

Implementing transitional justice in post-transition Central African Republic: What viable options?

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Summary: *The Central African Republic currently is in search of the most suitable approach to adopt in order to address serious crimes and human rights violations committed in the country in recent years. This article is a contribution to the ongoing debate relating to transitional justice options in post-transition CAR. It suggests a three-pronged policy; focusing on the perpetrators, the victims and on society generally. The proposed policy in respect of perpetrators refers to the International Criminal Court, the Special Criminal Court and the national judiciary. Amnesty could be granted to suspected perpetrators willing to cooperate fully with transitional justice institutions. Such individuals equally could be subjected to diverse forms of lustration in exchange for forgiveness. As far as victims are concerned reparation programmes should be adopted and the necessary skills provided in order to enable them, their relatives and communities to earn a living. Lastly, society-focused transitional justice initiatives could involve the effective operationalisation of the Truth, Justice, Reparation and Reconciliation Commission, the establishment of a permanent national peace and dialogue commission and the involvement of community-based mechanisms and religious leadership. Yet, in order to increase the likelihood of success for the proposed transitional justice policy, the overall capacity of the CAR state*

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ought to be significantly improved. Furthermore, external polities will have to refrain from interfering in the country's internal affairs and, at the same time, the international community should increase its support of the CAR.

Key words: *transitional justice; Central African Republic; war crimes; crimes against humanity; Truth, Justice, Reparation and Reconciliation Commission*

1 Introduction

Since the rise of President Faustin Archange Touadéra to power in March 2016, the Central African Republic (CAR) has attempted to put behind it years of political turmoil and civil war. As in the case of other African countries that have experienced civil war (often fought along ethnic and/or religious identity lines) in recent years, the CAR has had to overcome a multitude of challenges on its path towards building durable peace. One of these challenges relates to the need to address serious crimes and human rights violations committed during the civil war years or the question of transitional justice. In this regard, it is important to recall that the political agreement for peace and reconciliation in the CAR, known as the Khartoum Agreement, signed in February 2019 between the CAR government and 14 armed groups,¹ called for the establishment of the Truth, Justice, Reparation and Reconciliation Commission (CVJRR). This call is consistent with a trend shared by virtually all peace agreements signed in the country in recent years although to date no meaningful steps have been taken to implement the different transitional justice mechanisms provided for in the said agreements.

Two main schools of thought seem to dominate the current debate around transitional justice policy options in the CAR as far as the country's national stakeholders and external partners are concerned.² On the one hand, there are those who believe that there

1 The full nomination in French of the 14 armed groups are: *Anti-Balaka aile-Mokom*; *Anti-Balaka aile-Ngaïssona*; *Front Démocratique du Peuple Centrafricain (FDPC)*; *Front Populaire pour la Renaissance de la Centrafrique (FPRC)*; *Mouvement des Libérateurs Centrafricains pour la Justice (MLC)*; *Mouvement Patriotique pour la Centrafrique (MPC)*; *Rassemblement Patriotique pour le Renouveau de la Centrafrique (RPRC)*; *Retour, Réclamation et Réhabilitation (3R)*; *Révolution et Justice – aile-Belanga (RJ-Belanga)*; *Révolution et Justice – aile-Sayo (RJ-Sayo)*; *Séléka Rénovée*; *Union des Forces Républicaines (UFR)*; *Union des Forces Républicaines – Fondamentale (UFR-F)*; and *Union pour la Paix en Centrafrique (UPC)*.

2 The author has been following the situation in the CAR for the past seven years. He has frequently travelled to the country and spoken to a variety of actors, including the country's most senior officials, civil society representatives, officials

can be no peace and reconciliation without criminal justice. In their view, impunity not only has had the effect of criminalising the CAR's political class, but also has contributed to bad governance and, in so doing, exacerbated the country's recurring crises.³

On the other hand, there are those who argue that the peculiar situation of post-transition CAR, characterised by utter state weakness and the pressing need for inter-community reconciliation, should compel the government to explore and adopt transitional justice mechanisms less likely to compromise the fragile peace currently prevailing in the country.

This article contributes to the ongoing debate relating to transitional justice in the CAR. It argues that as far as post-transition CAR is concerned the need to pursue criminal justice should not be viewed as being in opposition to the goals of restorative and distributive justice. Instead, in designing the country's transitional justice policy, there is a need to take into consideration the peculiar realities of post-transition CAR as characterised by the absence of a clear winner in the latest conflict, the chronic weakness of state institutions (including the judiciary), the large number of atrocities and crimes committed and the actors involved, as well as the urgent need to address strong feelings of mutual resentment among the country's ethno-religious communities. This circumstance, it is argued, should lead to the embrace of a holistic approach to transitional justice that combines aspects of criminal, restorative and distributive justice.

The article is divided into four parts beside this introduction and the conclusion. The first part clarifies the concept of transitional justice and the second part presents a historical background to the CAR's recent crisis and transition. The third part is dedicated to the proposed three-pronged transitional justice policy for the CAR, encompassing perpetrator-oriented mechanisms, victim-targeted processes and society-focused initiatives. The last part looks beyond justice alone and analyses the extent to which state recovery and positive engagement from international role players may contribute to advancing the cause of transitional justice in the country.

representing international organisations working in the CAR (United Nations, African Union, Economic Community of Central African States), members of the diplomatic corps, etc. Much of the information used in this article is derived from these conversations.

3 D Niewiadowski 'Pourquoi le Cameroun se raidit face à la crise centrafricaine' (2016), <http://www.jeuneafrique.com> (accessed 24 May 2017).

2 Understanding transitional justice

The quest for justice is central to processes aimed at stabilising societies emerging from protracted civil war, including conflicts ended through negotiated power-sharing arrangements. The phrase 'transitional justice' thus is grounded in a notion of justice based on a movement away from the situation in which it originates. In this regard, any meaningful grasp of the concept of transitional justice ought to be preceded by a clarification of the notion of justice, as attempted below.

2.1 Defining justice

Kofi Annan regards justice as an ideal, the aim of which is to ensure accountability and fairness through 'the protection and vindication of rights and the prevention and punishment of wrongs'.⁴ In this regard, the form of justice may be retributive, restorative or distributive.

Retributive or criminal justice seeks to re-establish justice 'through the imposition of punishment on the offender consistent with what it is believed the offender deserves'.⁵ It therefore aims to achieve two main goals, namely, to bring perpetrators to account and, in so doing, discourage the rest of society from embarking on a criminal path.

Restorative justice is a process through which all parties with a stake in an offence agree to deal comprehensively with the latter's different dimensions, including its implications for the future.⁶ From a restorative perspective an offence is understood as 'a conflict between victim, offender, and community that needs to be resolved in interaction between those parties'.⁷ Restorative justice therefore aims to repair 'harms and ruptured social bonds resulting from crime'⁸ and to bring about social reconciliation.

Lastly, unlike retributive and restorative justice that focus on the consequences of crimes or conflicts, distributive justice seeks to tackle the roots or the structural factors that lead to violence or the commission of crimes.⁹ According to Kasapas, reparations are

4 K Annan 'The rule of law and transitional justice in conflict and post-conflict societies. Report of the Secretary-General' (2004).

5 M Wenzel et al 'Retributive and restorative justice' (2007) 32 *Law and Human Behavior* 375.

6 TF Marshall *Restorative justice: An overview. A report by the Home Office Research Development and Statistics Directorate* (1999).

7 Wenzel et al (n 5) 378.

8 K Daly & R Immarigeon 'The past, present and future of restorative justice. Some critical reflections' (1998) 1 *Contemporary Justice Review* 21.

9 G Kasapas 'An introduction to the concept of transitional justice: Western Balkans and EU conditionalities' (2008) *UNISCI Discussion Papers* 18 66.

'the key element of distributive justice';¹⁰ they entail rectifying past wrongs, restoring property or rights and providing compensation, rehabilitation and satisfaction to the victims. Reparations can be either material (provision of goods, services, monetary compensation) or moral (apologies, acknowledgment of truth, commemoration of victims).¹¹

Justice may also be retrospective or prospective.¹² Whereas retributive and restorative justice fall under the realm of retrospective justice, prospective justice 'describes the improvement of the relationship between the parties to the conflict in the time to come'.¹³ In this regard, justice may be sought not only as redress for crimes, but also as 'as a way of coming to terms with the past and building a peaceful future'.¹⁴ Hence, justice, reconciliation and peace should be seen as 'inextricably intertwined'.¹⁵

Bringing together the past, the present and the future in the search for justice in a post-conflict context constitutes the entry point to understanding transitional justice as shown in the lines below.

2.2 Defining transitional justice

Transitional justice embraces to varying degrees the different aspects of retributive, restorative and distributive justice presented above.

From the outset it ought to be recalled that as a field of study transitional justice is relatively new. This context partly explains the current lack of a common or shared understanding of the concept among scholars.¹⁶ Nevertheless, in recent years there has been abundant literature dedicated to the concept, its origins and historical evolution.

Armstrong and Ntegeye define transitional justice as the full range of processes, strategies and institutions that assist post-conflict or

10 As above.

11 Kasapas (n 9) 66-67.

12 S Buckley-Zistel et al 'Transitional justice theories: An introduction' in S Buckley-Zistel et al (eds) *Transitional justice theories* (2014) 6.

13 As above.

14 W Lambourne 'Transformative justice, reconciliation and peacebuilding' in S Buckley-Zistel et al 'Transitional justice theories: An introduction' in Buckley-Zistel et al (n 12) 19.

15 As above.

16 N Turgis *La justice transitionnelle en droit international* (2014) 11.

post-authoritarian societies in accounting for histories of mass abuse as they build peaceful and just states.¹⁷ It aims to

halt ongoing human rights abuses; investigate past crimes; identify those responsible for human rights violations; impose sanctions for some of those responsible for serious human rights violations; provide reparations to victims; prevent future abuses; preserve and enhance sustainable peace and promote individual and national reconciliation.¹⁸

For the United Nations (UN), transitional justice

comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.¹⁹

Building on the definitions above, it is proposed that four underlining elements combine to bring about the necessity for transitional justice, namely, massive or generalised violations of human rights with a direct or indirect involvement of government, the decree of a transitional process, judicial and/or alternative measures and mechanisms in a holistic process and a justice policy with clearly-identified objectives.²⁰

Transitional justice comprises two main complementary dimensions. On the one hand, there are institutional mechanisms entrusted with the task of manifesting transitional justice such as truth commissions, judicial tribunals, traditional and/or community-based mechanisms, and so forth. There is a need to ensure that these institutions are relevant and effective for a transitional process to be successful. On the other, there are processes involved in (or components making up) transitional justice policies, including prosecution, truth seeking and telling, individual and collective reparations, political and institutional reforms, construction of memorials, and so forth. There is a need to ensure that these processes are regarded as legitimate by the majority of society. Therefore, they ought to be inclusive, nationally owned and entrenched in communities.

17 A Armstrong & G Ntegeye 'The devil is in the details: The challenges of transitional justice in recent African peace agreements' (2006) 6 *African Human Rights Law Journal* 1.

18 CM Fombad 'Transitional justice in Africa: The experience with truth commissions' (2008), <http://www.nyulawglobal.org> (accessed 27 September 2013).

19 United Nations *The rule of law and transitional justice in conflict and post-conflict societies* (2004) para 8.

20 Turgis (n 16) 14-24.

Overall, the literature identifies three main sets of transitional justice mechanisms. The first set is made up of mechanisms aimed at the perpetrators of crimes, including those which are intended to hold them accountable,²¹ namely, trials, exiles, lustrations and amnesties. The second set applies to 'victim-oriented restorative justice processes'²² that include reparations and victims' empowerment programmes. The third set targets the wider society and includes institutional reforms, truth commissions and public memory projects the aim of which is 'to officially recognise but pardon past acts'.²³ Notwithstanding their institutional variation, the shared goal of all transitional justice mechanisms is to restore the dignity of individuals and communities victimised by atrocities, to deter future violations and prevent a repeat of past horrors.²⁴

As both a concept and a set of practices, transitional justice has attracted several criticisms. The first criticism relates to its timing in that the 'post-conflict' context to which transitional justice applies varies from one conflict situation to another. Some authors argue that only processes 'initiated within five years following an armed conflict'²⁵ should be regarded as transitional justice. Yet, experiences in other post-conflict societies highlight instances of transitional justice mechanisms being set up even over a decade after the signing of a peace agreement. Hence, the criticism that transitional justice is sometimes used by governments as a means of pursuing political ends and, in some cases, to settle a score with political opponents.²⁶

A further criticism levelled against transitional justice relates to its scope. Two scenarios ought to be considered in this regard. In cases of civil war won by one of the parties, the transitional justice mechanism is designed by the winners. Hence, it is criticised as victors' justice.²⁷ In cases where the war ended through negotiations transitional justice mechanisms must be agreed upon by all the

21 TD Olsen, LA Payne & AG Reiter 'Transitional justice in the world, 1907–2007: Insights from a new dataset' (2010) 47 *Journal of Peace Research* 803-809.

22 As above.

23 As above.

24 R Bhargava 'Restoring decency to barbaric societies' in RI Rotberg & D Thompson (eds) *Truth v justice: The morality of truth commissions* (2000) 45.

25 HM Binningsbø et al 'Armed conflict and post-conflict justice, 1946-2006: A dataset' (2012) 49 *Journal of Peace Research* 731.

26 Bangladesh provides an interesting case in reference to this argument. In 2014 various high-profile opposition politicians were charged with and convicted for crimes allegedly committed during the 1971 war with Pakistan. They include Zahid Khokon, Motiur Nizami and Ghulam Azam, who were found guilty of war crimes and sentenced to penalties ranging from death to life imprisonment. See P Snyder 'Bangladesh Special Tribunal convicts opposition leader of war crimes' (2014), <https://www.jurist.org> (accessed 9 April 2019).

27 L Reydam's *Let's be friends: The United States, post-genocide Rwanda, and victor's justice in Arusha* (2013).

parties involved, especially the warring parties, resulting in what may be termed 'warrior' justice'.²⁸ In both scenarios, transitional justice is criticised as being primarily a political matter in which justice is only its second, and sometimes long-term, objective.

3 Background to the CAR's recent crises and transition

3.1 From independence to Patassé's fall (1960-2003)

Since gaining formal independence²⁹ from France in August 1960, the CAR has been in a permanent state of crisis as a result of the utter incompetence of the country's political class and France's continuing interference in the country's internal affairs.³⁰

General Jean Bedel Bokassa's 14-year rule (1965-1979) provided the CAR with an opportunity to chart a different path from the *predation politics* the country had experienced in its first five years of post-colonial self-rule.³¹ However, Bokassa's patrimonial governance style contributed to weakening state institutions and rendering them unable to maintain their control over far-reaching peripheries. His repressive and arbitrary rule sowed the seeds of the recourse to violence for political ends.³² Bokassa was eventually deposed by a French-led *Opération Barracuda* in December 1979 and replaced with

28 K Sadiki 'The tensions between power sharing, justice and human rights in Africa's "post-violence" societies: Rwanda, Kenya and the Democratic Republic of the Congo' (2013) 13 *African Human Rights Law Journal* 254.

29 The CAR is a true example of the 'artificial independence' France was eager to grant to its former African colonies. As far as France is concerned independence for its colonies in West and Central Africa was designed merely to serve as a façade while all the structures of its political, economic and cultural control over the newly-independent countries remain unchanged. The CAR, more than any other country, has followed this pattern. It has been argued elsewhere that '[t]he Central African Republic is the epitome of an artificial state, from ... its uncontrolled borders and decades of overwhelming intervention by its former colonial ruler, France, to the complete lack of government presence outside the capital'. See E Bertelsmann Transformation Index 'Central African Republic Country Report' (2010), <http://www.bti2010.bertelsmann-transformation-index.de> (accessed 7 August 2019).

30 See L Lombard & T Carayannis 'Making sense of the CAR: An introduction' in T Carayannis & L Lombard (eds) *Making sense of the Central African Republic* (2015) 1 4. According to the UN Group of Experts, two main features run through the CAR's ruling elite: an insatiable race to self-enrichment; and a total neglect of society's needs; see Groupe des Experts des Nations Unies *Rapport du Projet Mapping documentant les violations graves du droit international des droits de l'homme et du droit international humanitaire commises sur le territoire de la République centrafricaine de janvier 2003 à décembre 2015* (2017) 9 12.

31 Lombard & Carayannis (n 30) 4.

32 CG Ntoutoume *La Communauté Economique des Etats de l'Afrique Centrale (CEEAC) dans la gestion des crises et la promotion de la paix en Afrique centrale: cas de la République Centrafricaine (1998-2016)* (2018) 59.

his predecessor David Dacko who subsequently was overthrown by General André Kolingba in September 1981.

In contrast to his predecessors, Kolingba manipulated ethnic solidarity for political ends, appointing his Yakoma kin to positions in the state apparatus and parastatal companies.³³ This practice is obvious in the defence and security sector as 70 per cent of the national army was drawn from the small Yakoma minority to which Kolingba belonged, although this ethnic group represents only 5 per cent of the country's population.³⁴

Notwithstanding the shortcomings mentioned above, Kolingba is credited with opening the CAR to liberal democratic rule in 1991. He became the CAR's first ever President to hand over power peacefully following the 1993 presidential election that he lost to Ange-Félix Patassé.

In retrospect, Patassé's 10-year stay in power (1993-2003) turned out to be a missed opportunity for the country to move toward stability, value-based politics and national unity. Not only did he further ethnicise the country's politics and the national defence and security forces,³⁵ but he also contemplated staying in power beyond his two-term constitutional limit. More importantly, he exacerbated the issue of external interference in CAR's internal affairs when he allied with Khaddafi's Libya in an attempt to shield his regime from what he regarded as a plot for regime-change organised by France and the Republic of Chad.

3.2 Bozizé, Djotodia and the plunge into anarchy (2003-2014)

With support from Chad and France, General François Bozizé ousted President Patassé in March 2003.³⁶ In an unprecedented move he

33 SW Smith 'CAR's history: The past of a tense present' in Carayannis & Lombard (n 30) 30.

34 International Crisis Group 'Central African Republic: Anatomy of a phantom state' (2007) 136 *Africa Report* 8.

35 TS Possio *La France et la sécurité collective en Afrique subsaharienne: de l'interventionnisme militaire systématique au renforcement des capacités africaines de maintien de la paix* (2003) 79. In fact, instead of addressing the legacy of Yakoma dominance in the public, defence and security sectors inherited from Kolingba in a comprehensive manner, Patassé simply moved to assert the dominance of his own ethnic group (Sara) and co-ethnic Kaba, thus exacerbating the politicisation of ethnic identities and fuelling the sentiment of marginalisation among the Yakoma. See also AS Houénou 'Aspects de la crise en République Centrafricaine' (2016) *Paix et Sécurité Européenne et Internationale*, <https://halshs.archives-ouvertes.fr> (accessed 24 June 2021).

36 See AC Mayneri 'La Centrafrique, de la rébellion Séléka aux groupes Anti-balaka (2012-2014): Usages de la violence, chême persécutif et traitement médiatique du conflit' (2014) 134 *Politique Africaine* 179. According to Marielle, 80% of

committed himself not to stand in the post-*coup* elections anticipated to restore liberal democratic rule in the country. Bozizé did not keep his promise. He stood in the 2005 presidential election and won in the second round with 64,6 per cent of the vote.

Bozizé's ten-year (2003-2013) rule over the CAR represents the most important clue in understanding the recent crisis in the country. He served as general chief-of-staff of the CAR army under President Patassé from 1996 to 2001. He was dismissed amid allegations of collusion with factions of the army involved in repeated mutinies during the Patassé presidency.³⁷ He escaped to Chad from where he maintained close links in the CAR defence and security forces. Support from Chad and France ensured that he captured state power in 2003, as stated previously. In a move calculated to strengthen the chances of staying in power for longer, he premised his presidency on two priorities, namely, national reconciliation³⁸ and the restoration of democratic rule.

Bozizé's national reconciliation efforts – as symbolised by his politics of 'consensus-based transition'³⁹ – never matched the high expectations created by his proclamations. This failure was particularly relevant in respect of the many armed groups mostly based in the northern and eastern parts of the country. With regional facilitation Bozizé's government signed several peace agreements with them. This is the case of the first Libreville Agreement⁴⁰ signed in June 2008 with the facilitation of the Economic and Monetary Community of

troops that helped Bozizé seize power in Bangui in March 2003 were Chadian drawn from among that country's many mobile men-in-arms. See D Marielle 'Fluid loyalties in a regional crisis: Chadian ex-liberators in the Central African Republic' (2008) 107 *African Affairs* 427 225-241; See also International Crisis Group (n 34) 16.

37 N Bagayoko *Comparative study on transitional justice in Africa: Central African Republic* (2018) 18.

38 However, it is important to note that efforts at national reconciliation already had begun under President Patassé through the national dialogue inaugurated in 2002 and which ironically was interrupted following Bozizé's 2003 *coup*. Yet, Bozizé organised his own 'all-inclusive political dialogue' in 2008 bringing together a majority of the country's political leaders. See Groupe des Experts des Nations Unies (n 30) 12-13. He also promulgated an amnesty law in 2008 within the framework of the all-inclusive political dialogue.

39 Le Monde (in collaboration with *Agence France Presse*) 'François Bozizé remporte la présidentielle et les législatives en Centrafrique' (2005), <https://www.lemonde.fr> (accessed 5 January 2019).

40 Also called the Libreville Comprehensive Peace Agreement, it was signed between the CAR government and two 'politico-military' movements, namely, the *Armée Populaire pour la Restauration de la Démocratie* (APRD) and the *Union des Forces Démocratiques pour le Rassemblement* (UFDR), joined a year later by the *Front Démocratique des Peuples Centrafricains* (FDPC). This agreement was complemented by a ceasefire agreement and a peace agreement signed respectively in June 2011 and August 2012 between the government and the *Convention des Patriotes pour la Justice et la Paix* (CPJP). See Groupe des Experts des Nations Unies (n 30) 13.

Central Africa (CEMAC) and the second Libreville Agreement⁴¹ signed in January 2013 under the auspices of the Economic Community of Central African States (ECCAS). Parties to these two agreements included the CAR government under President Bozizé, an array of armed groups and political parties.

The agreements shared several features as both called for

- the cessation of all hostilities;
- armed groups to surrender their weapons and undergo the disarmament, demobilisation and reintegration (DDR) process and transform into political parties;
- the establishment of inclusive transitional dispensations tasked with, among other things, organising free and fair elections;
- the withdrawal of foreign combatants and for foreign states to desist from interfering in the CAR's internal affairs;
- the international community to provide support to the country's transitional authorities.⁴²

Bozizé applied only those aspects in agreements that did not threaten his control over state institutions. In most cases, he reneged on his earlier commitments, a move that repeatedly angered armed groups and, more importantly, the regional leaders involved in the facilitation of the CAR's peace and reconciliation processes.

Internal and external disapproval of Bozizé's regime reached a boiling point after he launched a constitutional amendment aimed at enabling him to remain in power beyond his initial two-term limit.⁴³ Bozizé had all but severed ties with Chad's President Idriss Déby, who had enabled him to topple Ange-Félix Patassé in 2003.⁴⁴ Further, not only did he distance himself from France, he also opened up his country to the influence of China and South Africa; the latter deployed approximately 400 soldiers in the CAR within the framework of a military agreement signed between the two countries in 2007.⁴⁵ Bozizé's decision to free himself from Franco-

41 Also called Libreville Political Agreement for the Resolution of the Political and Security Crisis in the Central African Republic, it was signed between the CAR government, the political opposition, 'non-fighting' armed groups and the Séléka coalition.

42 AZ Tamekamta 'Gouvernance, rébellions armées et déficit sécuritaire en RCA: comprendre les crises centrafricaines (2003-2013)' (2013) 8.

43 Radio Ndeke Luka 'L'opposition politique contre le projet de modification de la Constitution par Bozizé' (2012), <https://www.radiondekeluka.org> (accessed 5 January 2019).

44 See Mayneri (n 36) 179-193.

45 Houénou (n 35). Indeed, through the bilateral military agreement, South Africa had to provide military training to the CAR army. Bado argues that, beyond military training, South African troops in the CAR were also involved in Bozizé's security. See AB Bado 'Une analyse des conflits en République Centrafricaine' (2015) 80-81. South Africa withdrew from the CAR in March 2013 after 13 of its

Chadian tutelage invited his downfall; he was overthrown by the Séléka coalition in March 2013.⁴⁶

Séléka had been established in 2012 and comprised five politico-military movements, namely, the *Front Démocratique du Peuple Centrafricain* (FDPC); the *Convention des Patriotes pour la Justice et la Paix* (CPJP); the *Union des Forces Démocratiques pour le Rassemblement* (UFDR); the *Convention Patriotique pour le Salut du Kodro* (CPSK); and the *Alliance pour la Renaissance et la Réfondation* (A2R). The group enlisted Sudanese and Chadian combatants, a state of affairs exploited by Bozizé and other CAR citizens to portray Séléka as a foreign organisation and the leader, Michel Djotodia, was presented as a puppet of Chad.⁴⁷

Soon after it assumed power, it became clear that Séléka was a 'disparate rebel coalition'⁴⁸ lacking any cohesive governance vision beyond toppling the Bozizé regime. It also became evident that the group's political leadership under Djotodia did not have full control over its military branch.

However, the toughest test of Séléka's ability to rule in CAR came in the form of its relations with the civilian population, most of whom resented the group as Muslim-leaning. Angered by rejection by a majority of the population, Séléka embarked on widespread violence in order to suppress dissent. This strategy backfired as it led to discrediting the group in the eyes of the international community and was used by non-Muslim communities throughout the country as an opportunity to set up an array of self-defence militias which coalesced under the 'Anti-balaka' umbrella.⁴⁹

The rise of the Anti-balaka contributed to a further worsening of the socio-political and security situation in the CAR and led some observers to fear the possibility of genocide. It brought into question Michel Djotodia's ability to rule the country.⁵⁰

Faced with growing criticism of his group's alleged exactions and in a desperate move to salvage his regime, Djotodia decided to dissolve the Séléka coalition in September 2013. In response several Séléka military commanders – some of whom held senior

soldiers were killed in crossfire as the Séléka troops marched toward Bangui to topple President Bozizé from power.

46 Bado (n 45).

47 Ntoutoume (n 32) 76.

48 Lombard & Carayannis (n 30) 2.

49 Bado (n 45) 70-72.

50 Ntoutoume (n 32) 102.

positions in the country's security and defence forces – embarked on a programme to undermine the government's efforts to stabilise the CAR. Subsequently, the coalition began to disintegrate as its various constituent groups sought to recover their autonomy. The result was the emergence of several Séléka factions controlling different parts of the country.⁵¹

On 10 January 2014 ECCAS heads of state and government held an extraordinary summit in N'Djamena, Chad, and compelled Michel Djotodia and Nicolas Tiangaye to resign from their positions as CAR's President and Prime Minister respectively.⁵² The Transitional National Council (CNT) – the country's transitional parliament – subsequently elected Catherine Samba-Panza as CAR's transitional President. At the time of her election, Samba-Panza was the mayor of Bangui, a position to which she had been appointed by Michel Djotodia upon assuming power in March 2013. As the transitional head of state, she principally was tasked with laying the ground for post-conflict peacebuilding and, more importantly, organising the first post-transition free and fair elections in the country. She was succeeded by Faustin Touadéra in March 2016 following the latter's election as the country's new President.⁵³

Table 1: CAR's Presidents since independence

President's name	Period of rule	Means of ascent to power
David Dacko	1960-1965	Popular vote
General Jean Bédél Bokassa	1965-1979	Coup d'état
David Dacko	1979-1981	Coup d'état
General André Kolingba	1981-1993	Coup d'état
Ange Félix Patassé	1993-2003	Popular vote
General François Bozizé	2003-2013	Coup d'état
Michel Djotodia	2013-2014	Civil war
Cathérine Samba-Panza	2014-2016	Vote by transitional parliament
Faustin Archange Touadéra	2016-ongoing	Popular vote

Source: Adapted from Christian G Ntoutoume⁵⁴

⁵¹ Ntoutoume 102-103.

⁵² Ntoutoume 103. It is important to note that ECCAS heads of state and government held four extraordinary sessions between April 2013 and 10 January 2014 on the CAR. All of these were held in N'Djamena as Chadian President Idriss Déby was then Chairperson of the ECCAS summit. A fifth extraordinary session was held on 25 November 2015 in Libreville, five months after Gabonese President Ali Bongo assumed the Chairpersonship of the ECCAS summit.

⁵³ Ntoutoume (n 32) 102-103.

⁵⁴ Ntoutoume 60.

4 Proposal on viable options for transitional justice in the CAR

From the outset it is important to note that '[t]here is no model transitional justice approach that can easily be transferred from one country to another. Each situation requires that the parties to the conflict, civil society, and victim groups negotiate the mechanisms appropriate to their circumstances.'⁵⁵

The lack of a model should not prevent post-civil war countries such as the CAR from taking advantage of valuable lessons derived from the experience of other countries, especially those with which they may share similar historical, political and sociological features.

This part discusses the proposed transitional justice policy for the CAR, including the period and the types of crimes to be covered.

4.1 Delineating the scope of transitional justice in post-transition CAR

It is necessary to acknowledge that it will be impossible for any transitional justice mechanism set up in the CAR to examine all past crimes committed in the country whichever period is considered. Three main reasons support this argument. First, the very large number of the crimes involved make the task a non-starter. Second, the challenges facing the CAR's justice sector, a clear reflection of the country's failed state, will continue to hinder any quest for justice in the short term.⁵⁶ Lastly, by their nature, transitional justice mechanisms are exceptional and interim processes designed to run for a limited period before being phased out and leaving the space to conventional justice to take care of the day-to-day task of delivering justice in the society.

As far as the types of crimes to be considered are concerned, there is a need to recall that due to their limited time scope transitional justice processes generally focus on the most grievous crimes

⁵⁵ African Union *Transitional justice policy* (2019) 7.

⁵⁶ Writing in 2018, Grebenyuk states that well before the 2013 crisis the CAR's justice sector was already very weak, lacking resources, offices and with a small number of personnel, especially outside Bangui. The crisis of 2013 resulted in the close collapse of the justice sector. I Grebenyuk 'La cour pénale spéciale centrafricaine: une illustration de «complémentarité élargie»' (2018) 1 *Revue de Science Criminelle et de Droit Pénal Comparé* 14-15. A few years ago, Niewiadowski regarded the CAR's judiciary as a system in 'decomposition'. See D Niewiadowski 'La République Centrafricaine: le naufrage d'un Etat, l'agonie d'une nation' (2014) 25-27, <https://rongdhrca.files.wordpress.com> (accessed 24 June 2021).

regarded by the international legal system as international crimes, namely, genocide, war crimes, crimes against humanity and crimes of aggression.

Taking into account the observation above, the CAR's transitional justice dispensation ought to focus on war crimes and crimes against humanity. This limitation is relevant as the mapping report produced by the UN panel of experts on the CAR found no evidence of genocide or crimes of aggression for the period between January 2003 and December 2015.⁵⁷

War crimes are grave breaches of the Geneva Conventions of 12 August 1949 directed against persons or property in the form of wilful killing; torture or inhuman treatment, including biological experiments; extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; compelling a prisoner of war to serve in the forces of a hostile power; depriving a prisoner of war of the rights to a fair and regular trial; unlawful deportation; and taking of hostages.⁵⁸ They also apply to direct attacks against civilian populations and non-military targets or objects; direct attacks against personnel, installations, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the UN Charter; relocation or deportation of large parts of population; rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilisation; conscription of children into armed forces or groups, and so forth.⁵⁹

Crimes against humanity, for their part, refer to acts purposely committed and attacks systematically directed against any civilian population. These include

murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape; sexual slavery; enforced prostitution; forced pregnancy; enforced sterilisation; persecution against any identifiable political, racial, national, ethnic, cultural, religious or gender group; enforced disappearance of persons; the crime of apartheid and other inhuman

57 Groupe des Experts des Nations Unies (n 30). Despite the findings by the panel of experts, there is evidence of Chad's significant involvement in the ousting of both Ange-Félix Patassé (2003) and François Bozizé (2013). Both presidents denounced such involvement and what they regarded as Chad's crime of aggression.

58 International Criminal Court *Rome Statute of the International Criminal Court* (2011) 5-8.

59 As above.

acts of a similar character intentionally causing great suffering, or serious injury to body, mental or physical health.⁶⁰

As is apparent from the definitions above, acts qualifying as war crimes are similar to those amounting to crimes against humanity. The main difference between the two categories is that war crimes are committed in the context of armed conflict, crimes against humanity may occur at any time.

The need to focus specifically on war crimes and crimes against humanity is because they are international crimes and, as such, are imprescriptible. Their prosecution will make it possible for the CAR's transitional justice authorities to liaise with judicial authorities around the world and international justice institutions (including the International Criminal Court (ICC)) on the possible pursuit of suspects (both CAR citizens and foreigners) located outside the CAR's borders. A further justification for the focus on war crimes and crimes against humanity is to avoid overwhelming the transitional justice mechanisms given that the existing national judiciary system, with adequate reinforcement, will continue to take care of the other types of crimes committed during the country's recent crises.

As far as the period to be covered by the transitional justice mechanisms is concerned, there is a need to acknowledge from the outset that it will be very difficult to reach consensus. For instance, the presidential decree establishing the Special Criminal Court entrusts it with prosecuting serious crimes committed from 2003 onward. In contrast, the 2015 Bangui Forum empowered the Truth, Justice, Reparation and Reconciliation Commission (CVJRR) to work on the period extending from 1958 to 2015.

However, beyond the time scope there are at least two other options worth considering. One option consists of covering the period comprised between 1958 and 2020 in order to bring, for instance, to light to the mysterious death of Barthélemy Boganda, the 'father of the CAR's independence', in an aeroplane crash in March 1959⁶¹ and to take into consideration the recent insurgency

⁶⁰ International Criminal Court (n 58) 3-4.

⁶¹ For many CAR citizens and observers of the country's politics, the death of Barthélemy Boganda represents a critical moment in CAR's history, with significant implications for the country's post-colonial evolution. See, eg, C Kinata 'Barthélemy Boganda et l'Eglise Catholique en Oubangui-Chari' (2008) 191 *Cahiers d'Etudes Africaines* 549; P Kalck *Bathélemy Boganda: élu de Dieu et des Centrafricains* (1995). It therefore ought to be elucidated as part of the country's effort toward true reconciliation. In similar vein, the year 1958 is also critical in CAR history (likewise that of other former African French colonies) as it marks the successful outcome of the referendum by which the people of the CAR agreed to be part of the community between France and its former African colonies as

waged by the *Coalition des Patriotes pour le Changement* (CPC) led by François Bozizé.⁶² The other option consists of focusing on the post-single party period (1993-2020). In fact, according to Carayannis and Fowlis,

[w]hile civil conflict in CAR until the end of the Cold War had largely been limited to relatively isolated incidents, from 1993 onwards, growing cleavages manifested themselves in dysfunctional and – at their worst – non-existent state institutions, and a prolonged crisis emerged, characterised by low-intensity violence with periodic spikes in fighting.⁶³

This article favours the second option and suggests that the transitional justice mechanisms being designed in the CAR should focus on the period extending from the election of President Ange-Félix Patassé in 1993 to the recent insurgency waged by the CPC. By reducing the temporal scope of the work, this approach appears realistic and cost-effective, yet, it is likely to be opposed by those who have suffered loss at the hands of the different regimes that ruled the country in its first three post-colonial decades (1960-1993).

4.2 Transitional justice options for the CAR

As discussed in the second part above, there are three complementary sets of mechanisms post-conflict or post-authoritarian societies generally use to implement transitional justice. These include perpetrator-oriented mechanisms, victim-oriented processes and society-focused initiatives. However, it is worth recognising that although post-conflict countries such as the CAR ideally should apply evenly and simultaneously all three sets of transitional justice mechanisms mentioned above, experience elsewhere shows that circumstances specific to each country may lead stakeholders to adopt a sequential approach and favour some aspects of transitional justice

suggested by French President Charles de Gaulle. The debate relating to the legality, in international law, of the referendum and similar exercises in other African countries remains a matter of debate among specialists.

62 The CPC is a coalition set up in mid-December 2020 with the double objective of preventing the organisation of the presidential and parliamentary elections scheduled for 27 December 2020 and toppling President Touadera. It comprised six of the 14 armed groups signatories to the 2019 political agreement for peace and reconciliation in the Central African Republic, namely, the *Mouvement Patriotique pour le Changement* (MPC); the *Retour, Réclamation et Réhabilitation* (3R); the *Union pour la Paix en Centrafrique* (UPC); the *Front Populaire pour la Renaissance de la Centrafrique* (FPRC); and the *Anti-balaka/aile-Mokom* and the *Anti-balaka/aile-Ngaïssona*. UPC and MPC have since distanced themselves from the CPC, accusing the latter of preventing humanitarian aid from reaching those in need and deviating from its initial objectives. See JF Koena 'RCA: Le retrait de l'UPC d'Ali Darassa ne convainc pas' (2021).

63 T Carayannis & M Fowlis 'Lessons from African Union-United Nations cooperation in peace operations in the Central African Republic' (2017) 26 *African Security Review* 221.

mechanisms over others.⁶⁴ Therefore, it is imperative to ensure that the design of the CAR's transitional justice policy not only takes into consideration the country's situation, but also carefully balances the demands for justice with the search for peace and reconciliation.⁶⁵

Below is a discussion of the way in which each of the three sets ought to be designed and applied in post-transition CAR if the country's specific circumstances are considered.

4.2.1 *The case for perpetrator-oriented transitional justice mechanisms*

As far as transitional justice in post-violence societies is concerned, it was argued earlier that those suspected of having committed serious crimes and human rights violations face trial in national, mixed (hybrid) or international courts. They may also be prevented from occupying high public office either indefinitely or for a limited period (vetting). Furthermore, those found guilty of committing grievous crimes and other serious human rights violations be compelled to live outside the country for a period. (exile). Lastly, they may be granted amnesty, generally in accordance with provisions contained in peace agreements or after they have contributed to revealing the truth surrounding specific crimes.

In post-transition CAR the prosecution of perpetrators of grievous crimes and other serious human rights violations committed in the country's recent crises thus far has involved national and internationally-backed courts.

At a national level the CAR's judiciary has been involved in the prosecution of several individuals accused of having committed grievous crimes and serious human rights violations in the country. This, for instance, has been the case in the successful prosecution of the former Anti-balaka commander Rodrigue Ngaïbona, also called General Andjilo, in January 2018.⁶⁶ He was tried by the Bangui criminal

64 These circumstances are determined by the country's political situation and economic conditions. They include the mode of war termination as well as the extent of the involvement of external role players. For further insights into differentiated transitional justice paths followed by post-civil war African countries in recent years, see, eg, I Souaré 'Le dilemme de la justice transitionnelle et la réconciliation dans les sociétés postguerre civile: les cas du Libéria, de la Sierra Leone et de l'Ouganda' (2008) 39 *Etudes Internationales* 205-228. See also K Sadiki 'The challenges of power-sharing and transitional justice in post-civil war African countries: Comparing Burundi, Mozambique and Sierra Leone' (2019) 19 *African Journal on Conflict Resolution* 81.

65 African Union (n 55).

66 E Rugiririza 'Centrafrique: un premier chef de guerre condamné par la justice nationale' (2018), <http://www.justiceinfo.net> (accessed 27 December 2018).

court and found guilty of several crimes including multiple murders, criminal conspiracy, armed robbery, illegal possession of weapons and ammunitions of war and kidnapping. He was sentenced to life imprisonment with forced labour.⁶⁷

Another former Anti-balaka military commander, Urbain Samy – also known as Bawa – on 12 December 2018 was sentenced to 20 years in prison by the Bangui criminal court after he had been found guilty of murder, association with criminals, armed robbery and illegal possession of weapons and ammunitions.⁶⁸

Further, on 28 February 2018 the same court sentenced 11 former Séléka combatants to life imprisonment after it found them guilty of threatening state security, rebellion, illegal possession of weapons and ammunitions and association with criminals.⁶⁹

In February 2020 five former Anti-balaka commanders appeared before the Bangui criminal court for the killing of over 70 Muslim civilians in May 2017 in the city of Bangassou. They were found guilty of war crimes and crimes against humanity and were sentenced to life imprisonment with forced labour.⁷⁰

At an international level three cases are worth mentioning as far as the prosecution of those suspected of having committed grievous crimes and serious human rights violations in the CAR is concerned. The first relates to Jean-Pierre Bemba. Despite not holding CAR citizenship, this former Congolese rebel leader was prosecuted by the ICC between 2008 and 2018 for crimes allegedly committed by his group's combatants in 2003 in the CAR where they were deployed in support of President Patassé's government against the threat of an armed insurrection led by General François Bozizé. However, after 10 years the ICC prosecutor failed to bring forward convincing proof against Bemba which resulted in his release in 2018.⁷¹

67 C Ngingui 'Centrafrique: le "général Andjilo" condamné à des travaux forcés à perpétuité' (2018), <http://fr.africanews.com> (accessed 12 December 2018).

68 Radio Ndeke Luka 'Bangui: un ex-Comzone Antibalaka condamné à 20 ans de travaux forcés' (2018), <http://www.radiondekeluka.org> (accessed 27 December 2018).

69 TV5 Monde 'Centrafrique: travaux forcés à perpétuité pour des ex-Seleka' (2018), <https://information.tv5monde.com> (accessed 27 December 2018).

70 Le Monde (in collaboration with *Agence France Presse*) 'En Centrafrique, cinq chefs de milice condamnés à perpétuité' (2020), <https://www.lemonde.fr/afrique/article> (accessed 21 June 2021).

71 Bemba's prosecution has brought to the fore the issue of the independence of the ICC. On the one hand, questions have been raised regarding the Court's decision to prosecute Bemba alone in a case (CAR's civil war) where many other actors may have committed similar crimes. On the other hand, Bemba's arrest in 2008 and release ten years later have occurred against the background of very particular developments in the political calendar in his home country, the DRC. In

The second and third, more recent, cases relate to two former Anti-balaka commanders, namely, Alfred Yekatom (also called Colonel Rombhot or Rambo) and Patrice-Edouard Ngaïssona. Yekatom is a former Corporal in the CAR national army. He joined the Anti-balaka coalition in 2013 and quickly became one of its high-ranking military commanders. In 2016 he was elected member of the country's national assembly where he served until his arrest in October 2018. During his time as an Anti-balaka military commander he was accused of committing war crimes and crimes against humanity between 2013 and 2014, triggering an international arrest warrant from the ICC. He currently is awaiting trial at the ICC and faces charges of murder, torture, targeted attacks against civilian populations and places of worship as well as mutilations.⁷² His former partner, Patrice-Edouard Ngaïssona, was arrested in France and handed over to the ICC in January 2019. He stands accused of war crimes and crimes against humanity that he allegedly committed when he served as an Anti-balaka commander in the fight against the Séléka coalition between 2013 and 2014. He also is awaiting trial in The Hague.⁷³

The last component in the judicial process in respect of the prosecution of crimes committed in recent years in the CAR relates to the Special Criminal Court (SCC). It was set up by Law 15.003 of 3 June 2015 following an agreement between the CAR government and the UN. Although a hybrid tribunal, article 1 of the Law referred to above states that the SCC falls under the purview of the CAR's national judiciary system. It comprises 25 judges (13 CAR citizens and 12 foreign nationals) and applies both CAR and international laws. It is tasked with prosecuting those suspected of committing the most serious violations of human rights and international humanitarian law in the CAR and in foreign countries (if the latter have mutual legal assistance agreements with the CAR) since January 2003.⁷⁴ It

2008 President Kabila had defeated Bemba in the country's presidential election and arrest prevented Bemba from assuming his position as opposition leader. In 2018 Bemba's surprising release came in the context of the approaching 2018 general elections. There are those who believe that Bemba's arrest was a ploy by Western powers to relieve Kabila of a tough opponent while his release in 2018 is regarded as a ploy by the same Western powers to position a tougher candidate against Kabila's anointed Ramazani Shadary after it became clear that Moïse Katumbi would be prevented by the regime from standing in the elections. In the latter case, the Western powers allegedly were in search of a potential ally expected to advance their economic interests in a post-Kabila DRC.

72 La Croix (in collaboration with *Agence France Presse*) 'L'ex-chef de milice centrafricain Alfred Yekatom est arrivé au centre de détention de la CPI' (2018), <http://www.la-croix.com> (accessed 27 December 2018).

73 Radio France Internationale 'RCA: l'ex-chef anti-balaka Patrice-Edouard Ngaïssona transféré à la CPI' (2019), <https://www.rfi.fr/fr/afrique> (accessed 21 June 2021).

74 See Grebenyuk (n 54) 3. See also Radio France Internationale 'RCA: inauguration de la Cour pénale spéciale' (2018), <http://www.rfi.fr> (accessed 10 June 2019).

was officially launched in October 2018 and became fully functional in March 2021 following the appointment of its last judges.⁷⁵

Alongside the judicial process, some of those suspected of having committed grievous crimes and serious human rights violations in the CAR in the last 25 years have benefited from amnesty provisions contained in some of the peace agreements signed between the government and different rebel groups. Indeed, all agreements signed since 2008 to end civil wars in the CAR have included provisions relating to amnesty for all involved in the commission of atrocities and crimes,⁷⁶ although the precaution has been taken throughout not to include war crimes and crimes against humanity.

No Central African politicians or those linked with armed groups thus far have been forced to leave the country as a result of their involvement in the country's recent crises. As far as the suggested transitional justice policy is concerned, exile should not be considered an option unless freely chosen by those accused of crimes and fearing for their lives. In that case exile may be granted in exchange for full cooperation with transitional justice authorities.

Amnesty ought to be considered in connection with the implementation of the 2019 Khartoum Agreement, signed between the government and the 14 armed groups mentioned earlier in order to end the armed conflicts raging in the country since the arrival of the Séléka coalition in power in 2013. Most of these armed groups are factions previously connected to the Séléka and Anti-balaka coalitions. Granting amnesty to some key leaders and other military commanders of these groups constitutes an important incentive to be used in order to convince them to lay down their weapons and lead their fighters into the disarmament, demobilisation and reintegration (DDR) process. As Tunamsifu argues, 'when the national army fails to defeat a rebel movement, negotiating a peace agreement remains the final option'.⁷⁷ In such a scenario warring parties responsible for serious crimes and human rights violations only commit to sign and abide by the signed agreements when the latter offer clear guarantees or some forms of personal and/or collective amnesty. Should an amnesty policy be agreed upon in the

75 JF Koena 'La cour pénale spéciale lance ses travaux en RCA, espoir pour les victimes' (2021), <https://www.dw.com/fr> (accessed 22 June 2021).

76 There is a need to highlight that although the Khartoum Agreement opposes any idea of impunity, it acknowledges the discretionary power of the head of state to grant pardon. See *Accord politique pour la paix et la réconciliation en République Centrafricaine* (2019) 19-20.

77 SP Tunamsifu 'Transitional justice processes in Africa: The case of the Democratic Republic of the Congo' (2018) *CSVR Comparative Study in Transitional Justice in Africa Series* 55.

CAR, provision ought to be made explicitly not to cover war crimes, crimes against humanity and genocide.

It is necessary to highlight the fact that the idea of amnesty meets much resistance in the CAR, among both the political class and society in general. For instance, the majority of participants in the 2015 Bangui Forum clearly voiced their opposition to amnesty. The general feeling was that granting amnesty appeared to entrench impunity and can be viewed as an incentive for 'warmongers' to persist on the path of insurgency,

Notwithstanding the relevance of the argument above, this article argues that to attempt to avoid granting amnesty at all costs in the CAR appears unrealistic and is not feasible on at least two accounts. First, given the current weakness of the CAR's security and defence forces (compounded by the economic hardship facing the country) and the dominant paradigm in the United Nations Stabilisation Mission in the Central African Republic (MINUSCA) (opposition from troops contributing countries to any robust and aggressive mandate) there is no possibility armed groups in the CAR will be defeated militarily in the near to medium term.⁷⁸ The longer the current situation continues the more likely these armed groups will split, making any task of resolving the crisis most difficult. Furthermore, the CAR's current armed groups are better off fighting and staying out of any DDR process. In this regard, any talk of denying them amnesty will contribute to a sense of justification and strengthen their agenda of controlling large tracts of land, exploiting natural resources and acquiring more weapons. The result will be a national government confined to Bangui and its surroundings, as has been the case in the past decade.

Second, this view has no solid backing from a comparative perspective. Experience on the African continent shows that in all countries where civil wars could not end in outright military victory by one of the parties, they have had to adopt some form of amnesty measures in order to convince former fighters to commit to peace. This has been the case in Liberia, Sierra Leone, Burundi, the Democratic Republic of the Congo (DRC), Sudan, Mozambique and, more importantly, South Africa. Of course, the adoption of amnesty in all these countries has been met with protests from

⁷⁸ Military support from Russia and Rwanda in December 2020 onward helped galvanise loyalist troops in their fight against the CPC. However, as this author learned from his latest visit to Bangui in April 2021, the CAR's national army is far from being self-reliant while the military support the government currently receives from its partners may not be sustainable in the medium to longer term.

victims, their families and other socio-political groups opposed to the perceived impunity that is granted. Yet, it is difficult for even the most optimistic supporters of an exclusively retributive approach of transitional justice to tell how South Africa, for instance, would have moved beyond minority rule without the incumbent regime being militarily defeated or its key players being granted some form of amnesty.

In respect of vetting or lustration provision will have to be made to ensure that those who meet such measures are not prosecuted in order to avoid the penalty of double jeopardy. Lustration and a guarantee of 'no-prosecution' can be offered as an option to political role players involved in the commission of crimes and other human rights violations who are willing to disclose the truth about these crimes and violations.

Lastly, the new transitional justice policy should ensure that no CAR citizens, whatever their roles in the country's recent crises, should be compelled to go into exile. This is relevant insofar as throughout its political history the CAR has experienced cases of violent regime change driven by prominent CAR citizens living outside the country, albeit with external support. Therefore, the emphasis should be on national reconciliation among all citizens in the country. However, should individuals freely choose to leave the country (as a result of holding dual citizenship, for example) they should be granted amnesty in exchange, provided they commit to abstaining from involvement in any activities aimed at destabilising the country or be exposed to prosecution.

4.2.2 *The case for victim-oriented transitional justice processes*

The recent crises experienced by the CAR have had a negative impact on the country's population. It is estimated that close to 5 000 people have lost their lives since the beginning of the country's latest insurrection in 2012. According to the UN Office for the Coordination of Humanitarian Assistance (OCHA), by October 2020, 742 000 people were displaced in the country while the number of people in need of humanitarian assistance in February 2021 climbed to 2,8 million people out of a total population estimated at 4,9 million.⁷⁹ Meanwhile, the total number of CAR citizens living as refugees,

⁷⁹ Office for the coordination of humanitarian assistance 'Central African Republic: humanitarian situation update' (2021) 2 4.

mainly in neighbouring Cameroon, DRC, Chad, Sudan, Congo and South Sudan, is estimated at 695 115.⁸⁰

Due to their communal dimension, wrongly presented as a confrontation between Muslims and Christians (or northerners and southerners), these recent crises have had a significant toll on civilian populations, many of whom have seen their livelihoods (housing, farms) destroyed by their real or perceived enemies.

Although the Khartoum Agreement has called upon the government to initiate restoration and reparation programmes aimed at victims,⁸¹ there is a need to acknowledge that the CAR's current transitional justice dispensation has not adequately taken account of the issue of victims' empowerment and compensation. The country's economic predicament explains partly this circumstance. As the country works to define its comprehensive transitional justice policy, it is imperative for all involved stakeholders to factor in a dimension relating to reparations or compensations and victims' empowerment. On the one hand, there ought to be programmes designed to assist affected populations to rebuild their livelihoods, including houses, farms, and so forth and on the other, training programmes ought to be initiated and directed to victims, especially the youth, so as to help them learn critical skills to enable them to earn a decent living, outside recruitment into armed groups.

4.2.3 *The case for society-focused transitional justice initiatives*

Without a proper engagement with the past and the institutionalisation of remembrance, societies are condemned to repeat, re-enact and relive the horror. Forgetting is not a good strategy for societies transiting to a minimally-decent condition.⁸²

Ongoing transitional justice initiatives in the CAR have included institutional reforms. In fact, between 2016 and 2021 the country had a national ministry of national reconciliation. Its main objective consisted of creating the conditions and undertaking actions for national reconciliation and long-term peaceful coexistence among the country's communities.

80 United Nations High Commissioner for Refugees 'Refugees from the Central African Republic' (2021), <https://data.unhcr.org/en> (accessed 23 June 2021).

81 See *Accord politique pour la paix et la réconciliation en République Centrafricaine* (n 76) 20.

82 Bhargava (n 24) 54.

The ministry sought to establish decentralised structures in the country's 16 regions or *préfectures* expected to lead reconciliation initiatives throughout the country. However, the inability of the national government to control the whole of the national territory prevented the extension of the national reconciliation ministry's work outside Bangui. It can be anticipated that the task of national reconciliation will be pursued by the new ministry of humanitarian action, solidarity and national reconciliation set up following the recent cabinet reshuffle in June 2021.

Furthermore, as argued earlier, the Khartoum Agreement provides for the establishment of the Truth, Justice, Reparation and Reconciliation Commission (CVJRR) as recommended during the 2015 Bangui Forum. On 6 June 2020 President Touadéra launched national public consultations for the establishment of the CVJRR. However, the consultations could not be held in most of the country's regions as they were under the control of armed groups.

The CVJRR law was enacted on 7 April 2020. Article 5 of the law provides that the CVJRR is tasked with establishing the truth, seeking justice, restoring the dignity of the victims and promoting national reconciliation. According to article 6 of the Law, the CVJRR is set to hold hearings involving victims, witnesses and suspects of crimes so as to establish the responsibilities of the different role players in the crimes committed during the period extending from 1958 to 2015.⁸³ With regard to the management of the Commission the 11 commissioners provided for in article 7 of the CVJRR were selected in December 2020. However, the December 2020 elections and the CPC insurgency have delayed their taking an oath and the assumption of office. The CVJRR is set to run for four years with a possibility of a 24-month extension.

Lastly, to date no public memory projects have seen the light of day in post-transition CAR. In theory such projects have the potential to help the nation remember one of the darkest episodes of its existence as an independent state. The law on the CVJRR referred to above in article 6 provides for the erection of a memorial for the victims. The fact that the larger part of the country remains under the control of armed groups continues to impede the realisation of such initiatives. Further, the fact that there are ongoing efforts aimed at resolving different aspects of the conflict calls for additional

83 In taking into consideration political and security developments in the CAR since 2015, there is a high likelihood for the scope of the Commission to be extended to take into account the insurgency waged by the CPC since December 2020.

time before a comprehensive understanding is reached of a feasible 'national public memory project' agreed upon by all stakeholders,

As the CAR seeks to adopt a comprehensive transitional justice policy, there is a need for critical thinking regarding society-focused initiatives. Indeed, setting up a ministry of national reconciliation (led by a politician linked to the ruling party or coalition) runs the risk of unnecessarily politicising the national reconciliation project. Instead, there should be a National Peace and Dialogue Commission, led by a prominent civil society personality. This commission should have offices in each of the country's 16 regions also led by prominent local civil society leaders. The commission should be a permanent state organ with administrative and financial autonomy. It should be able to seek additional technical and financial support from national and external partners. The national and regional commissioners should be appointed through a parliamentary process. It ought to be emphasised that in order to avoid duplication the National Peace and Dialogue Commission should be put in place only once the CVJRR will have completed its work. Hence, the selected members of the CVJRR should take the oath of office at the soonest opportunity for the Commission to begin its work.

At the same time the CAR should undertake major work in the area of public memory projects. In this regard the country should adopt a National Reconciliation Day to be declared a public holiday. The day should be used by the government to strengthen national unity and foster peaceful coexistence. In addition to the victims' memorial provided for in the Khartoum Agreement, other public memory projects to be considered include erecting large 'national unity monuments' in Bangui and the country's 16 regional capitals. In order to ensure public involvement and ownership the monuments should be designed by local people in competition processes run by the National Peace and Dialogue Commission.

Lastly, reference ought to be made to traditional conflict resolution mechanisms as well as to the role of religious and community leaders. In recent years the leadership of the Catholic, Protestant and Muslim religious communities have demonstrated their ability to work in unity in resolving conflict in the CAR. The proposed transitional justice mechanism, therefore, ought to take advantage of such efforts by including these leaders and others in its processes. In similar vein, to avoid the criticism of elite bias the proposed transitional justice mechanism should provide space for communities' participation in cities and in the countryside.

5 Looking beyond justice: State recovery and international engagement in post-transition CAR

There is a need to acknowledge that no single mechanism is capable alone of addressing the demands of justice and reconciliation in a post-conflict or post-authoritarian country. Consequently, transitional justice mechanisms are most effective only when implemented as part of a flexible, inclusive and holistic post-conflict peacebuilding strategy.⁸⁴

The previous part set out the content of the transitional justice mechanism that ought to be implemented in post-transition CAR. However, for such a policy to bear any meaningful fruit there is a need to look beyond justice alone and pay adequate attention to various critical issues to ease the task of transitional justice in the country. This part focuses on two of these issues, namely, state recovery and international engagement.⁸⁵

5.1 State recovery and transitional justice in post-transition CAR

As the CAR moves to adopt a transitional justice policy to address the most grievous crimes and serious human rights violations committed in the country in recent years, it is necessary to acknowledge that this project can be achieved only if meaningful efforts are committed for the state to recover from its current fragility.

First, state recovery in the CAR implies strengthening public institutions throughout the country, which includes deploying territorial administration in all 16 regions and, in so doing, re-affirming government's full control over the entire territory. It also means rebuilding the country's defence and security forces (army, gendarmerie, police and intelligence) as well as the justice sector (judiciary and prison services) through comprehensive security and justice sector reform processes. At the same time, an effort ought to be undertaken to entrench democracy and guarantee meaningful public participation in order to ensure the legitimacy of the governing class.

Second, state recovery also implies economic recovery, which includes adequately equipping public agencies tasked with collecting

84 African Union (n 55) 7.

85 The role of state recovery and international support for peacebuilding and stabilisation in the CAR is analysed in an ongoing study by the author.

taxes and revenues. In similar vein, government should work toward re-organising the mining sector with the aim of putting an end to illegal mining that feeds the activities of some of the country's numerous armed groups. The agricultural sector should be given the necessary means for its development, including providing farmers with lands, tools, agricultural inputs and expert support for more productivity. However, it is necessary to emphasise that there will be no economic recovery in the CAR without a comprehensive infrastructure development programme. This programme primarily should target roads and bridges. The priority should be to link the country's 16 regional capitals and should be extended to roads linking the CAR to its neighbours, namely, Cameroon, Chad, Congo, the DRC, South Sudan and Sudan.

Third, state recovery implies nation building. Although it may not necessarily portray the reality on the ground, the 2013 crisis has been regarded – including by some of the country's role players – as a confrontation between the northern Muslims and the southern Christians. The Séléka and Anti-balaka coalitions have exploited this perception to secure population adherence and, at times, seek external support. Therefore, in the context of post-transition CAR state recovery ought to include nation building, understood here to mean strengthening the sense of (national) belonging among the country's citizens despite ethnic, religious and linguistic differences. This goal is relevant insofar as numerous former Séléka and Anti-balaka fighters, after undergoing demobilisation and disarmament, will have to return to civilian life. Unless they have been prepared to welcome them through social cohesion capacity-building programmes, the population may find it hard to live alongside their former victimisers.

5.2 International engagement and transitional justice in post-transition CAR

The discussion above has shown that state recovery (understood in its three dimensions of state building, economic recovery and nation building) is a critical ingredient in the success of the future transitional justice mechanism in the CAR.

Nevertheless, in addition to state recovery, the success of the CAR's transitional justice efforts depends very much on the extent of the support the country will receive from its international partners. Two main reasons help explain the pressing need for international support of the CAR's transitional justice efforts, namely, the severe

weakness of internal mechanisms and the long-standing interference of external actors in the CAR's crises.

International engagement insofar as the CAR's transitional justice process is concerned should include the strengthening of MINUSCA's⁸⁶ mandate with more involvement of African troops. More support should be provided for the effective implementation of the Khartoum Agreement and its attendant processes, including a comprehensive security sector reform. Similarly, the CAR government ought to convince its international partners (the African Union, United Nations, the European Union) to adopt a realistic and reasonable view of transitional justice in the CAR, taking into consideration the country's predicament. The UN Peacebuilding Commission should adopt a meaningful programme for the CAR commensurate with the country's priorities and needs. For their part, the African Union and regional organisations of which the CAR is a member state (ECCAS,⁸⁷ ICGLR⁸⁸ and CEN-SAD⁸⁹) should design a joint peacebuilding intervention strategy for the CAR, in coordination with the UN and other international partners. Furthermore, cooperation between the national judiciary, the Special Criminal Court and the International Criminal Court should be strengthened. Lastly, the CAR government should agree with its development partners (the World Bank, International Monetary Fund, the African Development Bank) on

- 86 The United Nations Stabilisation Mission in the Central African Republic (MINUSCA) has been deployed in the CAR since 2014. It replaced the African Union-led International Support Mission for CAR (MISCA). One of the largest UN peacekeeping missions, MINUSCA by 20 January 2021 comprised 13 511 uniformed personnel, 1 231 civilian staff and 254 UN volunteers. However, in response to the CPC's insurrection that started in mid-December 2020, the UN Security Council adopted Resolution 2566 on 12 March 2021 through which it decided to increase the level of MINUSCA's uniformed personnel by 2 750 soldiers and 940 police officers, <http://www.minusca.unmissions.org> (accessed 24 June 2021).
- 87 Economic Community of Central African States. It was established in October 1983 with the aim of promoting regional integration in the Central African region. It comprises 11 member states, namely, Angola, Burundi, Cameroon, the CAR, Chad, Congo, the DRC, Equatorial Guinea, Gabon, Rwanda and São Tomé and Príncipe. ECCAS is recognised by the African Union (AU) as a regional economic community (REC). It is based in Libreville, Gabon.
- 88 International Conference on the Great Lakes Region. It was established in 2008 with the main aim of building peace and stability in the Great Lakes region. Its member states are Angola, Burundi, CAR, Congo, DRC, Kenya, Rwanda, South Sudan, Sudan, Tanzania, Uganda and Zambia. It is based in Bujumbura, Burundi.
- 89 Community of Sahelo-Saharan States. It was established in 1998 with the aim of addressing the specific challenges confronting states located in Africa's Sahel and Saharan regions, including drought, desertification, climate change and food insecurity. It has 29 member states, namely, Benin, Burkina Faso, Cape Verde, CAR, Chad, Comoros, Côte d'Ivoire, Djibouti, Egypt, Eritrea, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Libya, Liberia, Mali, Mauritania, Morocco, Niger, Nigeria, São Tomé and Príncipe, Senegal, Sierra Leone, Somalia, Sudan, Togo and Tunisia. The organisation is based in Tripoli, Libya, and is recognised as a REC by the AU. However, as a consequence of the Libyan crisis, the organisation's headquarters temporarily have been moved to N'Djamena, Chad, since April 2019.

specific comprehensive financial assistance programmes aimed at re-starting the country's economy, including through infrastructure building and the development of the agricultural sector.

As far as curbing external interference is concerned, the CAR government should strike a deal with countries such as France, Chad and the Sudan as, directly or indirectly, they play a significant role in the country's transitional justice process and will compel these countries to strengthen judicial cooperation with the CAR and to limit the movement of CAR's suspected criminals on their soil, and so forth. Lastly, the CAR government should establish and strengthen partnerships with its neighbours (Cameroon, Chad, Congo, DRC, South Sudan and Sudan) so as jointly to secure their common borders, especially the infamous 'triangle of death' between the CAR, Chad and Cameroon.

6 Concluding remarks

The CAR is at a crossroads. The country must chart a new path leading out of its recent episodes of armed violence. Dealing effectively with the numerous crimes and human rights violations committed in the country in the last two decades – and possibly beyond – represents a major challenge facing the CAR, but at the same time, it could prove a critical linchpin in the country's post-conflict peacebuilding process.

The elevation of President Touadéra to power in March 2016 provided an environment conducive to the pursuit of transitional justice in the CAR. Yet, there is no common understanding among stakeholders regarding the content to be bestowed on a future CAR's transitional justice mechanism. This article sought to contribute to an ongoing debate. Taking into consideration the efforts being deployed by the government, this article has suggested a three-pronged transitional justice policy for the country.

It is argued that the ICC and the Special Criminal Court – working in close coordination with the national judiciary – are an important element in a framework designed to assist the country in dealing with those accused of committing serious crimes and human rights violations. Such individuals may be granted amnesty if they display a willingness to fully cooperate with transitional justice authorities. They equally may be subjected to vetting or lustrations, that is, being compelled to withdraw either temporarily or indefinitely from active politics in exchange for forgiveness.

As far as victims are concerned, restoration and reparation programmes ought to be applied targeting victims of violence. Priority should be afforded to activities aimed at assisting victims, their relatives and communities at large to rebuild their livelihoods and provide them with the necessary skills to earn a decent living.

Lastly, transitional justice efforts in post-transition CAR should focus on society in general. To this effect the CVJRR should become operational and be provided with the necessary means to undertake its work of revealing the truth about the past and laying the ground for national reconciliation within the set time frame. As far as institutional building is concerned, a National Peace and Dialogue Commission ought to be established as a permanent institution tasked with fostering national unity, social cohesion and peaceful coexistence. Furthermore, a national reconciliation day ought to be agreed upon by all stakeholders, and consensus-based reconciliation monuments ought to be erected in Bangui and regional capital cities. Civil society's participation in the form of the role of religious and traditional leaders as well as community involvement, should be guaranteed.

The CAR's transitional justice mechanism should deal only with the most grievous crimes and serious human rights violations committed during the earmarked period, that is, between 1993 and 2020. At the same time, it is necessary to emphasise that, in order to increase the likelihood of success for the suggested transitional justice policy adequate attention will have to be paid to state recovery and international engagement. Deploying and strengthening state institutions throughout the country, meaningfully improving the country's economic condition as well as fostering national cohesion are critical to the success of the CAR's transitional justice process. So too is the support of external partners, manifested, among other things, by refraining from interference in CAR's internal affairs and the provision of the required diplomatic, technical and financial support.