

**Supplement to the
International Protocol
on the Documentation
and Investigation of
Sexual Violence in
Conflict:**

Central African Republic

Guidance for practitioners in CAR
December 2018

Case Matrix Network

The Case Matrix Network ('CMN') provides knowledge-transfer and capacity development services to national and international actors in the fields of international criminal and human rights law. We seek to empower those working to provide criminal accountability for violations of core international crimes and serious human rights violations, by providing access to legal information, legal expertise and knowledge tools. The CMN is a department of the Centre for International Law Research and Policy ('CILRAP'), which is an international non-profit organisation, registered in Belgium.

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ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights.
AI	Amnesty International.
ANT	Chadian National Army (<i>Armée Nationale Tchadienne</i>).
ASF	Lawyers without Borders (<i>Avocats sans frontières</i>).
CARSV	Conflict and atrocity-related sexual violence.
CIJA	Commission for International Justice and Accountability.
CMN	Case Matrix Network.
COOPI	Italian International Cooperation.
CPJP	Convention of Patriots for Justice and Peace (<i>Convention des Patriotes pour la Justice et la Paix</i>).
CPS	Special Criminal Court.
DSPJ	Judiciary Police Direction Services (<i>Direction des services de la police judiciaire</i>).
FACA	Central African Armed Forces (<i>Forces armées centrafricaines</i>).
FCO	United Kingdom's Foreign and Commonwealth Office.
FPR	Popular Front for Recovery (<i>Front populaire pour le redressement</i>).
GBV	Gender-based violence.
GBVIMS	GBV Information Management System.
HRW	Human Rights Watch.
ICC	International Criminal Court.
ICHL	International criminal and humanitarian law.
ICRC	International Committee of the Red Cross.
LRA	Lord's Resistance Army.
MARA	UN Monitoring, Analysis and Reporting Arrangement.
MdM	Doctors of the World (<i>Médecins du monde</i>).
MINUSCA	United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic.
MISCA	African Union Mission in the Central African Republic.

MLC	Movement for the Liberation of the Congo (<i>Mouvement de libération du Congo</i>).
MRM	Monitoring and Reporting Mechanism.
MSF	Doctors without Borders (<i>Médecins sans frontières</i>).
OHCHR	Office of the United Nations High Commissioner for Human Rights.
OPJ	Judiciary Police Officer (Officier de police judiciaire).
ROPEs	Rules of Procedure and Evidence.
SEA	Sexual exploitation and abuse.
SGBV	Sexual and gender-based violence.
SOPs	Standard Operating Procedures.
UFDR	Union of Democratic Forces for Unity (<i>Union des Forces Démocratiques pour le Rassemblement</i>).
UMIRR	Mixed Unit for Rapid Intervention and Suppression of Sexual Violence against Women and Children (<i>Unité Mixte d'Intervention Rapide et Réponse aux violences sexuelles faites aux femmes et aux enfants</i>).
UNFPA	United Nations Population Fund.
UNPOL	United Nations Police.
UPDF	Uganda People's Defence Forces.
UPR	Universal periodic review.
WHO	World Health Organization.



PART I: USING THE INTERNATIONAL PROTOCOL IN CAR

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Chapter 1: Using the International Protocol and this Supplement

This Supplement adapts the second edition of the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law ('IP2')¹ to the Central African Republic ('CAR') context in a user-friendly format. It focuses on the documentation and investigation of conflict and atrocity-related sexual violence ('CARSV'), defined in IP2 as follows: "sexual violence as a war crime, crime against humanity, act of genocide or other serious violation of international criminal, human rights or humanitarian law".²

This Supplement contains complementary content to IP2 specific to the situation in CAR. The part, chapter, and section order of this Supplement follows that of IP2 in order to ease the use and reference of the Supplement alongside IP2. It is geared to practitioners documenting or investigating CARSV in CAR, whether as members of the Special Criminal Court ('CPS'), the Mixed Unit for Rapid Intervention and Suppression of Sexual Violence against Women and Children ('UMIRR'), the national Judiciary Police, or as ordinary justice system investigators, prosecutors, judges, as well as civil society.

This Supplement provides practitioners with contextual, comparative, and practical information on the perpetration of CARSV, accountability avenues, legal framework, 'do no harm' approaches, and types of sexual violence evidence in CAR. It provides background related to the sexual violence context

in CAR and describes its forms, alleged perpetrators and categories of victims, as well as individual and societal impacts. It provides an overview of national, hybrid and international accountability mechanisms available in and outside CAR, including challenges to documentation, investigation, or prosecution, and recent efforts at accountability processes. It provides user-friendly comparison tables of CARSV crimes with 'ordinary' sexual violence crimes based on the international definition and/or that from the 2010 Criminal Code. This allows practitioners to compare elements of crimes and understand legislative gaps. Furthermore, it examines modes of liability, defences, and procedural issues, such as rules on eliciting evidence of consent under the CPS' Rules of Procedure and Evidence ('ROPEs'). Lastly, it provides insights on upholding the 'do no harm' principle when working with survivors, introduces types of sexual violence evidence in CAR and presents a detailed Evidence Workbook detailing means of proof and sources of evidence, based on the Jean-Pierre Bemba trial proceedings at the International Criminal Court ('ICC').³

The information in this Supplement is up to date as of November 2018. Users are free to use, update, or adapt this Supplement as needed. However, please give due acknowledgment to this Supplement when adapting it.

¹ FCO, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law* (2nd edition), March 2017 [IP2].

² *Ibid.*, p. 11.

³ Only facts and findings that were not overturned on appeal are considered in this Supplement. See Annex 1 – Evidence Workbook.



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Chapter 2: Understanding Sexual Violence in CAR

Rape and other forms of CARSV have been used strategically as part of attacks on civilians to punish and terrorise them. The status of women and girls in CAR exposes them to discrimination, stigmatisation, and socially-acceptable levels of violence, which create conditions for widespread CARSV with impunity. Major practical and procedural obstacles have prevented the launching of prosecutions in domestic courts and, as a result, perpetrators largely enjoy impunity. This ongoing conflict in CAR has also produced a generalised insecurity situation and dysfunctional or collapsed State institutions, which may improve with the operationalisation of the CPS and other stabilisation and rule of law capacity-building efforts. Rape and enslavement, including acts of sexual slavery and forced marriage were the main crimes perpetrated on women, girls, men and boys in CAR by a multitude of national and international actors. The individual and societal consequences are significant, with survivors often being completely ostracised from their families and communities with little or no support. The situation is marked by severe physical and psychological trauma suffered by survivors and a climate of impunity in which crimes are committed with little to no prospect of justice, truth or reparation.

A. Conflict and Atrocity-Related Sexual Violence in CAR

The Panel of Experts on the Central African Republic created by the UN Security Council,

states that sexual and gender-based violence ('SGBV') is widespread and recurrent in the entire country.⁴ The occurrence of core international crimes – including SGBV – increased in three periods: (i) between 2002 and 2003, when Army General François Bozizé took power; (ii) since 2013, when the Séléka, an alliance of various rebel groups, ousted Bozizé and led to Michel Djotodia becoming president;⁵ and (iii) around the 2016 election, when violence peaked again, during which a high number of SGBV crimes were allegedly committed.⁶ Periodic spikes in violence occurred in between these crises. Although these crises have been primarily politically motivated, religious tensions between the Christian and Muslim communities also occurred, particularly during 2013, involving the opposition of the Muslim Séléka rebels against the mostly Christian Anti-balaka group.⁷ Other armed groups, including the Lord's Resistance Army (LRA), have operated in CAR and committed numerous grave abuses throughout the various crises. Lastly, international peacekeepers, deployed in CAR since 2013, have been involved in the commission of sexual exploitation and abuse ('SEA') against civilians.

1. Forms of CARSV

Rape

Rape has been used in CAR as a means to terrorise the population. During recent and past periods of conflict in CAR, rape – often accompanied by grave violence such as killing

4 Security Council, Letter dated 26 July 2017 from the Panel of Experts on the Central African Republic extended pursuant to Security Council resolution 2339 (2017) addressed to the President of the Security Council, Midterm Report of the Panel of Experts on the Central African Republic extended pursuant to Security Council resolution 2339 (2017), U.N. Doc. S/2017/639, 26 July 2017, para. 113.

5 ICC, *Situation in Central African Republic II*, Case No. ICC-01/14; Enough, *Central African Republic*, 2016 [Enough CAR].

6 UNSG, *Report of the Secretary-General on Conflict-Related Sexual Violence*, 20 April 2016, S/2016/361, para. 26.

7 Tearfund CAR, *To Make Our Voices Heard: Listening to Survivors of Sexual Violence in Central African Republic*, 2015, p. 8 [Tearfund CAR]; Enough CAR, *supra* note 5; Human Rights Council, *Report of the Independent Expert on the situation of human rights in the Central African Republic*, A/HRC/39/70, 13 August 2018, pp. 9-10.

or mutilation of the victim(s) – was widespread. In numerous cases, alleged perpetrators ordered residents to open their houses under the pretext of searching for combatants or weapons during village raids. They raped women, often in front of their children, girls and other family members and occasionally brutally amputated limbs to mark them as victims of rape. Rapes were also committed in public or in front of the community and often in conjunction with other crimes such as pillaging, beatings and threats with weapons.⁸ Gang rapes involving up to 20 men raping one woman repeatedly, sometimes in public places, and rapes took place in a context of violence with perpetrators killing survivors' family members on some occasions or committing the rapes with objects, including grenades.⁹

Sexual slavery

Armed groups allegedly abducted women and girls as hostages to be used as slaves, including sex slaves, meaning they were repeatedly raped for days or even months. They were deprived of liberty and forced to do domestic work.¹⁰ Sexual slavery survivors were occasionally beaten and subjected to other forms of ill-treatment, especially when they resisted sexual advances.¹¹ Some of the victims were as young as 14 years of age and became pregnant in the course of their captivity.¹² Children associated with armed groups were subjected to sexual slavery, with numerous feeling they had no choice but to submit to

sexual advances from commanders or higher-ranked armed group members.¹³

Forced marriage

Abducted women and girls were coerced into marrying members of armed groups.¹⁴ The Séléka and Anti-balaka are alleged to refer to women and girls in captivity as “wives”.¹⁵ Survivors of forced marriage were threatened with death if they refused to have sex with perpetrators.¹⁶ This could occur multiple times per day with violence if survivors refused or expressed that they not want to. Survivors were also forced to cook, clean and collect food or water.¹⁷

CARSV against men and boys

Men and boys have also been subjected to sexual violence while family members were forced to watch, including rape and gang rape.¹⁸ Male survivors reported being subjected to anal rape with a penis or other objects, such as sticks or guns.¹⁹ There are also reported patterns of men being forced to give oral sex and touch the genitals of other males, which is used as a deliberate tactic to degrade survivors by forcing them to perform same-sex acts.²⁰ This could be stigmatising and shameful for survivors due to the prevalence of homophobic attitudes in CAR. Males have also been subjected to forced nudity, forced masturbation, and beating, mutilation or severing of genitals.²¹ Moreover, males have been forced to witness sexual violence perpetrated on their female family members.

8 United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic ('MINUSCA'), Office of the United Nations High Commissioner for Human Rights ('OHCHR'), [Report of the Mapping Project documenting serious violations of international human rights now and international humanitarian law committed within the territory of the Central African Republic between January 2003 and December 2015, 2017](#), p. 214 [CAR Mapping Report].

9 *Ibid.*, pp. 206, 214; Tearfund CAR, *supra* note 7, p. 8; Enough CAR, *supra* note 5, p. 16; Human Rights Watch, [They Said We Are Their Slaves: Sexual Violence by Armed Groups in the Central African Republic](#), 2017, p. 16 [HRW SGBV Report].

10 HRW SGBV Report, *ibid.*, p. 46.

11 CAR Mapping Report, *ibid.*

12 *Ibid.*, p. 222.

13 *Ibid.*, p. 223.

14 *Ibid.*, p. 218.

15 HRW SGBV Report, *supra* note 9, p. 55.

16 *Ibid.*, p. 58.

17 *Ibid.*, p. 16.

18 FIDH, [Forgotten, Stigmatised: the Double Suffering of Victims of International Crimes](#), October 2006 [FIDH Double suffering of victims].

19 All Survivors Project, [I don't know who can help: Men and boys facing sexual violence in Central African Republic](#), 2018, p. 18 [All Survivors SGBV against men and boys].

20 *Ibid.*, p. 19.

21 *Ibid.*

2. Alleged perpetrators

Mouvement de libération du Congo (‘MLC’)

The MLC moved from the Democratic Republic Congo (‘DRC’) to CAR around October 2002. During the 2002-2003 violence, it is alleged to have carried out a campaign of killing, rape, and pillage in CAR.²² The MLC is reported to have committed rape in public, in front of family members and communities, gang rape and rape of young girls, with some as young as 10 years of age.²³ The MLC is suspected of having committed CARSV in conjunction with pillaging and violence, beating survivors and threatening them with weapons,²⁴ and of raping and gang raping boys and men.²⁵

General Bozizé’s rebel fighters and national security forces

Prior to General Bozizé taking power in March 2003, his fighters, known as “*libérateurs*”, included numerous Chadian nationals.²⁶ They are reported to have committed rape and other forms of sexual violence in the Centre-North areas of the country as they moved from Chad towards Bangui.²⁷ Incidents of gang rape allegedly committed by President Bozizé’s national security forces, including the Presidential Guard and Forces armées centrafricaines (‘FACA’) were reported in the weeks and months following his *coup d’état*.²⁸

Armed groups opposing the Government

Members of the Union of Democratic Forces for Unity (‘UFDR’) and of the Convention of Patriots for Justice and Peace (‘CPJP’) have allegedly committed acts of rape and other forms of sexual violence against civilians.²⁹ UFDR was one of the founding members of the Séléka coalition and some CPJP commanders also joined Séléka. UFDR members are reported to have committed rape against civilians and recruited children, while elements of the CPJP are suspected of “systematic rapes on various villages” and forcing women and girls to marry them.³⁰

Séléka/ex-Séléka

The Séléka (“alliance” in the Sango language) was created in late 2012 by the fusion of three armed groups from the northeast.³¹ Séléka fighters are overwhelmingly Muslim but the group has not professed a religious affiliation.³² During the armed offensive of 2012, Séléka fighters are alleged to have committed “extensive acts” of SGBV as they seized control of major towns and villages on the way to Bangui.³³ Séléka fighters are suspected of forcibly breaking into houses, hospitals and schools, and systematically raping women and girls that they found.³⁴ Séléka are accused of carrying out gang rapes, involving up to 10 fighters at a time, in various parts of the country.³⁵

²² CAR Mapping Report, *supra* note 8, p. 214.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ FIDH Double suffering of victims, *supra* note 18.

²⁶ CAR Mapping Report, *supra* note 8, p. 215.

²⁷ *Ibid.*

²⁸ *Ibid.*, p. 216.

²⁹ *Ibid.*, pp. 217-18.

³⁰ *Ibid.*, p. 218.

³¹ HRW SGBV Report, *supra* note 9, p. 33.

³² *Ibid.*

³³ CAR Mapping Report, *supra* note 8, p. 219.

³⁴ *Ibid.*

³⁵ ICC, *Situation in the Central African Republic II*, Article 53(1) Report, 24 September 2014; FIDH, *They must all leave or die*, June 2014; CAR Mapping Report, *supra* note 8, p. 219.

Anti-balaka

Anti-balaka (“anti-bullet” in the Sango language and “machete” in the Gbaya language spoken in the area around Bossangoa - Bozize’s home region) groups emerged in 2013 as Christian and animist local self-defence groups in response to widespread killings and destruction.³⁶ It began to launch attacks in late 2013 to overthrow the Séléka. In these attacks, Anti-balaka is suspected of committing SGBV against the civilian population, including rapes, sexual slavery lasting from a few days to many months, and forced marriage.³⁷ Sexual violence, including rape, was also allegedly committed against recruited children.³⁸

Foreign armed groups

Elements from the Popular Front for Recovery (‘FPR’), an armed group from Chad, and from the Lord’s Resistance Army (‘LRA’), an armed group from Uganda, reportedly committed acts of sexual violence in CAR.³⁹ FPR fighters are alleged to have conducted raids on local populations, while raping women and girls between 2009 and 2012 in the Ouham and Nana-Gribizi prefectures.⁴⁰ LRA fighters are suspected of abducting children and subjecting them to rape and other forms of sexual violence, including sexual slavery.⁴¹ The LRA is accused of not only targeting children but also of “systematically” abducting women and girls into sexual slavery since it entered CAR in 2008 in the Mbomou, Haut-Mbomou, and Haute-Kotto prefectures.⁴²

Zaraguina

The Zaraguina are a group composed of former members of failed rebellions in CAR and Chad believed to have engaged in armed banditry and armed attacks against civilians. It is also suspected of committing rape and other forms of sexual violence in the Centre-North region of CAR in 2008 and 2009.⁴³ The Zaraguina are reported to have abducted and sexually abused young girls, from the ages of 8 to 12.⁴⁴

International forces

United Nations and non-United Nations international forces under a Security Council mandate are alleged to have committed sexual violence against girls, boys and women in CAR.⁴⁵ From December 2013 to June 2014, the UN documented allegations of sexual violence against children committed by soldiers of the African Union Mission in the Central African Republic (‘MISCA’), the French Sangaris forces and the European Union Forces (‘EUFOR RCA’).⁴⁶ Other organisations documented allegations that the French Sangaris forces and MISCA forces committed sexual violence against boys, girls and women at the Bangui M’Poko IDP camp.⁴⁷ On 15 September 2014, authority was transferred from MISCA to MINUSCA.⁴⁸ Cases of SEA continued to be reported thereafter.⁴⁹ The vast majority of cases involve women and girls but boys have also been among the victims, with allegations of sexual abuse in exchange for food or money near Bangui M’Poko IDP camp.⁵⁰

36 HRW SGBV Report, *supra* note 9, p. 33; Human Rights Watch, *Killing Without Consequence: War Crimes, Crimes Against Humanity and the Special Criminal Court in the Central African Republic*, 2017, p. 12 [HRW Killing Without Consequence].

37 CAR Mapping Report, *supra* note 8, pp. 221-222.

38 *Ibid.*, p. 223.

39 *Ibid.*, pp. 223-224.

40 *Ibid.*, p. 224.

41 Report of the Secretary-General on Children and Armed Conflict (A/65/820-S/2011/250), 23 April 2011; CAR Mapping Report, *supra* note 8, p. 224.

42 CAR Mapping Report, *ibid.*

43 *Ibid.*, p. 225.

44 Report of the Secretary-General on Children and Armed Conflict in the Central African Republic (S/2009/66), 3 February 2009; Report of the Secretary-General on Children and Armed Conflict in the Central African Republic (S/2011/241), 13 April 2011.

45 CAR Mapping Report, *supra* note 8, p. 226.

46 *Ibid.*

47 Report of the Secretary-General on Children and Armed Conflict, 5 June 2015; United States of America Department of State, *Country Reports on Human Rights Practices*, 2015 [State Dept Country Reports]; Report of the Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic, 17 December 2015, p. 36 [Independent Review on Sexual Exploitation and Abuse].

48 Report of the Secretary-General on the Situation in the Central African Republic (S/2014/857), 28 November 2014.

49 CAR Mapping Report, *supra* note 8, p. 227.

50 All Survivors SGBV against men and boys, *supra* note 19, p. 25.

There were reports of children witnessing the rape of other children by peacekeepers and of it being known in communities that children could approach certain peacekeepers for food while having to submit to sexual abuse in exchange.⁵¹ Peacekeepers have been accused of raping and gang raping women and girls and of running a prostitution ring at Bangui M’Poko IDP camp.⁵²

Non-United Nations international forces deployed to CAR (i.e. not in the context of a Security Council mandate) are also alleged to have committed sexual violence against civilians. The Chadian National Army (‘ANT’), present at various times in CAR, is suspected of raping women and girls during raids or joint operations with FACA against Chadian rebels.⁵³ Elements of the Uganda People’s Defence Forces (‘UPDF’) deployed to combat the LRA reportedly committed numerous rapes and acts of sexual slavery against women and girls.⁵⁴

The allegations of sexual exploitation and abuse concern military personnel with the following nationalities:⁵⁵

- Bangladesh;
- Burundi;
- Cameroon;
- Chad;
- Democratic Republic of Congo;
- Egypt;
- Equatorial Guinea;
- France;
- Gabon;
- Mauritania;
- Morocco;
- Niger;
- Pakistan;

- Republic of Congo;
- Rwanda;
- Uganda;
- Zambia.

3. Survivors

Survivors face an array of factors that lead them to be targeted. These intersectionalities include religion, perceived affiliation (to armed groups, the government, or members of a certain religion) and gender, which are oftentimes used as grounds to justify sexual violence against survivors and their families.

Religious affiliation

Rape has been used to punish Christian and Muslim women who were known or perceived to have relationships with men of the other religion, believed to be trading with them or accused or believed of being married to members of Séléka or Anti-balaka.⁵⁶ It appears that in some cases, such accusations were made only to justify committing sexual violence and to “dishonour” survivors.⁵⁷ Women and girls were also targeted on the basis of their presumed religion, which was used as grounds to assume support for ‘enemy’ groups and justify committing sexual violence.⁵⁸

Perceived support to the ‘enemy’

Rape has been used as a form of retaliatory punishment against families that were suspected of being allies of the other side or of giving or selling food to the other side. FACA soldiers are alleged to have raped women as punishment for alleged support to rebels, which included for example, accusations of having cooked for UFDR rebels.⁵⁹ Armed

51 [Independent Review on Sexual Exploitation and Abuse](#), *supra* note 47, p. 36.

52 [State Dept Country Reports](#), *supra* note 47.

53 [CAR Mapping Report](#), *supra* note 8, p. 229.

54 *Ibid.*

55 [Conduct and Discipline Unit in UN Field Missions](#) (last visited November 2018); [Report of the Secretary-General on Special Measures for Protection from Sexual Exploitation and Abuse \(A/70/729\)](#), Annex IV, 16 February 2016.

56 SG report on sexual violence in conflict, April 2016, *supra* note 6, para. 13; [CAR Mapping Report](#), *supra* note 8, p. 221; [HRW SGBV Report](#), *supra* note 9, p. 45.

57 [CAR Mapping Report](#), *supra* note 8, p. 222.

58 [HRW SGBV Report](#), *supra* note 9, p. 45.

59 [CAR Mapping Report](#), *supra* note 8, pp. 216-217.

groups are alleged to have attacked minority ethnic groups, who they believed had allegiances to enemy armed groups or the government. Rape was used as a punishment for the survivor's alleged support to enemies.⁶⁰

Gender

Women and girls

Women were targeted to terrorise the population, to punish them for having relationships with Muslim, Christian or men of ethnic minorities, or aiding the 'enemy', to punish their male relatives and to dehumanise and dishonour them. Women and girls who endured sexual slavery and/or forced marriage were also forced to carry out domestic work. There are reports of girls as young as 5 years old and women of 60 years old or older being raped.⁶¹

Men and boys

As with women and girls, sexual violence against men and boys has been used to terrorise and humiliate the civilian population.⁶² In some cases, CARSV was carried out in revenge for attacks by opposing armed groups. In other cases, it appears to have been used in the absence of the rule of law and the impunity for criminal acts.

Socio-economic status

Socio-economic status is also a factor, since most people living in high-insecurity areas are poor and need to move into remote or even more insecure areas as a result of subsistence activities, such as farming, fishing, hunting or small-scale trading where they may be exposed to a higher risk of sexual violence.⁶³

B. Contextualising Sexual Violence

1. Shame and stigma

Stigmatisation of CARSV survivors is one of the key factors that discourages them from seeking to report. The social and economic consequences for survivors, whose victimisation is known in the family or community, can be severe. Spousal rejection or becoming unmarriageable is a common occurrence for survivors who cannot or do not hide that they were raped and, oftentimes, survivors are blamed for the crimes committed against them. Many families are not based on marriage in CAR and, if a woman becomes a victim of sexual violence, her partner may abandon her and their children.

Cultural beliefs about rape are deeply ingrained, such as: only women can be victims of sexual violence; speaking about intimate body parts is inappropriate; rape brings dishonour to victims and their families; marital rape is often not considered a crime; amicable arrangements after rape, such as marriage to the perpetrator or compensation, are preferable to a criminal investigation/provide a defence for the crime; the victim's prior and subsequent sexual history are relevant; sexual crimes are primarily motivated by lust. These beliefs translate into barriers that may cause criminal justice actors to overlook and minimise sexual offences or result in the stigmatisation or re-traumatisation of the victims.

Customs and tradition place girls and women at an inferior position in society. As such, females are often excluded from decision-making that has consequences on their lives and livelihood. In this manner, both CARSV and discrimination against females are widespread.⁶⁴

⁶⁰ *Ibid.*, p. 218.

⁶¹ *Ibid.*, p. 206.

⁶² All Survivors SGBV against men and boys, *supra* note 19, p. 18.

⁶³ *Ibid.*

⁶⁴ CAR Mapping Report, *supra* note 8, p. 207.

2. Practical obstacles to filing court cases

Armed groups continue to control large swathes of territory in CAR. In practical terms, many survivors of sexual violence simply have no one to report to, as the perpetrator likely belongs to the armed group running the local *Gendarmerie* post. CAR has poor road networks throughout much of the country, and survivors often face the challenge of finding sums to pay for transport to police stations, *Gendarmerie* posts and medical services.

There is profound lack of protection and support available for survivors from the CAR authorities in most of the country as there is no victim and witness protection mechanism available (although the situation is much better in Bangui since 2017 – see Chapter (3)(A) (1) “Domestic and Hybrid courts in CAR”, and UMIRR *on page 19*), a gap which humanitarian and human rights actors endeavour to fill. Police stations lack computerisation and lockable cabinets to securely store survivors’ personal information and statements. As such, files may lie on shelves and desks accessible to anyone. There are no official shelters or safe-houses except for temporary accommodation provided by NGOs.

The genuine will and commitment of the CAR government to address sexual violence and provide assistance to survivors must be acknowledged. The government has facilitated various trainings to magistrates, judiciary police officers (OPJs) and *gendarmes* on SGBV investigations and prosecutions. It has made efforts to create gender focal points at courts and tribunals, which are in charge of monitoring SGBV cases and ensuring that they move forward in the justice system. In 2015, the government decided to establish a specialised unit to provide survivors with interdisciplinary support to access justice and necessary services to protect their rights and wellbeing: the UMIRR, which is comprised of police, *gendarmerie*, psychosocial support and legal aid staff and became operational in 2017. In 2015, the CPS was established in law

to exercise jurisdiction over grave violations of international human rights and humanitarian law. Its inaugural session was held on 22 October 2018, marking the beginning of its judicial work, while its full operationalisation is still ongoing. However, all of these measures have been thwarted to some degree by delayed and weak implementation and ongoing instability.

3. Lack of data concerning prevalence of CARSV

No national or international agency has an overview of the number and nature of sexual violence complaints currently on file throughout the country. There is no centralised system for managing these or any other complaints. It is impossible to know how many of the filed complaints are conflict-related and how many represent ‘ordinary’ cases.

4. Near total impunity

Successive conflicts and coups, among other factors, brought the criminal justice system of CAR to near collapse. Human and material resources to conduct investigations and prosecutions lack. There are insufficient numbers of judges, lawyers and police, and the most basic resources at police stations and *Gendarmerie* posts – such as electricity, private spaces to take witness statements, paper, vehicles and fuel – are often lacking. This situation may partially improve with the operationalisation of the CPS.

There is a climate of impunity cultivated largely by cultural beliefs that favour amicable solutions over criminal justice. Community leaders often deal with cases of sexual violence outside of the criminal justice system. Survivors or their families are pressured (through financial need or coercion) to accept compensation from the perpetrator rather than pursue justice. Many survivors are in such dire financial circumstances that their need for monetary support overshadows the fact that a payment (or how it may be used by relatives) will do little to repair the harm suffered.

C. Impact of CARSV in CAR

Rape is used to dehumanise survivors and make them “objects of use and abuse”.⁶⁵ Survivors are humiliated in front of their families and communities and their dignity is permanently damaged. CARSV survivors face medical, psychosocial, material and societal consequences. Survivors sustain severe physical trauma, in many cases together with sexually-transmitted infections, such as HIV. Survivors and their families, including children, are also subject to severe psychological trauma, especially when sexual assault is committed in front of families with brutal violence. Accessibility of medical and psychosocial care in CAR is limited and the prohibitive cost of traveling from remote locations coupled with shame and stigma faced by survivors leads to significant barriers for appropriate care. Moreover, sexual violence is often committed in conjunction with pillaging of survivors’ property, therefore placing them in a worse financial situation.

Survivors often suffer in silence to avoid stigma and shame on themselves and their families. Numerous survivors who face sexual violence committed publicly or whose situation is disclosed to the community are abandoned by their spouse, who is often the breadwinner, but left with children.⁶⁶ Survivors obtain little family or community support and struggle to provide for their children as the mobility of women to undertake vital economic and livelihood activities, such as access to fields and markets, is compromised.⁶⁷

Survivors who become pregnant as a result of the sexual violence committed on them have the additional burden of caring for the child without any material or psychological support.⁶⁸ Numerous children born as a result of sexual violence are rejected by their mother’s

family and community and face significant stigma as they grow up.

In the vast majority of cases, perpetrators enjoy total impunity and survivors do not receive justice or reparations. Informal justice has been used in some cases for the survivor or their families to accept compensation from the perpetrator or for the survivor to marry the perpetrator, thereby perpetuating the suffering and subjugation of the survivor.

There are few survivor-centred initiatives that allow survivors to express their views and wishes in relation to justice, truth, and reparation.

⁶⁵ *CAR Mapping Report*, *supra* note 8, p. 232.

⁶⁶ *Ibid.*

⁶⁷ *Report of the Secretary General on conflict-related sexual violence*, 23 March 2018, para. 26.

⁶⁸ *CAR Mapping Report*, *supra* note 8, p. 232.



PART III: ACCOUNTABILITY AVENUES AND REMEDIES

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Chapter 3: Accountability Avenues and Remedies

This chapter examines domestic and international accountability avenues and remedies. It describes how criminal complaints are initiated in both the ordinary criminal justice system and the CPS, as well as the role of UMIRR in investigations. It provides an overview of the CAR proceedings at the ICC and the various complaints mechanisms that exist through human rights conventions. Lastly, it examines documentation efforts by investigative and fact-finding bodies, extraterritorial jurisdiction efforts, and proceedings against peacekeepers for sexual exploitation and abuse.

A. Overview of Accountability Avenues and Remedies for Survivors

1. Domestic and Hybrid Courts (in CAR)

Criminal

A criminal complaint can be initiated by the survivor (even if under 18 years old), the parents, an NGO, health workers or other representative of the victim to the police or gendarmerie⁶⁹ in writing (plainte) or orally (dénonciation). The Prosecutor's office may also initiate proceedings *proprio motu*. Though survivors should be able to file complaints free of charge,⁷⁰ in reality, they must pay fees, except at UMIRR and the CPS.⁷¹ The police or gendarmerie then transfer the file to

a prosecutor,⁷² of the Republic who decides to proceed with preliminary investigations according to the procedure for flagrant offences or to request the presence of the accused in court. Otherwise the prosecutor may open an “*information judiciaire*” pursuant to article 50 of the Criminal Procedure Code, issue an admonition for children in conflict with the law under 14 years of age or a stay of proceedings with notification to all concerned parties.⁷³ For flagrant offences, meaning those that are being committed or have just occurred,⁷⁴ the police immediately informs the prosecutor who starts the investigation by attending the crime scene to make necessary observations and take measures to preserve evidence.⁷⁵ With regards to juvenile police, who are in charge of children in conflict with the law, the process can be triggered in three ways: the investigation is triggered by the police itself, by a complaint or upon request of the prosecutor.⁷⁶

Alongside the action carried out by the prosecutor, the survivor can also decide to file a request to become a civil party to the criminal proceedings if they have been injured by the crime.⁷⁷ The investigating judge decides whether to accept or reject the claim after the prosecutor has made submissions on the issue.⁷⁸ The survivor filing such request must provide a payment in the amount to be

69 International Organization for Migration, *Reference Manual to the police and gendarmerie on gender-based violence case management*, 2016, p. 45 [IOM Reference Manual]; *Loi n°10.002 du 6 janvier 2010 portant Code de procédure pénale centrafricain*, 6 January 2010, Arts. 14, 15, 28, 35-36, 44 and 50 [Criminal Procedure Code of CAR 2010]; Case Matrix Network, *National Legal Requirements: Sexual and Gender-Based Violence in Central African Republic*, 2017, p. 67 [CMN CAR Legal Analysis]; Sous Cluster Violences Basées sur le Genre, *Procédures opérationnelles standards pour la prévention et la réponse à la violence basée sur le genre en République Centrafricaine*, 2015, p. 29 [GBV SOP CAR].

70 IOM Reference Manual, *ibid.*

71 Interviews with justice practitioners in Bangui, October 2018.

72 *Criminal Procedure Code of CAR 2010*, *supra* note 69, Art. 15.

73 *Ibid.*, Art. 28.

74 *Ibid.*, Art. 35.

75 *Ibid.*, Art. 36.

76 *GBV SOP CAR*, *supra* note 69, p. 29; *CMN CAR Legal Analysis*, *supra* note 69, p. 68.

77 *Criminal Procedure Code of CAR 2010*, *supra* note 69, Art. 56.

78 *Ibid.*, Art. 57.

determined by the investigating judge within 30 days, failing which the claim is dismissed.⁷⁹ A civil party serves as a formal party

to proceedings and may make submissions on the case file, examine witnesses and receive damages from the defendant.⁸⁰

Practitioners should keep in mind:⁸¹

Police officers often rely on the alleged perpetrator's confessions and do not collect additional material evidence; this runs the risk of collapse of the case if the alleged perpetrator withdraws his/her confession.

Gendarmerie officers do not always transfer the file to the prosecutor. In some areas, they solve the dispute themselves, in exchange for compensation of the victim, rather than transferring the file to a prosecutor.

A civil party whose claim is dismissed may be liable for damages if the accused decides to file a lawsuit for damages.

There are various criminal courts with jurisdiction over different types of crimes in CAR:⁸²

- “Correctional tribunals” within each “Tribunal de Grande Instance (TGI)”
 - Three criminal courts (located within the Bangui, Bambari and Bouar Courts of Appeal): the Bangui and Bouar Courts hold criminal sessions;
 - Youth Court (court with jurisdiction over minors in conflict with the law);
- Military tribunals and court martial (military tribunals have jurisdiction over military offences and ordinary law committed by military members or assimilated individuals exercising their functions. Each military tribunal is held as court martial (see Law 17.012 of 24 March 2017 introducing the Military Justice Code);
- Court of Appeal (court with appellate jurisdiction over cases decided by “correctional

tribunals” with territorial jurisdiction— it also holds criminal trials⁸³);

- Court of Cassation (highest court in the judicial system and court of last instance).

Criminal mobile courts have not operated in the country since 2012.⁸⁴

The Ministry of Justice has worked to create gender focal points in courts and tribunals, which are currently monitoring SGBV cases, ensuring their processing and collecting statistics from the Prosecutor's office, investigation chambers and registrars located at the Bangui Court of Appeal in Bangui. They also refer cases to UMIRR for investigation and integrated services. The Ministry is working on establishing the terms of reference of the focal points and it is planned that these will be officially established throughout the country in the near future.

⁷⁹ *Ibid.*, Art. 59.

⁸⁰ Human Rights Watch, *Looking for Justice: The Special Criminal Court, a New Opportunity for Victims in the Central African Republic*, 2018, p. 13 [HRW CAR CPS].

⁸¹ IOM Reference Manual, *supra* note 69, p. 43; World Bank Group, *Understanding Access to Justice and Conflict Resolution at the Local Level in the Central African Republic*, 2012, p. 41 [WBG Understanding Access to Justice and Conflict Resolution]; *Criminal Procedure Code of CAR 2010*, *supra* note 69, Art. 62.

⁸² *Criminal Procedure Code of CAR 2010*, *ibid.*, Arts. 209, 231; Committee on the Elimination of Discrimination against Women, *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Central African Republic*, CEDAW/C/CAF/1-5, 21 February 2013, para. 121 [CEDAW Committee Consideration of Reports: CAR]; *CMN CAR Legal Analysis*, *supra* note 69, p. 26.

⁸³ *Criminal Procedure Code of CAR 2010*, *ibid.*, Arts. 219, 220. There are three Courts of Appeal in the country: Bangui, Bouar and Bambari; only the Courts of Appeal at Bangui and Bouar are able to hold criminal sessions.

⁸⁴ Interviews with justice practitioners in Bangui, *supra* note 71.

There are major concerns with the execution of court judgements issued against perpetrators of human rights violations, which not only avoid prison due to the dysfunctional nature of the internal security system, but also do not possess sufficient means to pay criminal fines and provide reparation to victims or their relatives. Furthermore, there is no state fund for victim assistance to fill the gap left by the lack of reparation provided by perpetrators.

Overview of relevant prosecutions

In 2004, former President Patassé (who was overthrown by the coup d'état of General Bozizé), was charged, together with Jean-Pierre Bemba, Martin Koumtamadi alias Abdoulaye Miskine, Victor Ndoubabe, Paul Barril and Lionel Gane-Befio, with numerous crimes, including rape.⁸⁵ That same year, the indictment Chamber of the Court of Appeal in Bangui decided that, due to the seriousness of the crimes, the accused should instead be judged by the ICC.⁸⁶ While Bemba faced charges and was ultimately acquitted by the ICC on appeal (see Chapter (3)(A)(3) "International Criminal Court (ICC)" on page 25), no jurisdiction, not even the ICC, has brought to justice other MLC commanders or elements, FACA soldiers or Central African officials in connection with sexual and other forms of violence perpetrated in late 2002 and early 2003.⁸⁷

Rodrigue Ngaïbona, aka Andilo, a high-level Anti-balaka leader, was arrested in January 2015 in Bouca and charged with "murder, rebellion, illegal possession of weapons of war, criminal association, rape and looting".⁸⁸ Andilo was sentenced to a life sentence on 22 January 2018 by the Bangui Criminal Court for murder, conspiracy, theft with a weapon, kidnapping, and illegal detention of war arms and ammunition.⁸⁹ Andilo is suspected of having committed numerous crimes against humanity and war crimes, including CARSV, for which he was not convicted by the Bangui Criminal Court.

Alfred Yekatom Rhombo, aka Rambo, a high-profile Anti-balaka commander and member of the National Assembly, as well as its Defence and Security Commission dealing with the process of disarmament, demobilisation, reintegration and repatriation of armed groups,⁹⁰ was arrested on 29 October 2018 at the National Assembly in Bangui and transferred to the seat of the ICC in The Hague (The Netherlands) on 17 November 2018, under an ICC sealed arrest warrant.⁹¹ Mr. Yekatom is suspected of having committed crimes under international law, including killings of civilians, and is under UN sanctions for engaging in acts that undermine peace, stability and security in CAR.⁹²

Patrice-Edouard Ngaïssona, a previous most senior leader and "National General Coordinator" of the Anti-balaka, was arrested in France on 12 December 2018 under an ICC arrest warrant.⁹³ He is alleged to be responsible for crimes against humanity and war crimes, including murder, deportation, torture, persecution, enforced disappearance and pillaging, among others, between December 2013 to December 2014.⁹⁴

It is worth noting that neither of the arrest warrants against Rambo or Ngaïssona include the crime of rape or other crimes of sexual violence.

85 See *Cour d'appel de Bangui, Arrêt d'infirmité partielle de non-lieu, de disjonction et de renvoi devant la cour criminelle de la chambre d'accusation*, 16 December 2004; *Cour d'appel de Bangui, Ordonnance de non-lieu et de renvoi partiel du 16 septembre 2004 (procédure contre Patassé, Bemba, Miskine, Barril et autres)*, 16 September 2004. The charges were summarized by ICRC in *CAR: Practice Relating to Rule 161. International Cooperation in Criminal Proceedings*, as well as by the FIDH in *La FIDH et la situation en RCA devant la CPI - L'Affaire Jean-Pierre Bemba Gombo* as cited in *CAR Mapping Report*, *supra* note 8, p. 215.

86 FIDH, *Double suffering of victims*, *supra* note 19, p. 38.

87 *CAR Mapping Report*, *supra* note 8, p. 215. In 2006, Patassé was tried in *absentia* in Bangui and sentenced to 20 years in prison for fraud, but not for other violations. See *Le Monde, L'ex-président centrafricain Patassé condamné à 20 ans de travaux forcés par contumace*, 29 August 2006.

88 France24, *Un puissant chef Anti-balaka arrêté en Centrafrique par les troupes de l'ONU*, 19 January 2015.

89 FIDH, *Condamnation d'Andjilo : un premier pas décisif, en attendant le jugement d'autres chefs de guerre*, 2018.

90 Amnesty International, *The Long Wait for Justice: Accountability in Central African Republic*, 2017, p. 6 [AI Accountability in CAR].

91 Radio France International, *Centrafrique: l'ex-chef anti-balaka Alfred Yekatom Rhombot extradé vers la CPI*, 17 November 2018.

92 *AI Accountability in CAR*, *supra* note 90, p. 17.

93 ICC Press Release, *Situation in Central African Republic II: Patrice-Edouard Ngaïssona arrested for crimes against humanity and war crimes*, 12 December 2018.

94 *Ibid.*

Special Criminal Court (CPS)

The CPS was established by law in June 2015⁹⁵ as a domestic institution with a mixed composition of national and international judges, prosecutors and registry staff. It also has an investigation unit comprised of national *gendarmes* and OPJs, supported by six UNPOL officers. It exercises jurisdiction throughout CAR to investigate and try serious violations of human rights and international humanitarian law, including CARSV amounting to war crimes, crimes against humanity and genocide, committed after 1 January 2003.⁹⁶ The CPS has primacy over ordinary criminal courts as the Special Prosecutor has the ability to request a case transfer from the Public Prosecutor.⁹⁷ Likewise, the Special Prosecutor may transfer a case to the jurisdiction of ordinary courts.⁹⁸

Both the CPS and ICC may exercise jurisdiction over genocide, crimes against humanity and war crimes since 1 January 2003.⁹⁹ However, the Law creating the CPS grants the ICC primacy in case of a potential jurisdictional conflict over a particular case.¹⁰⁰ The Special Prosecutor is able to consult and share information with the ICC Prosecutor.¹⁰¹

The CPS has its own Rules of Procedure and Evidence. In addition, it applies the CAR criminal and procedure codes, as well as international substantive and procedural laws if national provisions do not cover a specific

issue or are unclear.¹⁰² The CPS is composed of the Office of the Prosecutor, Investigation Chamber, Special Accusation Chamber, Criminal Chamber and Appeals Chamber, and a Registry.¹⁰³

A pool of lawyers to provide defence services at the CPS is expected to be created in the near future.

A written or oral complaint (*plainte or dénonciation*) may be addressed directly to the Special Prosecutor by the survivor or any other person or association, describing the facts.¹⁰⁴ The complaint does not automatically trigger the start of criminal proceedings and the Special Prosecutor independently decides whether or not to open an investigation and the appropriate course of action to take.¹⁰⁵ The Special Prosecutor must promptly inform the survivor, person or association about the decision taken on the complaint.¹⁰⁶ The Special Prosecutor may also open an investigation on his/her own initiative.¹⁰⁷ Civil parties may directly seize the CPS by filing a complaint (requesting at the same time to become civil parties) and are exempt from paying the fees normally incurred by those wishing to become civil parties to proceedings in the ordinary criminal law system.¹⁰⁸ An investigation must be carried out in a “reasonable time”, with factors considered being the gravity of the facts, the complexity of the investigation and the rights of the defence.¹⁰⁹

95 *Loi organique n°15.003 du 3 juin 2015 portant création, organisation et fonctionnement de la Cour Pénale Spéciale*, 3 June 2018 [Law creating CPS].

96 *Ibid.*, Art. 3.

97 *Ibid.*, Art. 36.

98 *Loi n° 18.010 du 02 juillet 2018, portant règlement de procédure et de preuve devant la cour pénale spéciale de la République centrafricaine*, 2 July 2018, Art. 35 A) c) [CPS ROPEs].

99 *Ibid.*, Art. 14 A).

100 *Ibid.*

101 *Ibid.*, Art. 41; Law creating CPS, *supra* note 95, Art. 37.

102 CMN CAR Legal Analysis, *supra* note 69, p. 24, citing the Law creating CPS, *supra* note 95, Art. 3.

103 *Ibid.*

104 CPS ROPEs, *supra* note 98, Arts. 63 A) and B); CPS, *Investigation and Prosecution Strategy*, 4 December 2018, para. 28 [CPS Investigation and Prosecution Strategy].

105 *Ibid.* “CPS ROPEs”, Art. 63 D).

106 *Ibid.*, Art. 63 E).

107 CPS *Investigation and Prosecution Strategy*, *supra* note 104, para. 28

108 Law creating CPS, *supra* note 95, Art. 40.

109 CPS *Investigation and Prosecution Strategy*, *supra* note 104, para. 31.

If an investigation lasts longer than six months, the Special Prosecutor must explain the reasons to the Special Accusation Chamber.¹¹⁰

The CPS launched its Investigation and Prosecution Strategy on 4 December 2018. The Strategy provides selection and prioritisation criteria for the Office of the Prosecutor and Investigation Chamber.¹¹¹ The CPS' area of intervention is defined by selection criteria covering criminal incidents to investigate, alleged perpetrators to accuse as well as offences and legal qualifications to prosecute.¹¹² Investigation and prosecution prioritisation criteria consist of investigation security, representativity of incidents, possibility to identify, find and arrest suspects, existing evidence or availability of information, other strategic considerations and the public interest.¹¹³

The CPS' investigative component is comprised of a Special Judiciary Police Unit composed of police officers from the *gendarmerie* and police departments who report solely to the CPS.¹¹⁴ President Touadéra appointed 20 OPJs in February 2018 to fulfil this role.¹¹⁵ Additionally, MINUSCA may provide technical assistance and information to the CPS for investigations and arrests, including identification of alleged perpetrators and protection of victims and witnesses.¹¹⁶ The Unit is assisted by a UNPOL team that is located at the CPS' premises and that provides technical and capacity-building support for investigations.

The CPS faces several operational challenges. The control exercised by armed groups over large portions of the territory is a major challenge to carry out investigations and

successful prosecutions outside of Bangui and presents an additional challenge in relation to witness protection. Detention infrastructure and oversight need improvement as prisons are generally severely overcrowded, detainees often stay in pre-trial custody longer than proscribed legal limits and mass escapes have occurred.¹¹⁷

With its inaugural session on 22 October 2018, the CPS may officially commence investigations.

It should be noted that – like the ordinary criminal justice system – the CPS Trial Chamber may decide to try an accused *in absentia* under certain circumstances.¹¹⁸

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*, paras. 8, 12.

¹¹² *Ibid.*, part IV.

¹¹³ *Ibid.*, part V.

¹¹⁴ *Ibid.*, Arts. 28, 30.

¹¹⁵ Décret 18.051 portant nomination des membres de l'unité spéciale de la police judiciaire de la Cour pénale spéciale, 20 February 2018 (document on file with CMN).

¹¹⁶ Law creating CPS, *supra* note 95, Art. 28; United Nations Security Council, Resolution 2387 (2017), S/RES/2387, 15 November 2017, para. 43(e)(viii).

¹¹⁷ HRW CAR CPS, *supra* note 80, p. 24.

¹¹⁸ CPS ROPEs, *supra* note 98, Arts. 172 A) and B).

Forensic investigative capacity

The UNPOL component in CAR established a team staffed with four forensic police officers from Spain in 2017 to train local investigators in forensics and assist with investigations. This team has carried out various trainings on forensic investigations to UMIRR, the CPS and the Judiciary Police Direction Services ('DSPJ'), having trained 16 OPJs and *gendarmes* by October 2018. It has provided forensic equipment to UMIRR in the form of lighting, scientific and biological instruments. This team is working to set up a fingerprint database of detainees in Bangui. However, as of October 2018, UMIRR has not yet carried out any forensic investigations.

In addition, the International Human Rights Clinic at Columbia University School of Law and the Argentinian Forensics Department jointly conducted an exhumation at the site of Boali, where a massacre of civilians by UN forces allegedly took place in March 2014.

Exhumations must be carried out in respect of the interests and beliefs of the family and the dignity of the deceased.¹¹⁹ The family has the right to be regularly informed of the exhumation process and the analysis of the mortal remains.¹²⁰ The family also has the right to know the identity of the deceased and the causes and circumstances surrounding their death,¹²¹ as well as to obtain, as early as possible, the mortal remains.¹²²

The forensic investigative capacity in CAR is limited. The country has a single state pathologist and no forensic crime laboratory. OPJs lack infrastructure, such as vehicles, storage space and equipment. The security situation makes it difficult to access locations outside of Bangui and on many occasions, outside of Bangui, investigators arrive a month or after the facts at the crime scene, thus having little prospects of collecting valuable evidence.

Mixed Unit for Rapid Intervention and Suppression of Sexual Violence against Women and Children (UMIRR)

UMIRR is a specialised unit of police and *gendarmes* trained to register, investigate and respond to cases of SGBV and child abuse (whether conflict-related or not) against women and children.¹²³ It is located in Bangui and has a mandate covering the entire territory of CAR. This Unit became operational in mid-2017 and might refer conflict-related cases to the CPS.¹²⁴ UMIRR operates a multi-disciplinary service in Bangui, where victims may report incidents and receive legal, psychosocial and medical assistance or referrals free of charge. The entry point to UMIRR is the psychosocial service, which also refers SGBV survivors to the Doctors without Borders ('MSF') for free-of-charge medical

services and a medical certificate. Survivors strictly needing treatment of physical injuries (for non-sexual-violence cases) are referred to the Doctors of the World ('Mdm'). The legal services of UMIRR assist survivors in drafting criminal complaints after they have obtained a medical certificate. UMIRR has a protection room with two beds for survivors, where they may temporarily reside in case of immediate security concerns. There are plans to build a safe house in Bangui for survivors needing temporary and secure accommodation. UMIRR also has two small detention cells in its premises where suspects are held.

UMIRR officers prepare case files that may be forwarded to the prosecution or CPS. However, UMIRR faces challenges investigating cases outside Bangui due to insecurity, lack of protection for personnel and material

119 *Ibid.*, Art. 82 D) a).

120 *Ibid.*, Art. 82 D) b).

121 *Ibid.*, Art. 82 D) c).

122 *Ibid.*, Art. 82 D) d).

123 Décret n°15.007 du 8 janvier 2015 portant création d'une unité mixte d'intervention rapide et de répression des violences sexuelles faites aux femmes et aux enfants, 8 January 2015 [Décret n°15.007]; HRW SGBV Report, *supra* note 9, p. 130.

124 HRW SGBV Report, *supra* note 9, p. 25.

and logistical constraints.¹²⁵ As of October 2017, UMIRR had received approximately 10 CARSV cases.¹²⁶ Since then, it has received approximately one to two additional CARSV cases.¹²⁷

Civil

A survivor can become a civil party to the criminal proceedings as mentioned in the Chapter (3)(A)(1) on page 19 and be entitled to receive damages from the defendant. Furthermore, a survivor may file a civil claim for reparation of the injury caused by a crime or misdemeanour.¹²⁸ A civil claim may be carried out at the same time as the criminal proceedings within the same jurisdiction or separately from the criminal proceedings (with the civil claim suspended until such time as a final judgement is made on the criminal case).¹²⁹ Practitioners should note, however, that reparations are seldom provided to survivors, even if awarded in court.¹³⁰

Constitution

Fundamental human rights are articulated in the CAR Constitution.¹³¹ The Constitution provides that every individual whose constitutional rights are violated has the right to obtain reparation.¹³² Cases examining the conformity of laws to the Constitution are heard by the Constitutional Court and individuals have the right to directly seize it specifically to examine this conformity.¹³³ In practice, however, it appears that it is extremely rare for survivors to have access to a mechanism to obtain reparation for violations of constitutional rights.¹³⁴

2. Quasi-judicial and non-judicial

A national Human Rights Commission was re-established in 2017 but was not very active as of October 2018.¹³⁵ Its members have and are going through capacity building. There is no ombudsman office in the country. However, there is a national mediator, but due to the nature of its work, it is not recommended to refer CARSV survivors to such a service. A Truth, Justice, Reparations and Reconciliation Commission has not yet been established in practice. A pilot committee has been created with the mandate to carry out national consultations, but it has not as of October 2018 begun such consultations.¹³⁶

3. International Criminal Court (ICC)

CAR has been a party to the Rome Statute of the ICC since 3 October 2001 and the Prosecutor opened two situations in relation to CAR. In 2004, the Government of the President Bozizé referred the situation in CAR after 1 July 2002 to the ICC. The Office of the Prosecutor (OTP) opened an investigation which resulted in a case concerning crimes committed by the MLC forces under Jean-Pierre Bemba between 2002 and 2003. In March, 2016, the ICC convicted Bemba of crimes against humanity (murder and rape) and war crimes (murder, rape and pillage) based on command responsibility.¹³⁷ In June 2016, the ICC sentenced Bemba to 18 years in prison.¹³⁸ In June 2018, the Appeals Chamber acquitted Bemba, finding that the Trial Chamber erred in concluding that Bemba did

¹²⁵ *Ibid.*, p. 130.

¹²⁶ *Ibid.*

¹²⁷ Interview with UMIRR personnel, October 2018.

¹²⁸ Criminal Procedure Code of CAR 2010, *supra* note 69, Art. 2.

¹²⁹ *Ibid.*, Arts. 3, 4.

¹³⁰ Interviews with justice practitioners in Bangui, *supra* note 71.

¹³¹ Constitution of the Central African Republic, 2015.

¹³² *Ibid.*, Art. 17.

¹³³ *Ibid.*, Art. 100.

¹³⁴ Interviews with justice practitioners in Bangui, *supra* note 71.

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment pursuant to Article 74 of the Statute, Trial Chamber III, CC-01/05-01/08, 21 March 2016 [Bemba Trial Chamber Judgment].

¹³⁸ ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on Sentence pursuant to Article 76 of the Statute, Trial Chamber III, ICC-01/05-01/08, 21 June 2016 [Bemba Decision on Sentence].

not take the necessary and reasonable measures to prevent the crimes committed in CAR by his subordinate troops (command responsibility) and that trial judges erred in convicting Bemba for specific criminal acts that were outside the scope of the confirmed charges of the Pre-Trial Chamber.¹³⁹

In May 2014, the CAR government referred the situation in CAR for alleged war crimes and crimes against humanity committed in the violence that started in 2012. The OTP opened an investigation into alleged crimes committed by Séléka and Anti-balaka, which may include the war crimes of murder, rape, torture and cruel treatment, mutilation, pillaging, attacks against humanitarian missions, use of children under 15 years of age in combat, intentionally directing attacks against the civilian population, intentionally directing attacks against buildings dedicated to religion, intentionally directing an attack against personnel, installations, material, units or vehicles involved in a humanitarian assistance, destruction of the adversary's property and displacement of civilian population. It may also include the crimes against humanity of murder, extermination, rape, torture, forced displacement, enforced disappearance of persons, imprisonment and other severe deprivation of liberty and persecution.

See textbox titled “Overview of relevant prosecutions” at section 1, Domestic and Hybrid Courts, on page 21 for details of the arrest in October 2018 of Alfred Yecatomb Rhombo, aka Rambo, a high-profile Anti-balaka commander and member of the National Assembly pursuant to an ICC arrest warrant and Patrice-Edouard Ngaïssona, a previous most senior leader of the Anti-balaka, who was arrested on 12 December 2018.

4. Treaty bodies or other international mechanisms

CAR ratified the African Charter on Human and Peoples' Rights ('ACHPR') in 1986, which established the African Commission on Human and Peoples' Rights. States and individuals may bring complaints to the Commission alleging violations of the ACHPR by States Parties. The Commission may make recommendations if it finds a violation and grant provisional measures. CAR has not ratified the Protocol to the ACHPR establishing the African Court on Human and Peoples' Rights. As such, the Court has no jurisdiction over CAR.

CAR has ratified or acceded to various human rights treaties, including:

- Convention against Torture ('CAT');
- International Covenant on Civil and Political Rights ('ICCPR');
- International Covenant on Economic, Social and Cultural Rights ('ICESCR');
- Convention for the Protection of All Persons from Enforced Disappearance ('ICPAPED');
- Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW');
- Convention on the Rights of the Child ('CRC');
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict ('CRC OPI');
- Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography ('CRC OPII');
- Convention on the Rights of Persons with Disabilities ('ICRPD').

¹³⁹ ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's "Judgment pursuant to Article 74 of the Statute". Appeals Chamber, ICC-01/05-01/08 A, 8 June 2018 [Bemba Appeals Chamber Judgment].

Furthermore, CAR has accepted the following individual complaints procedures:¹⁴⁰

- Optional Protocol to the International Covenant on Civil and Political Rights, meaning complaints may be brought to the Human Rights Committee;
- Optional Protocol to the Convention on the Rights of Persons with Disabilities, meaning complaints may be brought to the Committee on the Rights of Persons with Disabilities.

The UN Human Right Council has special procedures, including the Independent Expert on the situation of human rights in the Central African Republic,¹⁴¹ The UN Working Group on Arbitrary Detention (WGAD) and the UN Working Group on Enforced or Involuntary Disappearances ('WGEID'). WGAD is a quasi-judicial procedure that may be accessed by or on behalf of CARSV survivors who are held in arbitrary detention anywhere in the world. WGEID assists families in determining the fate or whereabouts of family members who are allegedly disappeared anywhere in the world.

CAR must present periodic reports to the Committees monitoring implementation of the human rights conventions which it has ratified. Non-governmental organisations may provide information to a respective committee monitoring specific provisions or violations.

The UN Human Rights Council provides other avenues for monitoring the actions of the CAR government through its universal periodic review ('UPR') process and convening special sessions on CAR in January 2014. Lastly, the Council has established a confidential complaints procedure to address "consistent patterns of gross and reliably attested violations of all human rights and all

fundamental freedoms occurring in any part of the world".¹⁴² Complaints may be submitted by "individuals, groups, or non-governmental organizations that claim to be victims of human rights violations or that have direct, reliable knowledge of such violations".¹⁴³

5. Investigative and fact-finding bodies

Major documentation efforts at the international level include those of the International Commission of Inquiry on the Central African Republic (2014) ('CoI') and the CAR Panel of Experts. The CoI was established pursuant to Security Council Resolution 2127 of 5 December 2013 with a mandate to investigate international human rights and humanitarian laws violation and abuses in CAR by all the parties involved in the armed conflict since 1 January 2013. The resolution requested the CoI to compile information to help identify the perpetrators of such violations and abuses, point to their possible criminal responsibility and help ensure that those responsible are held accountable. The CoI began its work in April 2014 under conditions that made it difficult to carry out investigative missions, especially beyond the capital and its surroundings. The CoI reports offer valuable insight into the 2013 conflict, including an overview of the testimony it received from 103 survivors who were either raped or experienced other forms of SGBV by Séléka or Anti-balaka.

Security Council Resolution 2399 (2018) extended the arms embargo, travel restrictions and financial sanctions (asset freezing) related to the conflict in CAR until 31 January 2019. A Panel of Experts was established to assist the Committee tasked with overseeing the implementation of the Resolution. The successive reports of the Panel of Experts contain some of the most rich and detailed

¹⁴⁰ See the following OHCHR website for guidance on filing complaints: <https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#OPICCCR>.

¹⁴¹ For more details, see: <https://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/CF/Pages/IECentralAfricanRepublic.aspx> and the documents found in that webpage.

¹⁴² See OHCHR, [Human Rights Council Complaint Procedure](#).

¹⁴³ *Ibid.*

information about grave violations of human rights and humanitarian law publicly available. Moreover, numerous individuals have been listed as a result of the work of the Panel of Experts and the Committee.

MINUSCA and the OHCHR set up a Mapping Project in CAR, which led to the publication of the “Report of the Mapping Project documenting serious violations of international human rights now and international humanitarian law committed within the territory of the Central African Republic between January 2003 and December 2015”.¹⁴⁴ The Mapping Project’s objectives were: to conduct a mapping of serious international human rights law and international humanitarian law violations; to identify transitional justice mechanisms and propose a strategy for the development of such mechanisms, and; to propose priority areas for future investigations of the CPS, including the identification of alleged perpetrators of serious violations.¹⁴⁵

In addition, the annual reports of the Secretary General concerning sexual violence in conflict and children and armed conflict respectively have listed parties to the conflict that are believed to be involved in crimes of this nature.

6. Proceedings in Third States – Extra-territorial Jurisdiction

A case was filed in Belgium against the former President of CAR Ange-Félix Patassé. It was dismissed on the basis of immunity of a foreign head of State.¹⁴⁶ In addition, the International Crimes Division of Uganda’s High

Court could exercise jurisdiction over certain cases. The International Crimes Division enjoys extra-territorial jurisdiction over international crimes committed outside Uganda where the alleged perpetrator or victim is a citizen or resident of Uganda, the alleged perpetrator is an ex-employee of the Ugandan government, or they are physically present in Uganda.¹⁴⁷

No civil claims appear to have been filed against mining companies or other corporations for human rights abuses in CAR. However, in September 2018, the CAR authorities created an inter-ministerial commission to impose sanctions on Chinese mining companies for breaches of the mining and labour codes.¹⁴⁸ On 20 July 2017, the General Court of the European Union upheld the 2015 decision of the Council of the European Union to freeze the funds of two companies, Badika and Kardiam. The two companies purchased and sold diamonds originating from CAR, providing support to armed groups “through the illicit exploitation or trade of natural resources [...] in the Central African Republic”.¹⁴⁹

Some disciplinary and judicial measures have been taken against peacekeepers involved in SEA. In February 2017, Bangladesh investigated and substantiated an allegation, bringing a contingent member to court martial; he was dismissed from service and received a sentence of one year’s imprisonment.¹⁵⁰ Egypt also conducted a court martial and imposed a sentence of five years’ imprisonment on a contingent member.¹⁵¹ Gabon imposed a prison term of 45 days on a contingent member.¹⁵² Regarding French peacekeepers, the French

144 CAR Mapping Report, *supra* note 8.

145 *Ibid.*, p. 30.

146 Council of the European Union, *The AU-EU Report on the Principle of Universal Jurisdiction*, Brussels, 16 April 2009, p.25.

147 Uganda’s High Court (International Crimes Division) Practice Directions, 2011, Section 6 (Jurisdiction), as cited by CAR Mapping Report, *supra* note 8, p. 325. As explained on page 12, some Ugandan nationals are alleged to have committed CARSV in CAR.

148 Charles Bouessel du Bourg, *Centrafrique: des mines chinoises dans le collimateur des autorités*, Jeuneafrique économie et finances, 21 September 2018.

149 General Court of the European Union, Press Release, *The General Court upholds the decision freezing the funds of the Badika and Kardiam companies in the Central African “Conflict Diamonds” case*, Luxembourg, 20 July 2017.

150 CAR Mapping Report, *supra* note 8, p. 228.

151 *Ibid.*

152 *Ibid.*

Prosecutor's office in Paris opened three preliminary investigations, one of which resulted in a judicial investigation.¹⁵³ However, the investigation judges of that case declared that they had found no evidence to warrant further investigation.¹⁵⁴ In March 2016, 20 DRC soldiers went on trial before a military court in the DRC.¹⁵⁵ The status of this trial is unknown. MINUSCA's Conduct and Discipline section is planning to hold a mobile court in Bangui against DRC peacekeepers.¹⁵⁶

153 *Ibid.*, p. 229.

154 *Ibid.*

155 *Ibid.*

156 Interviews with justice practitioners in Bangui, *supra* note 71.



PART III: ACCOUNTABILITY AVENUES AND REMEDIES

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Chapter 4: Individual Criminal Responsibility

A. Legal Framework

CAR possesses, on the whole, an adequate legal framework for the investigation and prosecution of crimes of sexual violence, including as international criminal and humanitarian law offences (war crimes, crimes against humanity and genocide). The CAR Constitution dating from 2015 prohibits torture, rape and other cruel, inhuman, degrading or humiliating treatment,¹⁵⁷ and protects women and children from violence and insecurity.¹⁵⁸ It further provides that international treaties ratified by CAR are directly applicable and have superior authority over national legislation.¹⁵⁹

CAR ratified the Rome Statute of the ICC in 2001. It promulgated a new Criminal Code

and Criminal Code of Procedure (‘CPC’) in January 2010. Prior to this, the law in force was the Criminal Code of 1961, as amended up to 2009, and the Criminal Procedure Code of 1962. The 2010 Criminal Code was intended to remedy numerous issues and gaps with the criminal law and to serve as domestic implementing legislation for the Rome Statute of the ICC. With the 2010 Criminal Code, genocide, crimes against humanity and war crimes were codified.¹⁶⁰ The 2010 CPC outlines the national procedure applicable to cooperation with the ICC.¹⁶¹ The 2015 Law creating the CPS grants the CPS jurisdiction over genocide, crimes against humanity and war crimes without, however, further defining them. The Law creating the CPS also provides for both individual and command/superior responsibility.

Genocide, crimes against humanity and war crimes under the 2010 Criminal Code as compared to the Rome Statute

Genocide¹⁶²

Consistent with Article 6 of the Rome Statute, except for:

- ▶ Crimes must be committed as part of an “agreed plan”;
- ▶ Targeted groups are extended to any other groups based on “any arbitrary criteria”;
- ▶ The word “physical” is omitted before the word “destruction [of the group]”;
- ▶ It is unclear whether the contextual element from the ICC Elements of Crimes of the conduct taking place in the context of a “manifest pattern of similar conduct” is a requirement – this will be determined by the CPS or ordinary jurisdictions in due course.

¹⁵⁷ Constitution of the Central African Republic, *supra* note 131, Art. 3.

¹⁵⁸ *Ibid.*, Art. 6.

¹⁵⁹ *Ibid.*, Art. 82.

¹⁶⁰ Loi n° 10.001 portant Code pénal centrafricain, 6 January 2010, Art. 152 (genocide), Art. 153 (crimes against humanity) and Arts. 154-157 (war crimes) [Loi n° 10.001 portant Code pénal centrafricain].

¹⁶¹ See Criminal Procedure Code of CAR, *supra* note 70, Arts. 344-363.

¹⁶² Loi n° 10.001 portant Code pénal centrafricain, *supra* note 160, Art. 152.

Crimes against humanity¹⁶³

Consistent with Article 7 of the Rome Statute, except for two differences with regards to underlying acts:

- ▶ The practice of carrying out mass and systematic summary executions has been added;
- ▶ There is no persecution based on gender grounds.

Additionally, it is unclear whether the contextual element of an attack being committed pursuant to or in furtherance of an organisational policy is a requirement – this will be determined by the CPS or ordinary jurisdictions in due course.

War crimes¹⁶⁴

Three categories of war crimes are criminalised in the Criminal Code: (i) grave breaches of the Geneva Conventions; (ii) other serious violations of the law and customs of war applicable in international armed conflict; and (iii) serious violations of article 3 common to the Geneva Conventions. The fourth category of war crimes under the Rome Statute (other serious violations of the law and customs of war applicable in armed conflicts not of an international character) is not criminalised in the Criminal Code. This means, for example, that recruiting or using child soldiers in a non-international armed conflict will not be able to be investigated or prosecuted. Additionally, as in the Rome Statute, provisions on non-international armed conflicts extend to protracted armed conflicts between the government and organised armed groups or between armed groups themselves on CAR territory.

CAR has also enacted other legislation against SGBV, including Order No. 66-16 of 1966 abolishing female genital mutilation,¹⁶⁵ Law No. 06-032 of 2006 on the protection of women from violence in Central African Republic,¹⁶⁶ Law No. 06-005 of 2006 in relation to reproductive health¹⁶⁷ and Decree No. 15-007 on the creation of a Joint Rapid Response Unit to respond to sexual violence against women and children.¹⁶⁸

As mentioned above, the CPS has jurisdiction over the crimes of genocide, crimes against humanity and war crimes. In July 2018, the CPS' ROPEs¹⁶⁹ were passed by Parliament (see Chapter (4)(E) "Rules of Procedure and Evidence" on page 52).

As mentioned at Chapter (3)(A)(1) on page 19, the CPS applies the CAR criminal and procedure codes as well as international substantive and procedural laws if national provisions do not cover a specific issue or are unclear.¹⁷⁰ The definition of CARSV crimes will therefore primarily stem from the Criminal Code. There are two key issues for the prosecution of international crimes with the 2010 Criminal Code:

1. The elements of the majority of CARSV crimes are not defined in Articles 152 to 157 in the provisions covering genocide, crimes against humanity and war crimes, and there is no mention in the legislation of the ICC Elements of Crimes. Considering that the definitions of

¹⁶³ *Ibid.*, Art. 153.

¹⁶⁴ *Ibid.*, Arts. 154-157.

¹⁶⁵ CEDAW Committee Consideration of Reports: CAR, *supra* note 82, para. 54.

¹⁶⁶ *Loi n°06.032 du 27 December 2006 portant protection de la femme contre les violences en République Centrafricaine*, 27 December 2006 [Loi de 2006 portant protection de la femme].

¹⁶⁷ *Loi n°06.005 du 20 June 2006 Bangayassi relative à la santé de reproduction*, 20 June 2006 [Loi Bangayassi].

¹⁶⁸ *Décret n°15.007*, *supra* note 123.

¹⁶⁹ CPS ROPEs, *supra* note 98.

¹⁷⁰ *Law creating CPS*, *supra* note 95, Art. 3.

crimes are primarily derived from the Criminal Code, the definitions of corresponding ordinary crimes will apply. The crime of rape is defined as an ordinary crime but, as will be seen *on page 34* (Chapter (4)(B) “Elements of Crimes”), there are various important differences with the international definition. Furthermore, the elements of other CARSV crimes (sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and other forms of sexual violence of comparable gravity) are not defined in the Criminal Code. It is unclear whether the definitions of these crimes will be derived from the ICC Elements of Crimes or customary international law.

2. It is unclear how international crimes pre-dating 2010 (i.e. the enactment of the 2010 Criminal Code) will be prosecuted in light of the principle of *nullum crimen sine lege*. CAR ratified the Rome Statute in 2001. However, no specific sentences were provided for each international crime until the enactment of the 2010 Criminal Code. It remains to be seen how this will be dealt with by the CPS and/or ordinary jurisdictions.

Decriminalisation of SGBV offences from 1998 to 2016

On 19 May 1998, the General Prosecution Department (*Parquet général*) of the Court of Appeal of Bangui (the only General Prosecution Department of the country at the time) issued a practice direction to decriminalise (*correctionnaliser*) certain crimes, including rape, in order to ensure “swift” judicial processing of the offences.¹⁷¹ The decriminalisation refers to treating crimes as misdemeanours (namely, *délits*), which carry lower

sentences and are dealt with in a more summary manner in court proceedings.¹⁷² Misdemeanours are sanctioned with a penalty (versus a sentence),¹⁷³ which may include a prison term ranging from one month and a day to a maximum of 10 years, community service for 35 to 420 hours, or a fine exceeding 100,002 Francs.¹⁷⁴

On 8 March 2016, the Ministry of Justice issued another practice direction to abolish the decriminalisation of sexual violence crimes, including rape.¹⁷⁵ Reportedly, however, rape and other sexual violence crimes often continue to be decriminalised and treated as misdemeanours throughout the country as of October 2018.¹⁷⁶

171 Parquet général près la Cour d’appel de la République centrafricaine, Lettre circulaire No. 191/CA/PGCA/98 relative à la correctionnalisation et contraventionnalisation de certains crimes et délits, 19 mai 1998 (document on file with CMN).

172 See *Criminal Procedure Code of CAR 2010*, *supra* note 69, Title IV, Arts. 160-208.

173 *Loi n° 10.001 portant Code pénal centrafricain*, *supra* note 160, Art 1.

174 *Ibid.*, Art. 18.

175 Ministère de la justice chargé de la réforme judiciaire et des droits de l’Homme, Direction de cabinet No. 055/MJRJDH/DIRCAB.16, Lettre circulaire, 8 mars 2016 (document on file with CMN).

176 Interview with justice practitioners in Bangui, *supra* note 71. Furthermore, according to the 2018 Report of the Secretary General on Conflict-related Sexual Violence, in August 2018, the UN registered a case in which two anti-balaka elements were convicted for the rape of a 16-year-old girl in Bambari. They were sentenced to two years’ imprisonment and a fine, which is indicative of a sentence for misdemeanours and not crimes.

B. Elements of Crimes

1. Main Crimes under Central African Law relevant to Sexual Violence

Rape

Legal requirements and components of rape under the 2010 Criminal Code, Article 87

Actus reus 1

Any act of sexual penetration, whatever its nature, committed against another person

Any act of sexual penetration:

- ▶ "Any" act could include even "slight" penetration, in line with customary international law
- ▶ Unclear whether "sexual" penetration is linked to the "object" used for penetration (e.g. a sexual organ, such as the penis) or to the body part that is penetrated (e.g. such as the vagina, anus, mouth of the victim)
- ▶ Unclear if the act may be perpetrated with an object

Whatever its nature:

- ▶ Unclear whether this includes forced penetrative acts on the perpetrator's body (e.g. forced oral sex or victim forced to penetrate the perpetrator)

Committed against another person:

- ▶ The provision is gender neutral, meaning the victim may be male, female, or another gender
- ▶ Unclear whether the act may be carried out on a person other than the victim (e.g. victim forced to commit an act of sexual penetration on another victim)

Actus reus 2

[b]y violence, constraint, threat or surprise

By violence [OR]

By constraint [OR]

By threat [OR]

By surprise

- ▶ No requirement to prove lack of consent of the victim
- ▶ Does not include other coercive circumstances

However, see ROPEs of CPS (at section 5. Rules of Procedure and evidence, below) which lay down rules on evidence in relation to consent and coercive circumstances

- ▶ Does not include duress
- ▶ Unclear if threat must be against the victim, or may be against another
- ▶ Does not include if perpetrated against a person incapable of giving genuine consent, including minors (but see "Indecent Assault" below)

Aggravating circumstances

- If committed against a child under 18 years
- If perpetrators are direct relatives in the ascending line of the victim
- If perpetrators are from a superior social class having authority over the victim
- If perpetrators are teachers or a “servant” of the victim
- If perpetrators are ministers of a religious group
- If perpetrators were assisted by one or various persons to commit the crime
- If rape caused death of victim (Article 88)
- If the victim is a particularly vulnerable woman because she is pregnant, ill, disabled or has physical or mental deficiencies (Article 117)
- If the crime was committed with the threat of a weapon or by two or more perpetrators or it was committed by a legitimate, natural or adoptive ascendant or by a person who abuses the authority attached to their office (Article 117)

Notes

- Rape is also criminalised in essentially the same manner in Law No. 06-032 on the Protection of Women from Violence in CAR
- Children:
- Any indecent assault committed or attempted on a child below 15 of any gender is qualified as rape (Article 87)
- Indecent assault (Article 86) does not require sexual penetration or proof of violence, constraint, threat, or surprise
 - No definition of “indecent” acts
 - Does not include children between ages of 15 and 18 years old
 - The provision is gender neutral, meaning the victim may be male, female, or another gender

Legal requirements and components of rape under the Rome Statute¹⁷⁷

Actus reus 1	The perpetrator invaded the body of a person by conduct resulting in penetration, however slight:	Of any part of the body of the victim or of the perpetrator with a sexual organ [OR] Of the anal or genital opening of the victim with any object or any other part of the body <i>[The concept of “invasion” is intended to be broad enough to be gender-neutral (Elements of Crimes Art. 7(1)(g)-1, footnote 15)]</i>
Actus reus 2	The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent	By force [OR] By threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent <i>[It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity (EoC Art. 7(1)(g)-1, footnote 16)]</i>
Mens rea 1	Conduct	The perpetrator meant to invade the body of a person
Mens rea 1	Consequence	<i>[Consequence I]</i> The perpetrator meant to cause the invasion of the body of a person [OR] <i>[Consequence II]</i> The perpetrator was aware that the invasion of the body of a person would occur in the ordinary course of events
Mens rea 2	Circumstance	The perpetrator was aware of the use of force, threat of force or coercion or taking advantage of a coercive environment or of a person’s incapacity to give genuine consent

Rape prior to 2010¹⁷⁸

Article 197:

Whoever will have committed the crime of rape will be punished with forced labour for a definite period. Whoever commits an indecent assault committed or attempted with violence against individuals of either sex will be punished with a prison term of 5 to 10 years.

177 CMN, *International Criminal Law Guidelines: Legal Requirements of Sexual and Gender-Based Violence Crimes*, 2017, p. 21 [CMN SGBV Legal Requirements].

178 Criminal Code of the Central African Republic, 1961.

Aggravating circumstances:

- ▶ If the crime was committed on the person of a child under 15
- ▶ If the perpetrators are direct relatives in the ascending line of the victim
- ▶ If the perpetrators are from a superior social class having authority over the victim
- ▶ If the perpetrators are teachers or a “servant” of the victim
- ▶ If the perpetrators are ministers of a religious group
- ▶ If perpetrators were assisted by one or various persons to commit the crime

Sexual slavery

Article 153 of the 2010 Criminal Code does not contain a definition of sexual slavery. Therefore, the definition under the Rome Statute is provided below.

Legal requirements and components of sexual slavery under the Rome Statute¹⁷⁹

Actus reus 1	<p>The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty</p>	<p>Exercise of the right of ownership</p> <p>Impossibility of the person to take decisions voluntarily</p> <p>Exercise of all types of control over the person</p> <p>Use or threat of violence</p> <p><i>[It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children (EoC Art. 7(1)(g)-2, footnote 18)]</i></p>
Actus reus 2	<p>The perpetrator caused such person or persons to engage in one or more acts of a sexual nature</p>	<p>Causation by the perpetrator</p> <p>Engagement in acts of a sexual nature</p> <p>Acts of a sexual nature</p>
Mens rea 1	<p>Conduct</p>	<p>The perpetrator meant to exercise powers attached to the right of ownership over one or more persons</p>
Mens rea 2	<p>Conduct</p> <hr/> <p>Consequence</p>	<p>The perpetrator meant to engage in conduct causing such person or persons to engage in acts of a sexual nature</p> <p>[Consequence I] The perpetrator meant to cause such person or persons to engage in acts of a sexual nature [OR]</p> <p>[Consequence II] The perpetrator was aware that such person or persons would engage in acts of a sexual nature in the ordinary course of events</p>

179 CMN SGBV Legal Requirements, *supra* note 177, p. 31. Forced marriage may be also be understood as one of the indicia of the crime of enslavement, encompassing “both sexual and non-sexual acts of power attaching to ownership exercised over the females, such as physical and mental control”. See Prosecutor v. Kunarac et. al., ICTY Trial Judgement, Case No. IT-96-23-T & IT-96-23/1-T, 22 February 2001, paras 539–543 (defining enslavement as a crime against humanity).

Enforced prostitution

Article 153 of the 2010 Criminal Code does not contain a definition of enforced prostitution. Therefore, the definition under the Rome Statute is provided below.

Legal requirements and components of enforced prostitution under the Rome Statute ¹⁸⁰		
Actus reus 1	The perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment or such person's incapacity to give genuine consent	<p>The perpetrator caused one or more persons to engage in an act of a sexual nature</p> <p>The perpetrator's or victim's acts of a sexual nature occurred through force, threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent</p>
	Actus reus 2	<p>The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature</p> <p>The perpetrator obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of sexual nature [OR]</p> <p>Another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of sexual nature</p>
Mens rea 1	Conduct	The person meant to engage in the conduct of causing one or more persons to engage in one or more acts of a sexual nature
	Consequence	<p>[Consequence I] The person meant to cause one or more persons to engage in acts of a sexual nature [OR]</p> <p>[Consequence II] The person was aware that one or more persons would engage in one or more acts of a sexual nature in the ordinary course of events</p>
	Circumstance	The person was aware of use of force, threat of force or coercion or taking advantage of a coercive environment or of a person's incapacity to give genuine consent
Mens rea 2	Consequence	<p>[Consequence I] The person meant to obtain or expected to obtain pecuniary or other advantage [OR]</p> <p>[Consequence II] The person was aware that he/she or another person would obtain or expected to obtain pecuniary or other advantage</p>
	Circumstance	The person was aware that another person obtained or expected to obtain pecuniary or other advantage

180 *Ibid.*, p. 41.

Forced pregnancy

Article 153 of the 2010 Criminal Code does not contain a definition of forced pregnancy. Therefore, the definition under the Rome Statute is provided below.

Legal requirements and components of forced pregnancy under the Rome Statute¹⁸¹

<i>Actus reus</i> 1	The perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law	The perpetrator confined one or more women [AND] One or more women had been forcibly made pregnant [AND] The perpetrator intended to affect the ethnic composition of any population [OR] The perpetrator intended to carry out grave violations of international law	
	Conduct	The perpetrator meant to confine one or more women forcibly made pregnant	
	<i>Mens rea</i> 1	Consequence	[Consequence I] The perpetrator meant to affect the ethnic composition of any population or to carry out other grave violations of international law by confining one or more women forcibly made pregnant [OR] [Consequence II] The perpetrator was aware that the confinement of one or more women forcibly made pregnant would affect the ethnic composition of any population or would enable to carry out other grave violations of international law in the ordinary course of events
		Circumstance	The perpetrator was aware that one or more confined women had forcibly been made pregnant

Enforced sterilisation

Article 153 of the 2010 Criminal Code does not contain a definition of enforced sterilisation. Therefore, the definition under the Rome Statute is provided below.

Legal requirements and components of enforced sterilisation under the Rome Statute¹⁸²

<i>Actus reus</i> 1	The perpetrator deprived one or more persons of biological reproductive capacity	[The deprivation is not intended to include birth-control measures which have a non-permanent effect in practice, <i>Elements of Crimes: Art. 7(1)(g)-5, footnote 19</i>]

181 *Ibid.*, p. 49.

182 *Ibid.*, p. 57.

Actus reus 2	The conduct was:	<p>Not justified by the medical or hospital treatment of the person or persons concerned [AND]</p> <p>Not carried out with their genuine consent</p> <p><i>[It is understood that genuine consent does not include consent obtained through deception (EoC Art. 7(1)(g)-5, footnote 20)]</i></p>
Mens rea 1	Conduct	The perpetrator meant to engage in conduct which deprived one or more persons of biological reproductive capacity
	Consequence	<p><i>[Consequence I]</i> The perpetrator meant to cause the deprivation of one or more persons of biological reproductive capacity [OR]</p> <p><i>[Consequence II]</i> The perpetrator was aware that one or more persons would be deprived of biological reproductive capacity in the ordinary course of events</p>
Mens rea 2	Circumstance	<p><i>[Circumstance I]</i> The perpetrator was aware that the conduct was not justified by the medical or hospital treatment [AND]</p> <p><i>[Circumstance II]</i> The perpetrator was aware of absence of genuine consent</p>

Other forms of sexual violence of comparable gravity

Article 153 of the 2010 Criminal Code does not contain a definition of other forms of sexual violence of comparable gravity. Therefore, the definition under the Rome Statute is provided below.

Legal requirements and components of other forms of sexual violence of comparable gravity under the Rome Statute¹⁸³

Actus reus 1	<p>The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent</p>	<p>Committed an act of a sexual nature against one or more person; [OR]</p> <p>Caused such person or persons to engage in an act of a sexual nature [OR]</p> <p>The perpetrator's or victim's acts of a sexual nature occurred through force, threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent</p>
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183 *Ibid.*, p. 65.

<i>Actus reus 2</i>	Such conduct was of a gravity comparable to:	<i>[CAH, ICC Art. 7]</i> the other offences in article 7, paragraph 1 (g) of the Statute [OR] <i>[WC, ICC Art. 8(2)(b)(xxii)-6]</i> that of a grave breach of the Geneva Conventions [OR] <i>[WC, ICC Art. 8(2)(e)(vi)-6]</i> that of a serious violation of article 3 common to the four Geneva Conventions
	Conduct	The perpetrator meant to engage in committing an act of a sexual nature or causing a person or persons to engage in an act of a sexual nature
<i>Mens rea 1</i>	Consequence	<i>[Consequence I]</i> The perpetrator meant to commit an act of a sexual nature or to cause a person or persons to engage in an act of a sexual nature [OR] <i>[Consequence II]</i> The perpetrator was aware he or she would commit an act of a sexual nature or would cause a person or persons to engage in an act of a sexual nature in the ordinary course of events
	Circumstance	The perpetrator was aware of the use of force, threat of force or coercion or taking advantage of a coercive environment or of a person's incapacity to give genuine consent
<i>Mens rea 2</i>	Circumstance	The perpetrator was aware of the factual circumstances that established the gravity of the conduct

2. Other crimes of a sexual nature

Indecent assault

Legal requirements and components of indecent assault under the 2010 Criminal Code, Article 86 and 1961 Criminal Code, Article 196

<i>Actus reus</i>	Any indecent assault committed or attempted without violence on the person of a child of any sex	Any indecent assault: <ul style="list-style-type: none"> ▶ Committed without violence [OR] ▶ Attempted without violence ▶ On the person of a child of any gender
<i>Aggravating circumstances</i>	<p>If the child is a female under 18, not "emancipated" by marriage and is student at a school where the perpetrator works.</p> <p>If the indecent assault is committed with violence against individuals of any gender.</p>	
<i>Notes</i>	<p>Children:</p> <p>Any indecent assault committed or attempted on a child below 15 of any gender is qualified as rape (art. 87) – see above Rape</p> <ul style="list-style-type: none"> • "Indecent" act not defined 	

Indecent assault

Indecent exposure, Article 85 (2010 Criminal Code), Article 195 (1961 Criminal Code):

Any person having committed indecent exposure in a public area will be punished with a prison term of 1 month and 1 day and a fine of 100,002 to 300,000 Francs or one of these sentences only.

Any act against nature committed in a place open to the public with an individual of the same sex will be considered as public indecent exposure and punished with a prison term of 6 months to 2 years and a fine of 150,000 to 600,000 Francs.

Notes

- ▶ Misdemeanour charge for same sex acts between consenting adults when committed in a public space.

Sexual harassment

Legal requirements and components of sexual harassment under the 2010 Criminal Code, Article 96

<i>Actus reus 1</i>	The act of harassing another person	Unclear what "harassing" another person encompasses The provision is gender neutral, meaning the victim may be male, female, or another gender
<i>Actus reus 2</i>	By using orders, threats, constraint or serious pressure	Means: <ul style="list-style-type: none"> ▶ Orders [OR] ▶ Threats [OR] ▶ Constraint [OR] ▶ Serious pressure
<i>Actus reus 3</i>	With the aim of obtaining favours of a sexual nature by a person abusing of the authority that is attached to his/her office	Objective: <ul style="list-style-type: none"> ▶ Obtaining favours of a sexual nature Quality of perpetrator: <ul style="list-style-type: none"> ▶ Person abusing the authority attached to his/her office

Human trafficking

Legal requirements and components of human trafficking under the 2010 Criminal Code, Article 151

Actus reus 1	Recruitment, transport, transfer, accommodation, or reception of a person	<p>Actions indicating movement of the victim:</p> <ul style="list-style-type: none"> ▶ Recruitment [OR] ▶ Transport [OR] ▶ Transfer [OR] ▶ Accommodation [OR] ▶ Reception <p><i>(these are actions indicating movement of the victim)</i></p>
Actus reus 2	[b]y threat to use or use of force or other forms of constraint; by abduction, fraud, deceit, abuse of authority or a situation of vulnerability; by offering or accepting remuneration or other benefits in order to obtain the consent of a person having authority over another for the purpose of exploitation	<p>By threat to use or use of force or other forms of constraint [OR]</p> <p>By abduction, fraud, deceit, abuse of authority or a situation of vulnerability [OR]</p> <p>By offering or accepting remuneration or other benefits in order to obtain the consent of a person having authority over another for the purpose of exploitation</p> <p><i>(these are the means to traffic a victim)</i></p>
Actus reus 3	Purposes of exploitation can include, among others, exploitation of the prostitution of others and other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or organ removal	<p>Exploitation of the prostitution of others and other forms of sexual exploitation [OR]</p> <p>Forced labour or services [OR]</p> <p>Slavery or practices similar to slavery [OR]</p> <p>Servitude [OR]</p> <p>Organ removal [OR]</p> <p><i>(these are the purposes of trafficking)</i></p>
Aggravating circumstances	<p>If committed against a child under 18 years</p> <p>If perpetrators are direct relatives in the ascending line of the victim</p> <p>If perpetrators are from a superior social class having authority over the victim</p> <p>If perpetrators are teachers or a “servant” of the victim</p> <p>If perpetrators are ministers of a religious group</p> <p>If perpetrators were assisted by one or various persons to commit the crime</p> <p>If rape caused death of victim (article 88)</p> <p>If the victim is a particularly vulnerable woman because she is pregnant, ill, disabled or has physical or mental deficiencies (article 117)</p> <p>If the crime was committed with the threat of a weapon or by two or more perpetrators or it was committed by a legitimate, natural or adoptive ascendant or by a person who abuses the authority attached to their office (article 117)</p>	
Notes	<p>Children:</p> <p>Any indecent assault committed or attempted on a child below 15 of any gender is qualified as rape (article 87)</p> <ul style="list-style-type: none"> • Indecent assault (article 86) does not require sexual penetration or coercion 	

Other sexual crimes or misdemeanours (2010 Criminal Code)

Forced marriage of a female minor following her abduction, Art. 105:

When a [female] minor thus [referring to previous Article 104] abducted or kidnapped has married her kidnaper, he can only be prosecuted upon complaint by the persons who have the right to request the annulment of the marriage after the annulment has been pronounced.

Notes

- ▶ This article refers to the abduction stated in Article 104: abduction or kidnapping of a female minor, student in a school establishment, by an individual working there;
- ▶ Therefore, forced marriage is only applicable to cases of abduction by a member of the school personnel;
- ▶ This provision is not gender neutral, as the victim must be female;
- ▶ A family member of the survivor or the competent Prosecutor of the Republic may request a marriage annulment under these conditions (Family Code)

Procuring, Art. 90:

Will be considered as procurer and punished by 1 to 5 years' imprisonment and a fine of 100,002 to 1,000,000 francs, whoever:

- ▶ Habitually, aids, assists or knowingly protects the prostitution of another person or the soliciting for the purpose of prostitution;
- ▶ By any means, shares the products of the prostitution of another person or receives an allowance from a person habitually engaged in prostitution;
- ▶ Knowingly lives with a person who is habitually engaged in prostitution, and cannot justify sufficient income to allow him/her to be self-sufficient.
- ▶ Hires, trains or supports, even with their consent, a person even of the age of majority, for the purpose of prostitution, or to cause her/him to engage in prostitution or in debauchery.
- ▶ Serves as an intermediary, on any basis, between the persons engaged in prostitution or in debauchery and the individuals who exploit or pay for the prostitution or the debauchery.

Notes

- ▶ This Article criminalises procuring and otherwise aiding and assisting the prostitution of third parties;
- ▶ Does not require violence, constraint, threat or surprise, nor force or other coercive circumstances;
- ▶ Procuring is also criminalised in Article 26 of Law No. 06-032 on the Protection of Women from Violence in CAR, which makes it clearer that the procurer may be a man or a woman;
- ▶ Article 27 of Law No. 06-032 provides for aggravating circumstances, including coercion, abuse of power or whether the procurer has a special relationship with the victim;
- ▶ Article 28 of Law No. 06-032 criminalises contribution to debauchery of minors and access to facilities for the purpose of prostitution.

Castration, Art. 77:

- ▶ Provoking abortion: Art. 78 (however, abortion is legal under certain conditions provided in Art. 79, including foetus malformation, grave risk to life of expecting mother, rape, incest or grave distress of a female minor);
- ▶ Soliciting persons to provoke debauchery: Art. 89;
- ▶ Female genital mutilation: Arts. 114-116 (abolished through Order No. 66-16 of 1966 abolishing female genital mutilation).

Other crimes or misdemeanours (2010 Criminal Code or other laws)

- ▶ Manslaughter: Art. 70 of the 2010 Criminal Code;
- ▶ Murder and assassination: Arts. 51-58 of the 2010 Criminal Code;
- ▶ Homicide: Art. 83 of the 2010 Criminal Code;
- ▶ Imprisonment or other severe deprivation of physical liberty: Arts. 97-101 of the 2010 Criminal Code;

Torture and other cruel, inhuman or degrading treatment or punishment, Arts. 118-120:

- ▶ Forms of violence resulting in mutilations against women: Art. 29 of the Law on the Protection of Women from Violence;
- ▶ Violence against widows and widowers: Art. 112 of the 2010 Criminal Code and Art. 30 of the Law on the Protection of Women from Violence;
- ▶ Assault and battery: Arts. 67-69 of the 2010 Criminal Code.

Notes

- ▶ Torture and other cruel, inhuman or degrading treatment or punishment is also criminalised in Article 16 of Bangayassi Law No. 06-005 on reproductive health specifically for reproductive organs.

Crimes and misdemeanours against women (2010 Criminal Code):

- ▶ Assault and battery against women: Art. 112;
- ▶ Confiscating personal belongings of a widow: Art. 113;
- ▶ Female genital mutilation: Art. 114.

Crimes and misdemeanours against children (2010 Criminal Code):

- ▶ Infanticide: Art. 56;
- ▶ Assault and battery against children under 15 or not providing basic necessities: Art. 74;
- ▶ Indecent assault against children: Art. 86;
- ▶ Breach of decency of a minor: Art. 92;
- ▶ Substitution or taking of a new-born child: Art. 102;
- ▶ Child abduction: Art. 103;
- ▶ Forced marriage of a female minor abducted at school: Art. 105;
- ▶ Leaving a child incapable of protecting him/herself in a solitary place: Art. 107;
- ▶ Paedophilia: Art. 110;
- ▶ Child pornography: Art. 111.

Notes

- ▶ CAR ratified the CRC, which defines a child as anyone under the age of 18 in Article 1. Article 9 of the 2010 Criminal Code subjects children under the age of 18 to the jurisdiction of a judge for children. Children under the age of 14 are not subject to judicial measures and may only be provided with “re-educational measures”. Lastly, Article 209 of the 1997 Family Code sets the minimum age for marriage at 18 years of age.

C. Modes of Liability

CAR legislation provides for the following modes of liability:¹⁸⁴

- Direct perpetration: Art 8 of the 2010 Criminal Code;
- Accomplice: Arts. 11-16 of the 2010 Criminal Code;
- Attempt: Arts. 3-4 of the 2010 Criminal Code;
- Modes of liability for international crimes: Arts. 54-58 of the 2015 Law creating the CPS.

The modes of liability under CAR legislation are examined hereunder and may be compared with those from the Rome Statute found on IP2, Chapter 4, Box 7 (p. 54).

Direct perpetration

Direct perpetration under the 2010 Criminal Code, Article 8

No one shall be held criminally responsible except for his/her own acts.

Equivalent to Article 25(3)(a) of the Rome Statute only for direct perpetration.

Accomplice

Accomplice under the 2010 Criminal Code, Article 12

1. Will be punished as accomplice of an act qualified as a crime or misdemeanour: 1. Those who, by donations, promises, threats, abuse of authority or of power, guilty scheme and gimmicks, caused this act or gave the instructions to commit this act

Equivalent to Article 25(3)(b) of the Rome Statute on ordering, soliciting or inducing the commission of the crime.

Specifies the various means that can be used to order, solicit or induce a crime or misdemeanour.

However, the list of actions to order, solicit or induce appears to be exhaustive and may therefore exclude other scenarios.

2. Those who provided weapons, tools or any other means to carry out the act, knowing these would be used for such act

Equivalent to the last part of Article 25(3)(c) of the Rome Statute on providing the means for the commission of the act.

It covers any other means to commit the act, in a similar manner to the Rome Statute.

¹⁸⁴ CMN CAR Legal Analysis, *supra* note 69, p. 53.

3. Those who aided or assisted the main perpetrator(s) of the crime in the commission of the crime, prepared or facilitated or those who benefited from it, without prejudice to the penalties that will be specifically included in the present code against those involved in conspiracy or provocations that are prejudicial to the national security of the State, even when the crime that was the object of conspiracy and provocations has not been committed

Equivalent to Article 25(3)(c) of the Rome Statute on the participation of the accomplice in aiding and assisting the principal of the crime.

Consistent with article 25(3)(c) of the Rome Statute in requiring the accomplice to have knowledge that s/he was aiding and abetting to commit a crime.

Includes an additional manner in which the accomplice may be involved in the commission of the crime:

- ▶ By receiving benefits from the crime.

4. Those who, knowing the criminal behaviour of the criminals involved in banditry or violence against national security, public peace, persons or properties usually provide them with accommodation, safe haven or a place to meet

Partly covers Article 25(3)(d) of the Rome Statute, although it does not clearly encompass the notion of aiming to further the criminal activity.

Only covers situations where the accomplice provides assistance to the criminal group, with knowledge of their criminal purpose.

It is not clear whether the accomplice aims to further the criminal activity of the group.

Notes

National provisions on various forms of complicity from the Criminal Code do not contain a provision on incitement to commit a crime or misdemeanour.

Article 13 provides for criminal responsibility for persons who assisted the perpetrator by helping him/her to hide and escape justice.

Attempt

Attempt under the 2010 Criminal Code, Articles 3-4

Art 3: Any attempt to commit a crime by manifestly taking action that commences its execution, if it has not been suspended or if it has failed to achieve the desired effect solely through circumstances independent from the perpetrator's will, is considered as a crime

Similar to article 25(3)(f) of the Rome Statute but does not specify that the perpetrator must have taken substantial steps to commence the execution of the crime.

Provides for the liability of the perpetrator where s/he failed to complete the act through circumstances independent from his/her will, similar to abandonment of the act "because of circumstances independent of the person's intentions" under Art 25(3)(f) Rome Statute.

Includes situations where only the first steps towards the commission of the crime were taken and the desired effect of the crime was not reached.

Art 4: Attempts to commit a misdemeanour are not considered a misdemeanour, except in cases provided for by the Law

An attempt to commit a misdemeanour is not considered a misdemeanour, unlike an attempt to commit a crime.

This may impede the prosecution of certain misdemeanours related to CARSV seen in sub-section 2. Elements of Crimes above.

Modes of liability for international crimes (applicable to the CPS)

Modes of liability and Prohibited Defences

Article 55:

Equivalent to Article 25 of the Rome Statute.

Covers the following modes of liability:

- ▶ Commission: individual, joint or through another person
- ▶ Ordering, soliciting or inducing
- ▶ Aiding or abetting
- ▶ Joint criminal enterprise
- ▶ Direct and public incitement to commit genocide
- ▶ Attempt

Article 56:

Equivalent to article 27 of the Rome Statute referring to the irrelevance of official capacity criminal responsibility.

Article 57:

Equivalent to article 28(a) of the Rome Statute in that it provides for command responsibility:

- ▶ For forces under his/her command [OR]
- ▶ His/her effective authority [AND] control

Notes

- ▶ It is unclear whether "effective" also applies to command

Article 58:

Equivalent to article 28(b) of the Rome State in that it provides for superior responsibility:

- ▶ For subordinates under his/her effective authority and control

Notes

- ▶ This provision is exactly the same as that in the Rome Statute

Individual Criminal Responsibility

Article 55, CAR Penal Code:

Under this Law, a person is criminally responsible and may be punished for a crime within the jurisdiction of the Court if:

- ▶ They commit such a crime, whether individually, jointly with another person or through another person, whether or not that other person is criminally responsible;
- ▶ They order, solicit or encourage the commission of such a crime, where there is commission or attempted commission of the crime;
- ▶ In order to facilitate the commission of such a crime, they provide help, support or any other form of assistance to the commission or the attempted commission of this crime, including by providing the means of this commission;
- ▶ They contribute in any other way to the commission or attempted commission of such a crime by a group of persons acting in concert; this contribution must be intentional and, as the case may be, aimed at facilitating the criminal activity or criminal purpose of the group, if such activity or purpose involves the execution of a crime within the jurisdiction of the Court or is carried out with full knowledge of the intent of the group to commit this crime;
- ▶ With respect to the crime of genocide, they directly and publicly incite others to commit it.
- ▶ They attempts to commit such a crime by acts which, by their substantial nature, constitute a commencement of execution but without the crime being committed because of circumstances beyond their control. However, a person who abandons the effort to commit the crime or otherwise prevents its completion shall not be punished under this Law for their attempt if they have completely and voluntarily given up the criminal purpose.

Irrelevance of Official Capacity

Article 56, CAR Penal Code:

This Law applies equally to all, without any distinction based on official status.

Command Responsibility

Article 57, CAR Penal Code:

A military commander or person effectively acting as a military commander is criminally responsible for crimes within the jurisdiction of the Special Criminal Court committed by forces placed under their command or effective authority and control, as the case may be, when they failed to exercise appropriate control over those forces in the event that:

- ▶ That military commander or person knew, or owing to the circumstances, should have known that these forces were committing or were about to commit such crimes and;
- ▶ That military commander or person failed to take all necessary and reasonable measures within their power to prevent or repress their commission or to refer the matter to the competent authorities for investigation and prosecution.

Superior Responsibility

Article 58, CAR Penal Code:

With respect to superior and subordinate relationships, the superior is criminally responsible for crimes within the jurisdiction of the Special Criminal Court committed by subordinates under their effective authority and control, where they have not exercised appropriate control over such subordinates in the event that:

- ▶ The superior knew that these subordinates were committing or were going to commit these crimes or deliberately neglected to take into account information that clearly indicated so;
- ▶ These crimes were related to activities under their responsibility and effective control;
- ▶ The superior failed to take all necessary and reasonable measures within their power to prevent or punish their commission or to refer the matter to the competent authorities for investigation and prosecution.

D. Defences under Central African Law

Defences under the 2010 Criminal Code

Article 6: There is no crime or misdemeanour when the defendant has been compelled, at the time the crime occurred, by a force s/he could not resist

Defence of duress.

Applies to both crimes and misdemeanours.

- ▶ Applicable in cases of a force the perpetrator could not resist.
- ▶ There is no definition of what this force could entail.

Article 8: No one is criminally responsible, except for his/her own act. There is no crime or misdemeanour when the acts were committed in a state of psychological or neuropsychological disorder which destroyed the discernment or control of actions of the perpetrator or when s/he acted under an external force or constraint that s/he could not resist

Defence of mental disorder and specifically psychological or neuropsychological.

The disorder must have destroyed the perpetrator's discernment or control of actions.

Also defence of duress for an external force or constraint that the perpetrator could not resist.

Applicable to crimes and misdemeanours.

Article 46: Murder, bodily harm and blows are excused if they were provoked by blows or grave violence towards persons [...] The crime of castration, if immediately provoked by a violent indecent assault, will be considered as excused murder or bodily harm

Defence of blows or grave violence towards persons.

Unclear whether the blows and violence must be committed towards the perpetrator or third parties.

Castration is excused when immediately provoked by violent indecent assault.

Article 47: If the excuse is proven and the crime provides for a death or forced labour for life sentence, the sentence will be lowered to a prison term of 1 to 5 years. If a crime provides for a sentence of forced labour for a definite time, the sentence will be lowered to an imprisonment of 2 months to 2 years. If the acts consist of a misdemeanour, the sentence will be reduced to a 1 month and 1 day prison term, without prejudice to mitigating circumstances

Criminal excuses result in lower sentences:

- ▶ Reduced to a prison term of 1-5 years for crimes with a sentence of death or forced labour for life.
- ▶ Reduced to a prison term of 2 months to 2 years for crimes with a sentence of forced labour for a definite time.
- ▶ For misdemeanours, the sentence is reduced to a 1 month and 1 day prison term.

Article 48: Homicide, bodily harm and blows are justified and do not result in a conviction:

1. when ordered by law and commanded by legitimate authority;
2. when there was a state of necessity.

Nevertheless, this provision is not applicable to genocide, crimes against humanity and war crimes

Similar defence to lawful capacity of office specifically for acts ordered by law and commanded by legitimate authority.

Defence of necessity.

Applicable only to homicide, bodily harm and blows.

Not applicable to genocide, crimes against humanity and war crimes.

Article 49: Homicide, bodily harm and blows are justified and do not result in a conviction if commanded by current necessity of self-defence of oneself or others, of property or those of others. Current necessity of defence constitutes:

1. if the homicide was committed, the bodily harm carried out or blows given while constraining the climbing or break-in of fences, walls or entrances of a house, an inhabited apartment or an outhouse at night.
2. if the act took place in defence of the perpetrator of theft or pillage carried out with violence

Defence of self-defence.

Applicable only to homicide, bodily harm and blows.

Applicable only in cases of current necessity for:

- ▶ House, apartment or outhouse break-ins at night
- ▶ Theft or pillage carried out with violence

Article 161: [T]he principal or the accomplice of a crime covered in the present chapter cannot escape his/her responsibility because s/he performed an act prescribed or authorised by legislative or regulatory provisions or an act ordered by a legitimate authority. However, the court takes into account this circumstance to determine the penalty

Applies to genocide, crimes against humanity and war crimes.

In line with article 33 of the Rome Statute on superior orders but expands its application to unlawful laws and regulations.

Does not fully exclude superior orders as a defence by providing that a superior order may be classified as a mitigating circumstance.

E. Rules of Procedure and Evidence

The CPS' ROPEs were adopted by Law No. 18.010 on 2 July 2018,¹⁸⁵ and apply specifically to proceedings before the CPS.

1. Consent

The ROPEs contain specific provisions on the non-requirement of proof of lack of consent of victims for sexual offences. They provide as follows:

- Consent cannot be inferred from words or conduct of the victim when their faculty to provide genuine consent has been altered by the use of force, threats, duress or a coercive environment;¹⁸⁶
- Consent cannot be inferred from words or conduct of the victim when they is unable to give genuine consent;¹⁸⁷
- The reasons why the person would be “unable” to give consent are not provided in the ROPEs;
- Consent cannot be inferred from the silence of the victim or the victim's lack of resistance;¹⁸⁸
- No information is available on whether the defence is allowed to elicit evidence of consent of CARSV crimes, as provided in ICC Rule 72 or whether it must be done in closed session.

2. Corroboration

Unlike in the ICC ROPEs, corroboration of the victim's testimony is not dealt with in the CPS' Rules. According to ICC Rule 63(4), a chamber “shall not impose a legal requirement that corroboration is required in order to prove any crime within the jurisdiction of the Court, in particular, crimes of sexual violence”. No equivalent provision exists in the CPS' Rules. As seen at Chapter (10)(A)

“Introduction” on page 67, the CAR legal system is described by freedom of evidence, in which the judge is free to decide on the admissibility of evidence. As such, no legal requirement of corroboration exists, due to the fact that the judge is “free” to determine the admissibility of various types of evidence in court.

3. Prior and Subsequent Sexual Conduct

The credibility, worthiness or sexual availability of a victim cannot be inferred from the victim's prior or subsequent sexual behaviour.¹⁸⁹ Consistent with Rule 71 of the ICC ROPEs, the CPS does not admit evidence relating to the prior or subsequent sexual behaviour of a victim or witness.¹⁹⁰ In practice, this means that the status of the victim as a virgin or otherwise is not relevant before the CPS.

4. Protective Measures

The Registry of the CPS includes a Victim and Witness Support and Protection Unit, which became operational in September 2018. The functions of the Unit include:

- Ensuring the security, physical and psychological well-being, dignity and privacy of victims and witnesses;¹⁹¹
- Providing assistance (administrative, logistical, security, medical, psychological, and social) to victims and witnesses, while paying particular attention to children, vulnerable persons and victims of sexual violence;¹⁹²
- Taking all necessary measures to provide protection and security to victims and witnesses exposed to danger because of their testimony before the CPS.¹⁹³

¹⁸⁵ CPS ROPEs, *supra* note 98.

¹⁸⁶ *Ibid.*, Art. 170 A(a).

¹⁸⁷ *Ibid.*, Art. 170 A(b).

¹⁸⁸ *Ibid.*, Art. 170 A(c).

¹⁸⁹ *Ibid.*, Art. 170 A(d).

¹⁹⁰ *Ibid.*, Art. 170 B.

¹⁹¹ *Ibid.*, Art. 46 A(a).

¹⁹² *Ibid.*, Art. 46 A(b).

¹⁹³ *Ibid.*, Art. 46 A(c).

OPJs of the Special Judiciary Police Unit of the CPS must take all necessary measures to protect the security, physical and psychological well-being, dignity and privacy of the persons giving their testimony.¹⁹⁴ These OPJs may obtain advice as needed from the Victim and Witness Support and Protection Unit.¹⁹⁵ Furthermore, the Investigations Chamber (*Cabinet d'instruction*) has the power to take all appropriate measures to ensure the security, physical and psychological well-being, dignity and privacy of the persons involved in the investigation (instruction), in particular the civil parties and the witnesses.¹⁹⁶

The units and organs composing the CPS must take measures for the protection of security, physical, and psychological well-being, dignity and respect of privacy of victims, witnesses and people close to them.¹⁹⁷ The age, sex and state of health of the concerned individuals must be considered when taking protection measures.¹⁹⁸ Additionally, the units and organs of the CPS must take into account the nature of the crimes that victims, witnesses and others were subjected to, in particular when those crimes were accompanied by violence with a sexual character or violence against children.¹⁹⁹ In order to take the appropriate protective measures, the Court's units and organs may consult the Victim and Witness Support and Protection Unit and seek the assistance of any authority or competent organization.²⁰⁰ To this end, they must make sure to consult and consider the opinions of the persons affected by the protection measures and obtain their consent to the furthest extent possible.²⁰¹

Concealing the name or identifying information of the victim/witness

In order to ensure the protection of the identity of victims and witnesses, the CPS' organs can take several measures, including:

- The redaction of names and other identifying information;²⁰²
- Forbidding the persons participating in the procedure to disclose identifying information to third parties;²⁰³
- Issue an order to keep the identity of a victim or witness confidential following the procedure set in Article 153 of the Rules (see paragraph below),²⁰⁴ namely when the disclosure of a victim or witness' identity puts their life or physical integrity in danger (or that of their relatives) an order may be issued for the confidentiality of the identity of the individual(s) at hearings and in public court records;²⁰⁵
- Gather statements by electronic or other special means, including those that modify the image or voice, audio-visuals such as videoconference or closed-circuit television, or acoustic means;²⁰⁶
- Issue an order for closed sessions;²⁰⁷
- Take anonymity measures pursuant to Article 155 of the Rules (see below).²⁰⁸

When the disclosure of the identity of a witness or victim gravely puts in danger their life or physical integrity or that of persons close to him/her, the Investigations Chamber, the President of the Trial Chamber (*Section d'assises*) or the Appeals Chamber can order that the identity not be disclosed in public

194 *Ibid.*, Art. 66 A.

195 *Ibid.*, Art. 66 B.

196 *Ibid.*, Art. 72 C.

197 *Ibid.*, Art. 151 A.

198 *Ibid.*

199 *Ibid.*

200 *Ibid.*, Art. 151 C.

201 *Ibid.*

202 *Ibid.*, Art. 151 D(a).

203 *Ibid.*, Art. 151 D(b).

204 *Ibid.*, Art. 151 D(c).

205 *Ibid.*, Art. 153.

206 *Ibid.*, Art. 151 D(d).

207 *Ibid.*, Art. 151 D(e).

208 *Ibid.*, Art. 151 D(f).

hearings or public court records.²⁰⁹ The witness is then designated an identifying number.²¹⁰

Anonymity

When the examination of a victim or witness gravely risks putting their life or physical integrity in danger or that of persons close to them, the Investigations Chamber can authorise that their testimony be collected without revealing their identity.²¹¹ The exception to this rule is when knowing the identity of a person is indispensable to the exercise of the defence's rights.²¹² This protective measure can be temporary and the Trial Chamber can decide, at the beginning of the trial, whether it should be maintained until the end of the proceedings.²¹³ The identity of this victim or witness cannot be revealed in any other circumstances.²¹⁴ In case of necessity, a person whose life or physical integrity is in grave danger if their identity is revealed may be authorized to use an alias.²¹⁵ However, the alias may not be used during the proceedings in which this person testifies.²¹⁶

The decision to keep the anonymity of the witness and attribute them a number is joined to the record of the witness' testimony, on which the witness's signature does not appear.²¹⁷ The identity and address of the person is written in other minutes, signed by the witness, which are included in a separate file.²¹⁸ The accused can still ask to be confronted to the witness by using a technical device, which alters the voice of the witness and allows to hear them remotely or by defence counsel

using the same device to interrogate them.²¹⁹ The Investigations Chamber can decide to provide counsel of the parties with only a redacted version of the record of the witness' testimony, without any information allowing identification of the witness.²²⁰

Testimony in closed session

Trials are public unless the Trial Chamber orders a closed session for one of the following reasons:²²¹

- To preserve public order and public decency;
- To protect victims and witnesses;
- To guarantee the security of the CPS or its agents.²²²

The Trial or Appeals Chamber may order that the testimony of a witness be taken in closed session during trial when their life or physical integrity are gravely put in danger or that of persons close to them.²²³

Resettlement

When the taking of testimony of a victim or witness could gravely put their life or physical integrity in danger or that of people close to them, protection measures can be taken as necessary to ensure their security, including resettlement. These measures remain confidential.²²⁴ However, due to the limited budget of the CPS, it is unlikely for resettlement measures to be widely available to survivors.

209 *Ibid.*, Art. 153 A.

210 *Ibid.*, Art. 153 D.

211 *Ibid.*, Art. 155 A.

212 *Ibid.*, Arts. 155 E and 155 F.

213 *Ibid.*, Art. 155 B.

214 *Ibid.*, Art. 155 D.

215 *Ibid.*, Art. 156 B.

216 *Ibid.*

217 *Ibid.*, Art. 155 C.

218 *Ibid.*

219 *Ibid.*, Art. 155 G.

220 *Ibid.*, Art. 155 H.

221 *Ibid.*, Arts. 118 A and 145 E.

222 *Ibid.*, Art. 118 A.

223 *Ibid.*, Art. 154.

224 *Ibid.*, Art. 156 A and C.

Support available to victims and witnesses

The CPS' organs can take special protection measures to facilitate the examination of a traumatised victim or witness, a child, an elderly person, or a victim of sexual violence. They can order the presence of counsel, a representative, psychologist or family member during the examination.²²⁵

225 *Ibid.*, Art. 151 E.



PART IV: DOCUMENTATION IN PRACTICE: PREPARATION

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Chapter 7: Do No Harm

Chapter 7 of IP2 states that the key ethical principle for documentation of CARSV is the duty to ‘do no harm’. It further provides as follows:

[Do no harm] means practitioners must be fully aware of the possible negative impacts of documentation on victims and other witnesses, the wider community and the investigators themselves; be prepared for the harm those impacts may inflict; and put in place measures to prevent or minimize that harm.²²⁶

A. Potential Sources of Harm to Victims and Witnesses

1. Fear of retribution

The risk to survivors’ lives and their physical integrity, as well as that of their families, is real if they decide to speak out. In many cases, survivors withdraw their criminal complaints and/or statements as a result of the fear or threat of retribution from the perpetrator(s).²²⁷ The close proximity of perpetrators to survivors and the control that they exercise over territory and populations exacerbate the fear of retribution and the harm caused to victims when they complain. Survivors and their families who have spoken out have faced intimidation, threats to life, beatings and ill treatment.²²⁸

2. Stigma

The fear of stigma and therefore rejection by families and communities of survivors is extremely prevalent throughout CAR. This prevents survivors and their families from

speaking out since little to no support is offered by families and/or communities after the facts of the perpetration of sexual violence become known and, often times, survivors are blamed for their plight. The fear of stigma and rejection is so strong that numerous survivors do not report or attend medical facilities even though they suffer extreme pain and physiological complications following rapes. Male survivors additionally face the stigma associated with homosexuality and homosexual acts and in numerous cases decide not to seek assistance. For more information on stigma, see further Chapter (2)(B) “Contextualising Sexual Violence” on page 14.

3. Misdemeanour charges

Both the 1961 and 2010 Criminal Codes contain a provision worded in the same manner treating homosexual acts committed in a place open to the public as “public indecent exposure” (a misdemeanour) as follows:

Any act against nature committed in a place open to the public with an individual of the same sex will be considered as public indecent exposure and punished with a prison term of six months to two years and a fine of 100,002 to 300,000 Francs.²²⁹

This provision potentially poses a risk for male survivors wishing to report sexual violence perpetrated by other males when carried out in public areas, because it does not recognise an exemption from liability if they did not consent to the act.

²²⁶ IP2, *supra* note 1, p. 85.

²²⁷ Interviews with justice practitioners in Bangui, *supra* note 71.

²²⁸ HRW SGBV Report, *supra* note 9, pp. 131-135.

²²⁹ Loi n° 10.001 portant Code pénal centrafricain, *supra* note 160, Art 85; Criminal Code 1961, *supra* note 178, Art. 195.

4. Re-traumatisation and lack of referral services

Due to the extreme amounts of violence and lack of formal support services to CARSV survivors, as well as inaccessibility of those available services, re-traumatisation is a major risk to documentation, investigation and prosecution of sexual violence crimes. The best practices outlined at pages 92-102 of IP2 can assist practitioners with mitigating the risk of re-traumatisation during and after interviews. See also Chapter (7)(C) “Mitigating Harm” on page 60.

B. Informed Consent

Obtaining informed consent from survivors and witnesses prior to starting the documentation or investigation process is a crucial ethical obligation. As IP2 states:

Survivors and other witnesses have the ultimate authority to consent to participate. This authority is founded on both the ethical respect for their autonomy, and their legal right to self-determination.²³⁰

The 2015 Gender-Based Violence (‘GBV’) SOPs in CAR provide the following guidance regarding consent:²³¹

- All actors involved in the referral system know and apply the World Health Organisation’s (‘WHO’) ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies,²³² the dos and don’ts of UN Action and the GBV Inter-Agency Standing Committee’s guidelines;²³³

- For basic guidelines on information management and protection work, see the International Committee of the Red Cross (‘ICRC’) standards for protection work carried out by humanitarian and human rights actors in armed conflict and other situations of violence;²³⁴
- It is important to provide complete and honest information to survivors on possible referral services. If the survivor accepts and requests a referral, they must provide informed consent prior to any information being shared. They must be informed about the risks and consequences of the transmission of information on their situation and they have the right to limit the nature of the information that is shared, as well as to specify which organisations may or may not obtain such information;
- The survivor must also understand and accept the sharing of information on their case without allowing them to be identified for the purposes of collecting information and follow-up on security.

For a consent form for the sharing of information, see Annex 3 of the GBV SOPs.²³⁵ Furthermore, the Ministry of the Interior and Ministry of Justice developed an operating procedures manual for police investigations of SGBV and child rights violations. This manual provides that only court documents may contain information identifying persons involved in SGBV incidents.²³⁶ Furthermore, it provides that no information allowing the identification of a survivor, their family or the alleged perpetrator(s) may appear in any other document.²³⁷

The GBV SOPs and IOM reference manual to the police and gendarmerie on GBV case management²³⁸ contain specific guidelines regarding consent for children:

²³⁰ IP2, *supra* note 1, p. 89.

²³¹ GBV SOP CAR, *supra* note 69, p. 15.

²³² WHO, *Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies*, 2007.

²³³ Inter-Agency Standing Committee, *Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action: Reducing risk, promoting resilience and aiding recovery*, 2015.

²³⁴ ICRC, *Professional Standards for Protection Work carried out by humanitarian and human rights actors in armed conflict and other situations of violence*, 2018. The GBV SOPs refer to the first edition of this same document dated 2009.

²³⁵ GBV SOP CAR, *supra* note 69, p. 56.

²³⁶ Ministry of the Interior, Public Security and Territorial Administration, and Ministry of Justice, Human Rights and Attorney General, *Operating procedures manual on police investigations of sexual and gender-based violence and child rights violations*, p. 16 [Operating procedures manual on SGBV investigations] (document on file with CMN).

²³⁷ *Ibid.*

²³⁸ *IOM Reference Manual*, *supra* note 69.

- Children must be consulted and provided with all the necessary information to be able to make an informed decision;²³⁹
- Child-friendly techniques must be used in order to encourage them to express themselves;²⁴⁰
- Children's capacity to provide consent in relation to the collection of information, and the credibility given to such information, will depend on their age, level of maturity and the possibility that they have to freely express themselves;²⁴¹
- Children and their parents or guardians must be informed about the investigation in a manner that is appropriate to their culture, education and capacity to understand;²⁴²
- Informed consent must be provided by a parent or guardian; children who are "old enough to understand" the nature of the investigation must also provide their consent;²⁴³
- Direct contact between child survivors/witnesses and alleged perpetrators must be avoided; in certain cases, restrictive orders which provide for the preventive detention of the accused must be obtained.²⁴⁴

1. National practice to obtain informed consent

Except for the above-mentioned SOPs and manuals, there appear not to be any legal requirements to obtain informed consent in national legislation from survivors during the documentation process. UMIRR resorts to the operating procedures manual on SGBV investigations developed by the Ministry of the Interior and Ministry of Justice for guidance on obtaining informed consent from survivors.²⁴⁵ The provisions in that manual for informed consent are, however, summary in nature and do not contain a clear pathway to do so. The Special Judiciary Police Unit of the CPS has, as of October 2018, not formally begun to carry out investigations and does not have procedures to obtain informed consent from adult and child CARSV survivors.²⁴⁶ Therefore, there appears to currently be no established practice on obtaining informed consent from survivors by national authorities.²⁴⁷

Legal duty to report crimes

Practitioners must be aware of legal duties to report crimes, since this may potentially affect their ability to maintain confidentiality of information shared by survivors and/or witnesses. It is of utmost importance to inform survivors and witnesses about mandatory reporting obligations during the informed consent process. This must be discussed with the survivor prior to any disclosure.

Article 14 of the 2010 Criminal Code makes it a misdemeanour for individuals aware of the commission of a crime to not inform the relevant national authorities "if it was still possible to prevent or limit the effects of the commission of the crime or if it was foreseeable that the perpetrator(s) would commit new crimes that a criminal complaint could prevent".²⁴⁸ The sentence may range from a prison term of one month and one day to three years and/or a fine of 100,002 to 2,000,000 Francs. Exceptions to this duty apply to parents or family up to the fourth generation and perpetrators or accomplices of the crimes or attempted crimes (except for crimes committed on minors).²⁴⁹

Article 116 of the 2010 Criminal Code requires the same obligation of individuals to report a planned or executed female genital mutilation to the relevant national authorities.²⁵⁰ There are no conditions for this duty to report.

239 *GBV SOP CAR*, *supra* note 69, p. 15.

240 *Ibid.*

241 *Ibid.*

242 *IOM Reference Manual*, *supra* note 69, p. 29.

243 *Ibid.*

244 *Ibid.*

245 Interview with UMIRR personnel, October 2018; Operating procedures manual on SGBV investigations, *supra* note 236.

246 Interview with Special Judiciary Police Unit, CPS, October 2018.

247 Interviews with justice practitioners in Bangui, *supra* note 71.

248 *Loi n° 10.001 portant Code pénal centrafricain*, *supra* note 160, Art. 14.

249 *Ibid.*






















250 *Ibid.*, Art. 116.

C. Mitigating Harm







1. Threat and Risk Assessments

The table below is drawn from Forms 1 and 2 of Annex 2 of IP2 and contains examples of higher-ranking threats and risks specific to CAR with an indication of the risk/threat level. It is based on a pre-mitigation threat level and is not made to be comprehensive or accurate to specific settings with particular

circumstances in various parts of the country. Practitioners must conduct full, detailed and regular threat and risk assessments throughout the documentation process and prior to specific missions or contact with survivors/witnesses at each location. Based on their up-to-date, task-specific threat and risk assessments with information from locals/networks on the ground, practitioners may develop mitigation strategies and measures to address threats and risks.

Potential Threats, by Origin and Risk to Survivor						
Risk/threat	From conflict environment	From armed groups	From family and community	From environment	From institutions	From documentation
To survivor	 Ongoing conflict between numerous armed groups and government forces.  Raids/looting/attacks on villages.	 Risk of retaliation, including threats to life and physical integrity for documentation/investigation.  Stalling or interference with proceedings as alleged perpetrators may have positions of influence.	 Stigma, rejection.		 Lack of protection measures and referral services (health, psychosocial and others)  Re-traumatisation.  Stigma if exposed.  Exposure and lack of confidentiality.	 Re-traumatisation from multiple interviews. Exposure and stigma.
To family and community	 Repeated rapes on survivors.  Impossibility to access certain areas, including services and government institutions.	 Risk of retaliation, including threats to life and physical integrity for documentation/investigation.	 Stigma, rejection.		 Lack of protection measures.	
To staff	 Impossibility to access certain areas, including services and government institutions.	 Risk of retaliation, including threats to life and physical integrity for documentation/investigation.			 Lack of protection services.	 Vicarious trauma.
To evidence/information		 Retraction of statements because of fear or actual retaliation.			 Risk of alteration due to lacking infrastructure.	

Levels:

 Very low risk
  Low risk
  Medium risk
  High risk
  Very high risk
  Unacceptable

2. Coordination

The United Nations Population Fund ('UNFPA') leads the GBV sub-cluster in CAR. The sub-cluster has four working groups in the country: Ouaka Prefecture (Bambari), Nana-Gibrizi Prefecture, Ouham Prefecture and Bangui.²⁵¹

Two useful websites for practitioners on information-sharing are:

- Humanitarian Response's [website](#), containing contact information of the GBV sub-cluster, GBV data, case management toolkits and other documents (last updated in 2017);
- GBV sub-cluster's [website](#) that allows users to quickly share information relating to potential alerts and other information from the field, actions taken and operational presence (last updated in August 2015).

Information management on GBV is carried out by the GBV sub-cluster and the focal point is UNFPA, which has two offices in CAR, including one in Bangui. Quantitative GBV data stems from the following sources:²⁵²

- GBV Information Management System ('GBVIMS');
- Alert system of the health cluster;
- The protection monitoring (carried out by the Danish Refugee Council, Mercy Corps, Italian International Cooperation – 'COOPI' and INTERSOS, in partnership with UNHCR and OXFAM, in the prefectures of Nana-Mambéré, Mambéré-Kadéi, Ouham-Pende, Nana-Grebizi, Ouham, Ouaka, Kemo and the city of Bangui);
- The Monitoring and Reporting Mechanism ('MRM') on grave violations committed against children in times of armed conflict;
- The UN Monitoring, Analysis and Reporting Arrangement ('MARA') on CARSV.

At least 10 organisations members of the GBV sub-cluster participate on the GBVIMS and have signed an information sharing protocol, dated 2014 and updated in 2015.²⁵³ Data is compiled by UNFPA and, regarding sexual violence, provides the following:²⁵⁴

- Number of cases;
- Number of cases of rape, gang rape, sexual slavery and sexual exploitation (against girls, women, boys and men);
- Percentage of survivors by age category;
- Percentage of survivors by sex;
- Percentage of perpetrators by profession;
- Percentage of rapes with assistance provided within 72 hours;
- Percentage of rapes referred for legal assistance;
- Total number of cases per prefecture of their report.

MARA was established in 2017 to ensure systematic gathering of reliable and objective information on CARSV. It is composed of UN entities and MINUSCA components, and contains a technical-level working group which reviews, monitors, verifies incidents of sexual violence against women, men, girls and boys, analyses data, and identifies perpetrators, trends and patterns of violence. This working group is convened by the MINUSCA Senior Women Protection Adviser. It obtains valuable information on SGBV and CARSV from UNPOL and its various internal security forces stationed throughout CAR.

Additionally, a Joint Consultation Forum on CARSV has been created to enhance data collection from a broad range of actors. It is composed of international and local NGOs, representatives of health service providers and representatives from ministries, such as Ministry of Health, Ministry of Social Affairs, Promotion of Gender and Humanitarian

²⁵¹ *GBV SOP CAR*, *supra* note 69, p. 45.

²⁵² *Ibid.*, p. 40.

²⁵³ *Ibid.*

²⁵⁴ *Ibid.*, p. 41.

Action, and Ministry of Justice. It reviews and discusses information and analysis on CARSV from UN and NGO reports, government health or police data, and information from the GBVIMS.

Coordination of measures regarding GBV fall under the Ministry of Social Affairs, Promotion of Gender and Humanitarian Action through its Gender Promotion Directorate.²⁵⁵ The following organs have been created as a result:²⁵⁶

- A National Committee on the fight against harmful practices towards women, composed of a national group, as well as prefecture, sub-prefecture and community committees throughout the country;
- National Sector Committee on Gender and Reduction of Poverty, tasked with monitoring the National Action Plan of Resolution 1325 of

the UN Security Council (on women, peace and security);

- National Committee on monitoring the Bangui Forum recommendations with regards to gender.

However, despite the existence of these various national structures and the GBV sub-cluster, there is no mechanism in CAR to ensure coordination of judicial measures against GBV, such as protective measures, reparation and others.

Prior to approaching CARSV survivors, anyone embarking on documentation processes should find out who the mandated and non-mandated documentation, investigation and other actors are (such as medical and humanitarian). It is also essential to find out what documentation/investigation work has already been or is being done, and whether further documentation is necessary.

Mandated actors

For this Supplement, “mandated actor” means a person or body granted official government powers or mandate to act in a law enforcement, investigation, expert witness, prosecution and/or adjudicative function. This mandate can be given directly by, for example, a government, through national law, through an agreement with a government, through the UN Security Council acting under its Chapter VII powers, or through another body with the power to grant such official mandate.

3. Confidentiality

The IOM Reference Manual provides that confidentiality must be respected in all steps of police investigations.²⁵⁷ Neither the identity of the survivor or the means to locate them may be revealed to third parties, suspects or family members.²⁵⁸ The CPS’ ROPEs provide for the communications between a lawyer and their client being privileged.²⁵⁹ These

may only be disclosed at trial in the following cases:²⁶⁰

- The client consents to disclosure;
- The client voluntarily disclosed the content of the communications to a third party who is involved in the judicial proceedings;
- The client had the intention of committing a crime and the exchanged communications contributed to its commission.

²⁵⁵ *Ibid.* p. 43.

²⁵⁶ *Ibid.*

²⁵⁷ *IOM Reference Manual*, *supra* note 69, p. 27.

²⁵⁸ *Ibid.*, p. 28.

²⁵⁹ *CPS ROPEs*, *supra* note 98, Art. 165.

²⁶⁰ *Ibid.*

Apart from the CPS' ROPEs, there is no national legislation covering lawyer-client professional privilege or confidentiality of survivors of sexual violence in CAR. However, it appears that traditionally, clients and lawyers benefit from confidentiality in their communications.²⁶¹ Institutions involved in providing services to survivors of sexual violence appear to be generally aware of the ethical obligations concerning confidentiality.²⁶²

There are various challenges relating to confidentiality in CAR. Criminal sessions held at courts of appeal (the only manner to hold criminal trials in CAR) are open to the public and even the media is allowed to attend and report cases of minors.²⁶³ If individuals present in the public know the CARSV survivor, there are serious risks that they will be stigmatised and rejected by their family and community. A similar outcome is likely if the media report on the criminal sessions and provide the personal details of survivors. It remains to be seen how the CPS will deal with this issue and whether it will hold closed sessions. Another challenge is the lack of training of OPJs or *gendarmes* who interact with survivors and may inadvertently disclose confidential information or carry out procedures which expose their identity. This is linked to the close physical and personal proximity of people living together in

communities, as it is difficult for investigators to approach survivors and communicate with them without being noticed. To this regard, trainings and best practice exchanges are and will be held with OPJs/*gendarmes* on working with vulnerable survivors.²⁶⁴ Lastly, secure storage and protection of data (and potentially evidence) by actors documenting cases or assisting survivors (such as *centres d'écoute*, which are centres that assist survivors of sexual violence and provide referrals, and local NGOs) remains a challenge due to lacking infrastructure, absence of mandated investigation actors in numerous areas of the country, and presence of perpetrators and armed groups – which pose serious security threats.²⁶⁵

4. Referrals

The GBV SOPs provide general referral pathways for cases of rape.²⁶⁶ The first entry point of the survivor may be a medical facility, a psychosocial facility or a police/*gendarmerie* station.²⁶⁷ A referral to medical services should be provided within 72 hours of the first point of entry (if it is not already a medical facility), followed by a psychosocial referral.²⁶⁸ A referral to the police/*gendarmerie* may be made if it is “necessary” to file a complaint, followed by the judicial authorities.²⁶⁹

Medical, psychosocial, security and legal aid services referrals

For a list of medical facilities for CARSV survivors in Bangui and Bimbo, see p. 20 of the [GBV SOPs](#).

- ▶ Practitioners should be aware that MSF is the only actor that provides medical certificates free of charge;²⁷⁰

261 Interviews with justice practitioners, Bangui, *supra* note 71.

262 *Ibid.*

263 *Ibid.*

264 Interview with CPS, October 2018.

265 Interview with justice practitioners, Bangui, *supra* note 71.

266 *GBV SOP CAR*, *supra* note 69, pp. 14, 16.

267 *Ibid.*, p. 16.

268 *Ibid.*

269 *Ibid.*

270 Interview with justice practitioners, Bangui, *supra* note 71; *Ibid.*, p. 19: as of 2015, the fee for a medical certificate is 5,000 XAF and for a medical report (issued for incidents committed in the past) 20,000 XAF.

For a detailed pathway of medical assistance, including medical forms and certificate samples, see pp. 53-70 of the GBV SOPs.

For a list of psychosocial facilities for CARSV survivors throughout CAR, see pp. 21-22 of the GBV SOPs.

For child survivors who, for lack of other options, must be placed with a host family or institutionalised, practitioners should refer to the Center of Mother and Child (*Centre de la mère et de l'enfant*), SOS Village of Children (*SOS village d'enfants*) and Save the Children.

For contact information for the *Gendarmerie*, Police and UNPOL, see pp. 25-28 of the GBV SOPs.

- ▶ Practitioners should be aware that neither the *Gendarmerie*, the Police nor UNPOL are generally able to provide protection measures to survivors and/or witnesses,²⁷¹ and that vast areas of the country are not under their control.

The GBV sub-cluster has developed referral pathways for medical, psychosocial, security and legal aid services in various parts of the country, which are found in its SOPs:

- ▶ Bangui, p. 72;²⁷²
- ▶ Bimbo, p. 73;
- ▶ Ouham Prefecture (Bossangoa, Bouca), p. 74;
- ▶ Bambari, p. 75;
- ▶ Kaga Bandoro, p. 76.

Existing community-based protection mechanisms are the following:²⁷³

- ▶ Welcome committees (local community associations responsible for receiving IDPs and assessing their needs);
- ▶ *Carrefour communautaire* (community-level location where people gather; psychosocial counsellors may use this setting to speak to survivors in a non-stigmatising setting);
- ▶ *Relais communautaires* (operate as a bridge between communities and health centres).

Bangui and Berberati have a *cadre de concertation* led by Lawyers without Borders ('ASF') which gathers magistrates, representatives from the respective prefecture, lawyers, NGOs, administrative authorities and customary and religious leaders.²⁷⁴ Each *cadre* has monthly meetings between these justice actors to discuss best practices and areas for improvement, and to refer cases to each other for medical, psychosocial and local administration services. No referrals are made to lawyers as of the time of writing of this Supplement. However, this is envisaged to change.

The GBV SOPs additionally contain guidelines on special procedures for child survivors, such as the requirement for special training of medical personnel, requesting the child to choose someone to accompany them, and finding immediate protection needs.²⁷⁵

The GBV sub-cluster provides case management guidelines; the process should be structured as follows:²⁷⁶

1. Referrals;
2. Consent and communication of information;

²⁷¹ Interviews with justice practitioners, *supra* note 71.

²⁷² *IOM Reference Manual*, *supra* note 69, has a similar referral pathway for Bangui at pp. 79-80.

²⁷³ *All Survivors SGBV against men and boys*, *supra* note 19, p. 33.

²⁷⁴ Interview with ASF, Bangui, October 2018.

²⁷⁵ *GBV SOP CAR*, *supra* note 69, p. 17.

²⁷⁶ *Ibid.*, p. 18.

3. Medical, psychosocial, legal aid, judicial, reinsertion and socioeconomic assistance;
4. Coordination.

Social workers at psychosocial services should monitor the implementation of the various services provided to survivors. GBV case management guidelines are also provided in the IOM Reference Manual, which is geared specifically to the police and *gendarmerie*.²⁷⁷

Practitioners should note that, as of October 2018, numerous OPJs and *gendarmes* were unfamiliar with the GBV sub-cluster SOPs and the IOM Reference Manual, even those at key institutions working on sexual violence.²⁷⁸ As such, mandated investigators may not necessarily know the existing coordination efforts and referral pathways created in various parts of the country.

Practitioners should also note that the GBV sub-cluster SOPs include limited guidance on the clinical management of male survivors and they focus mainly on women and children.²⁷⁹ The levels of expertise on sexual violence against males among humanitarian service providers is generally low and few organisations have received detailed training on how to recognise and respond to sexual violence against men and boys.²⁸⁰

²⁷⁷ IOM Reference Manual, *supra* note 69, p. 41 et seq.

²⁷⁸ Interviews with justice practitioners, Bangui, *supra* note 71.

²⁷⁹ *All Survivors SGBV against men and boys*, *supra* note 19, p. 32.

²⁸⁰ *Ibid.*



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Chapter 10: Types of Evidence of Sexual Violence in CAR

A. Introduction

The criminal evidentiary system in CAR is based on the principle of freedom of evidence (*liberté de la preuve*), in which the judge is free to decide on the admissibility of evidence. The weight to be given to evidence is guided by the judge's firm conviction (*intime conviction*), which is the standard of proof in the ordinary criminal justice system. This system applies to the CPS pursuant to the ROPEs,²⁸¹ with the difference that the standard of proof at the CPS is "beyond a reasonable doubt".²⁸² Evidence obtained in violation of international human rights obligations by CAR, such as that obtained through torture, is inadmissible.²⁸³

The CPS' ROPEs cover issues related to evidence such as judicial notice, witnesses under protective measures, privilege and specificities of sexual violence. The ROPEs provide for the ability of the CPS to take judicial notice of facts already examined in other cases at the CPS, the ICC, or facts in the case being heard which do not concern the acts or behaviour of the accused.²⁸⁴ This means evidence does not have to be admitted on such matters, as the judges can consider the fact to be previously adjudicated or to be a "fact of common knowledge."

A conviction may not be based solely on the testimony obtained from witnesses under anonymity protection measures provided under Article 155 of the ROPE.²⁸⁵ No conviction may be made solely on the basis of statements made by persons having entered into a collaboration agreement.²⁸⁶ All information, documents or other evidence of the ICRC is privileged, if produced or obtained in the exercise or as a consequence of its mandate.²⁸⁷ This is in keeping with the practice of the international criminal tribunals of respecting the impartiality of the ICRC in order not to undermine the organisation's role in urging weapon bearers to adhere to the rules of international humanitarian law. In a similar manner, representatives or present or past employees of the ICRC may not be summoned or subpoenaed as witnesses before the CPS.²⁸⁸ Article 170 of the ROPEs provides specific rules for sexual violence evidence (see Chapter (4)(5) "Rules of Procedure and Evidence" *on page 52*).

B. Testimonial Evidence

Testimonial evidence is the most widely collected type of evidence in criminal SGBV cases in CAR.²⁸⁹ At the CPS, judges have freedom to consider confessions in the same manner as any other evidence (in accordance with the "*libre appréciation du juge*").²⁹⁰ Communications between a lawyer and their client are

281 CPS ROPEs, *supra* note 98, Art. 161.

282 *Ibid.*, Art. 5.

283 *Ibid.*, Art. 164.

284 *Ibid.*, Art. 167.

285 *Ibid.*, Art. 168 (A). According to Article 149 of the ROPEs, a collaboration agreement is entered into when a suspect or accused acknowledges their participation in the facts attributed to them and who provides the Court with information to reveal the truth or to identify other perpetrators or accomplices.

286 *Ibid.*, Art. 168 (B).

287 *Ibid.*, Art. 169 (A).

288 *Ibid.*, Art. 169 (C).

289 Interviews with justice practitioners, Bangui, *supra* note 71.

290 CPS ROPEs, *supra* note 98, Art. 162.

privileged and therefore inadmissible, except in three cases (see Chapter (7)(C)(3) “Confidentiality” on page 62).²⁹¹

Expert witness reports must contain a written oath, which is attached to the case file.²⁹² Expert witnesses are under the authority of the Investigations Chamber and must inform it of the development of their operations.²⁹³ Expert witness reports must be signed and state the names and roles of persons having assisted them in their operations.²⁹⁴ The Investigations Chamber must inform the Special Prosecutor, the accused and the civil parties about the conclusions of the expert(s).²⁹⁵

C. Documentary Evidence

Apart from testimonial evidence, the other type of evidence generally submitted to courts for criminal SGBV cases (if accessible to survivors) is medical certificates.²⁹⁶ They must be signed by qualified doctors in order to be admissible in courts (mid-wives are not allowed to sign them).²⁹⁷

In order to have probative value, *procès-verbaux*,²⁹⁸ reports and victim/witness statements must be made in due form,²⁹⁹ the author must have acted in the exercise of their functions and reported on a matter falling within their mandate what they saw, heard or noticed on a personal basis.³⁰⁰ Hearsay in documentary evidence is therefore inadmissible. *Procès-verbaux* must be completed and signed by an OPJ (a judiciary police agent - APJ - is not allowed to sign).³⁰¹

D. Physical Evidence

All documents and objects obtained by search and seizures carried out by OPJs must be included in an inventory and placed under seal (*scellés*).³⁰² Some material evidence is occasionally submitted to courts in SGBV cases, such as clothing or objects, although such practice appears to be rare.³⁰³ Investigators and the court registry face challenges in relation to the chain of custody of physical evidence, as objects are occasionally left in open areas in offices due to a lack of infrastructure and training.³⁰⁴

291 *Ibid.*, Art. 165.

292 *Ibid.*, Art. 81 B).

293 *Ibid.*, Art. 81 D).

294 *Ibid.*, Art. 81 E).

295 *Ibid.*, Art. 81 F).

296 Interviews with justice practitioners, Bangui, *supra* note 71.

297 *Ibid.*

298 Report made by OPJs about a criminal complaint or a victim/witness statement.

299 Pursuant to the Criminal Procedure Code of CAR 2010 (*supra* note 69) and the CPS ROPEs (*supra* note 98).

300 CPS ROPEs, *supra* note 98, Art. 163.

301 Interviews with justice practitioners, Bangui, *supra* note 71.

302 Criminal Procedure Code of CAR 2010, *supra* note 69, Arts. 8 and 64; CPS ROPEs, *supra* note 98, Art. 65E.

303 Interviews with justice practitioners, Bangui, *supra* note 71.

304 *Ibid.*

Annex I: Evidence Workbook

Bemba trial proceedings at the ICC. This case focused on crimes committed by the MLC forces under Bemba in CAR between 2002 and 2003. Incidents involved murder, rape and pillage throughout the country. This set an important precedent at the ICC and internationally for the prosecution of CARSV and command responsibility.

In March 2016, the ICC convicted Bemba of crimes against humanity (murder and rape) and war crimes (murder, rape and pillage) based on command responsibility.³⁰⁵ In June 2016, the ICC sentenced Bemba to 18 years in prison.³⁰⁶ On 8 June 2018, the Appeals Chamber acquitted Bemba, finding that the Trial Chamber erred in concluding that Bemba did not take the necessary and reasonable measures to prevent the crimes committed in CAR by his subordinate troops (command responsibility) and that trial judges erred in convicting Bemba for specific criminal acts that were outside the scope of the confirmed charges of the Pre-Trial Chamber.³⁰⁷

Despite Bemba's acquittal, numerous factual findings concerning the elements of crimes were not reversed on appeal. The following means of proof and sources of evidence are based on those incidents that were not overturned by the Appeals Chamber. Considering that the key element to Bemba's acquittal on appeal was the mode of liability of command responsibility (failing to take necessary and reasonable measures to prevent the commission of crimes), this Evidence Workbook focuses on underlying acts and contextual elements instead of modes of liability.

Sources of evidence of rape as a crime against humanity or war crime	
Means of proof	Potential evidence by source
Survivor/victims	Viva voce testimony about incident(s) they experienced.
Eye witnesses (whole family, many of whom were also victims)	The father of two girls testified about their rape (the two girls did not testify). The mother, sister and niece of the survivors corroborated this incident in their testimony. The Trial Chamber found this testimony from eye witnesses to be reliable considering the circumstances of the attack on the family compound. ³⁰⁸

³⁰⁵ Bemba Trial Chamber Judgment, *supra* note 137.

³⁰⁶ Bemba Decision on Sentence, *supra* note 138.

³⁰⁷ Bemba Appeals Chamber Judgment, *supra* note 139.

³⁰⁸ Bemba Trial Chamber Judgment, *supra* note 137, para. 493.

<p>Partial eyewitnesses</p>	<p>A partial eyewitness, who was raped in a compound, heard her sister-in-law in the adjacent compound “calling out like someone who is truly afraid” but could not see her because of a fence. That same day, the sister-in-law told the partial eyewitness that she had been raped by three soldiers of the same group that attacked the partial eyewitness. The Trial Chamber found the testimony of the witness to be reliable for her own rape and that of her sister-in-law.³⁰⁹</p>
<p>Corroboration by media articles and NGO reports</p>	<p>Media articles and NGO reports were admitted (together with <i>procès-verbaux d’audition de victimes</i> (see below)) to corroborate testimony, thus providing reliable evidence that MLC soldiers occupied houses and committed “numerous” and “continuous” acts of pillaging, rape and murder against civilians in various areas of Bangui.³¹⁰</p> <p>Media articles “may be admitted for limited purposes to be determined on a case-by-case basis”, such as to “corroborate other pieces of evidence” or to assess whether the “conduct described in the charges was widely broadcast”, which, could assist in determining the accused’s alleged knowledge of the crimes charged.³¹¹</p> <p>NGO reports can be considered “<i>prima facie</i> reliable provided that they offer sufficient guarantees of impartiality” and admissible “for the limited purpose that the information contained therein may serve to corroborate other pieces of evidence”.³¹²</p>
<p>Procès-verbaux d’audition de victimes, Bangui Court of Appeal.</p>	<p><i>Procès-verbaux</i> were admitted by the Trial Chamber to corroborate other evidence related to the contextual elements of the crimes charged. They were not admitted to prove the accused’s individual criminal responsibility because the Trial Chamber could have finally concluded that they were hearsay evidence and thus ascribe less probative value than testimony or other reliable evidence.³¹³ They assisted the Trial Chamber with the assessment of whether the crimes “allegedly perpetrated by the MLC were committed as part of a widespread or systematic attack directed against a civilian population, pursuant to or in furtherance of State or organizational policy”.³¹⁴</p>
<p>Medical certificate</p>	<p>The Trial Chamber admitted a medical certificate for a victim of rape.³¹⁵</p> <p>Note: Medical reports are rarely relied upon in cases at the international level as most victims are unable to undergo a medical examination within 72 hours of the act.</p>

309 *Ibid.*, paras. 465-466.

310 *Ibid.*, paras. 486, 520.

311 *Ibid.*, para. 269.

312 *Ibid.*, para. 270.

313 *Ibid.*, para. 266.

314 *Ibid.*

315 *Ibid.*, footnote 1318.

Impact evidence	
Means of proof	Potential evidence
Immediate damage ³¹⁶	<ul style="list-style-type: none"> ▶ Bleeding from vagina, swollen or torn anus, could not walk ▶ Physical injuries to vagina, back, pelvis, kidneys and eyes ▶ Inability to walk as anus swollen ▶ Pain ▶ Blood on dress
Long-term injuries	<ul style="list-style-type: none"> ▶ To genitals and/or anus ▶ Surgery required ▶ Problems conceiving
Sexually-transmitted infections	<ul style="list-style-type: none"> ▶ HIV
Psychological	<ul style="list-style-type: none"> ▶ Depression, constant sadness ▶ Fear ▶ Shame
Psychiatric	<ul style="list-style-type: none"> ▶ Traumatized, signs consistent with PTSD ▶ Suicidal
Social	<ul style="list-style-type: none"> ▶ Social stigmatisation, mocked as “Banyamulengue wife”, made fun of ▶ Disrespected ▶ Considers himself “a dead man” ▶ Social exclusion by other girls the same age as the survivor

Defence challenges	
Means of proof	Potential evidence
No prior disclosure of rape by survivor	<p>The Trial Chamber accepted an explanation by a survivor who had not disclosed that she was raped in a report to the family lawyer, a complaint to the prosecutor general, or her victim application. Shame prevented her from alerting neighbours immediately after the events. The Trial Chamber considered that these omissions did not discredit the survivor as a witness.³¹⁷</p>
“Confusing” witness	<p>The Trial Chamber found a witness reliable despite inconsistencies with regards to the time of the day of the commission of rapes against 8 women. The Trial Chamber held that this inconsistency does not undermine the reliability of his account for the following reasons:³¹⁸</p> <ul style="list-style-type: none"> ▶ the limited nature of the inconsistency,

³¹⁶ *Ibid.*, paras. 488, 489, 494, 516.

³¹⁷ *Ibid.*, para. 473.

³¹⁸ *Ibid.*, para. 483.

	<ul style="list-style-type: none"> ▶ the length of time that had elapsed between the events and testimony, ▶ the traumatic circumstances (22 armed MLC soldiers beat, kicked and raped 8 women on the deck of a ferry), ▶ the witness' demeanour when testifying about this incident, and ▶ his otherwise consistent description thereof <p>The Trial Chamber also found a witness reliable despite inconsistencies regarding her age at the time of the events (she was an adult at the time of the time of the rape). The Trial Chamber found that the inconsistencies can be explained by the lapse of time between the events and the testimony, the traumatic circumstances and her difficulties discussing such personal scenes in court.³¹⁹</p>
Inconsistent witness who was a child at the time of the rape	<p>The Trial Chamber did not find a witness' inconsistencies as to her exact age at the time of the events, the time of the events, and the number of perpetrators to undermine her account. The Trial Chamber considered her reliable based on her "demeanour, the lapse of time between the events and her testimony, her young age at the time of the events, the traumatic nature of the events and the fact that her account [was] corroborated by other members of her family and a neighbour".³²⁰</p>

Perpetrator identification	
Means of proof	Potential evidence
Identifying characteristics³²¹	<ul style="list-style-type: none"> ▶ position and role of accused, ▶ presence in and control of an area by the perpetrators and commanders, ▶ directions from which they came, ▶ composition of troops, ▶ uniforms including insignia, footwear, arms and clothing, ▶ his or her language, ▶ timing and location of identification, ▶ self-identification by perpetrator, ▶ indications of rank, ▶ perpetrators' vehicle, ▶ origin, and ▶ level of discipline.
Examples of MLC identifying characteristics	<ul style="list-style-type: none"> ▶ Banyamulenges" ▶ "Soldiers" ▶ "Wearing military uniforms like the CAR military but without any insignia"; ▶ "New uniforms" ▶ Spoke Lingala ▶ Only armed group in area : testimony that the MLC was the only armed group present in the 4th arrondissement of Bangui

³¹⁹ *Ibid.*, para. 492.

³²⁰ *Ibid.*, para. 490.

³²¹ *Ibid.*, para. 634.

<p>Modus operandi and motivation</p>	<p><i>Modus operandi</i> and motivation of perpetrators were relied upon by Trial Chamber as identifying characteristics when the actions of perpetrators accorded with evidence of the MLC's <i>modus operandi</i> and motivation in targeting the civilian population.³²²</p>
<p>Factors to assess identification evidence provided by a witness³²³</p>	<p>The Trial Chamber may consider the following:</p> <ul style="list-style-type: none"> ▶ circumstances of observation ▶ length of time observed ▶ distance between observer and observed ▶ obstructions ▶ interactions ▶ manner of description - inconsistencies, misidentifications, delay or influenced by others <p>Furthermore, the Trial Chamber held that there is "no recognised rule of evidence that traumatising circumstances necessarily render a witness's evidence unreliable" [in relation to identification evidence].³²⁴</p>

Effective control and knowledge of crimes

Potential evidence³²⁵

- ▶ Position and authority of accused (President of MLC and Commander in Chief ALC);
- ▶ Control of MLC funding, including payment of airtime and decision on food, fuel, medication and clothing;
- ▶ Gave order to enter CAR and the order to withdraw from CAR in March 2003;
- ▶ Communication systems including radios, satellite, thurayas, mobile phones and other communication equipment and used this to directly communicate with field commanders without going through the transmissions centre;
- ▶ Regular and direct communications including regular reports including information on the combat situation, troop positions, politics and allegations of crime;
- ▶ Field visits;
- ▶ Meetings;
- ▶ Military and civilian intelligence services and reports to him, with actual reports referring to crimes including rape by MLC/Banyamulengeus in and around Bangui, PK12, PK22, Bozoum, Damara, Sibut, Bossangoa, Bossembélé, Dékoa, Kaga Bandoro, Bossemptele, Boali, Yaloke, and Mongoumba;
- ▶ Followed and discussed international media reports, and reacted and issued responses to these.

³²² *Ibid.*, paras. 564, 565.

³²³ *Ibid.*, para. 242.

³²⁴ *Ibid.*, para. 241.

³²⁵ Effective control and knowledge as part of command responsibility was challenged by the Defence on appeal. However, the Appeals Chamber did not examine this issue in its judgement. Command responsibility was therefore not overturned on effective control and knowledge of crimes. See *ibid.*, paras. 706-711.

Modus operandi	
Evidence of	Means of proof of the chapeau/contextual elements of widespread and systematic attack for crimes against humanity³²⁶
<i>Modus operandi</i> by MLC troops	“The evidence also evinces certain specific motivations and objectives behind the commission of rape. Indeed, some MLC soldiers considered victims to be “war booty” and/or sought to destabilise, humiliate, and punish suspected rebels and rebel sympathisers. Such objectives were often realised: rape victims experienced significant medical, psychiatric, psychological, and social consequences, including PTSD, HIV, social rejection, stigmatisation, and feelings of humiliation, anxiety, and guilt”. ³²⁷

³²⁶ Specific acts of rape were considered by both the Trial and Appeals Chambers to be relevant for determining that the chapeau/contextual elements were met.

³²⁷ *Bemba Trial Chamber Judgment*, *supra* note 137, para. 567.

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