that, though the hybrid Special Court had probably been too internationalised, it had ultimately been a force for **security and peace** in the region. It had had a real impact, emphasized Rapp, who said many of the Special Court's staff had gone on to strengthen the Sierra Leonean state, and the justice system in particular.

Mr. Rapp noted further that the SCC would be more similar to Bosnia's War Crimes Chamber than the Special Court in Sierra Leone. In Bosnia and Herzegovina, the court had been integrated into the domestic justice system, and international prosecutors and judges had gradually been phased out, leaving a **lasting legacy** at a fraction of the cost. Bosnia and Herzegovina remained at peace, just like Sierra Leone where multiple elections and transitions of power had taken place without violence. These hybrid courts could have a **real impact**, he concluded.



■ Jean-Pierre Reymondet-Commy, Ambassador of the European Union in the Central African Republic

Florent Geel, Africa Desk Director of the International Federation for Human Rights (FIDH), discussed his organisation's work in supporting victims in the CAR. He noted that the FIDH had done similar work in the trial of Hissène Habré in Senegal, as well as in **Guinea, Côte d'Ivoire and Mali**. The FIDH had also been on the ground **in the CAR** in 2002/2003, where it had conducted investigations into the violence which had eventually come within the purview of the ICC.

Mr. Geel accentuated the importance

SCC **had to be functional**, it could not spend billions of dollars and produce 2 or 3 convictions, as in Cambodia. The SCC had to be efficient and effective, and take into account the **needs of victims**, who the FIDH was representing thanks to the EU's financial support in the CAR. Following the roundtable discussion, three members of the audience took the floor.

Marie-Thérèse Keita-Bocoum, Independent Expert on the situation of human rights in the CAR, offered her thoughts on the situation there, suggesting that the SCC would be essential, not only in the fight against impunity, but also in supporting peacebuilding and development. She confirmed and applauded the government's **political support** for the SCC, and underscored the fact that the court would also need the support of the general population, which had to **take ownership** of the justice reform and the fight against impunity.

Ms. Keita-Bocoum said that there would be **serious challenges**, particularly when it came to protecting victims and witnesses, providing transport to enable the public to attend trials, supporting victims of sexual violence so as to help them avoid social stigma, and ensuring that the SCC had adequate documentation to conduct effective investigations and trials. She concluded by suggesting a **broader strategy** to convince Central Africans that their wellbeing was better served by

STEPHEN RAPP: If armed groups were allowed to operate with impunity, all the money international donors pledged to the SCC would be lost.

of the current government's **political support** for the SCC, something that remained a serious obstacle in the fight against impunity elsewhere in Africa. He argued that the 2002/2003 violence and the 2013 crisis had been triggered by the same actors, and so it was essential to intervene with judicial means as early as possible. "**Justice does not have to wait for peace**", said Geel, who suggested that the state had to affirm its authority as soon as possible, otherwise it would always be dependent on foreign aid. Mr. Geel said that the easy part was passing laws, but operationalising a hybrid tribunal such as the SCC would be the real challenge, and this would prove impossible without continued political support. The

supporting the state than armed groups. **Anna Cave**, Principal Deputy, Office of Global Criminal Justice at the US State Department, took the floor and reminded everyone of President Obama's support for peace and reconciliation initiatives in Africa. She said that the US government would

Q&A

Members of the audience asked questions about defence counsel and fair trial rights before the SCC, co-operation arrangements with neighbouring countries, protection mechanisms for national judges, and whether any judges had already been appointed.

BETTINA AMBACH: A lot of commitments have been made and it is important to build on this momentum to make the SCC a success

officially donate an additional US\$8.2m to **justice sector reform** at the Brussels donor conference the following day, and an additional US\$1m to the SCC budget. Ms. Cave also noted that the US hoped to provide more support for the **penitentiary system** and, pending congressional approval, for **civil society** in the CAR.

Timothy Meyer, Programme Manager, American Bar Association (ABA), Rule of Law Initiative, spoke on behalf of Richard Malengule, ABA representative based in the CAR, who could not attend the event. He noted that ABA support in the CAR focused on **sexual- and gender-based violence, legal aid** for those accused of crimes and detained without trial, and **victim- and witness-protection**. Mr. Meyer emphasised the importance of **outreach** in managing expectations, and informing the CAR population about the justice system, and the SCC in particular.

The Minister of Justice responded by stressing that the entire justice system had to be reformed, and acknowledged that the penitentiary system was probably the weakest link, which risked undoing the work of other judicial actors. As regards the SCC and neighbouring countries, he said the CAR government would use existing co-operation agreements to work with other states on penal matters. The Minister reiterated that a recruitment committee under his supervision was currently selecting candidates for the SCC, whose nominations would then be forwarded to the President and Supreme Judicial Council (Conseil supérieur de la Magistrature) for validation.

Florent Geel said that a special defence bar would be established at the SCC to provide suspects with access to appropriate counsel. The CAR Bar Association and Avocats sans Frontières were providing training to attorneys, and it was hoped that division of labour would emerge among the various stakeholders to ensure that the fair trial standards of both the accused and victims could be guaranteed. The FIDH was currently focusing on victim support, yet defence rights were very important as well.

Stephen Rapp agreed on the need for well-trained defence counsel before the SCC. He noted that attorneys in the CAR currently receive 8 euro (5000 CFA) in legal aid for an entire case, which was clearly not enough for the sort of complex cases that the SCC

would be addressing. On co-operation with neighbouring countries, he mentioned the International Conference of the Great Lakes Region, which had agreements on co-operation in judicial matters, and suggested that the SCC and Central African government might try to work with them on extradition and other issues. With respect to the penitentiary system, Mr. Rapp highlighted the fact that high-profile detainees and convicts could be detained/imprisoned outside Bangui for security reasons, though this would require judicial co-operation with countries in the region.

Mr. Belay agreed that the penitentiary system needed strengthening. He added that Amnesty International was concerned that there was a somewhat reductionist view of this particular challenge, with the government failing to arrest people or actually shielded some people from arrest. **Mr. Londoumon** explained that the SCC recruitment process would take place in a "gradual manner", meaning that the Special Prosecutor and investigative judges would be appointed first, while trial and appeal judges would be hired after 2 to 3 years. **The Minister of Justice** made the point here that the police would also be recruited in the first phase. **The EU Ambassador** insisted that operationalising the SCC was the key challenge, and that it was important for the entire country to support the Court. In addition, he mentioned that the EU would provide the building in which the SCC was to be headquartered. **Marie-Thérèse Keita Bocoum** stressed that the right to truth should be respected in the CAR, something that called for a holistic approach to transitional justice and support for the TRC. **Bettina Ambach** underscored the fact that a lot of commitments had been made and that it was important to build on this momentum to make the SCC a success.



■ Stephen Rapp, Distinguished Fellow at The Hague Institute for Global Justice, former Ambassador-at-Large for War Crimes Issues, Office of Global Criminal Justice, Department of State, United States of America, and Christian Londoumon, President of the Court of Cassation, Central African Republic



Bettina Ambach, Flavien Mbata, Klaus Rackwitz and Didier Preira

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