

The Role of the International Criminal Court in Preventing Mass Atrocity: Lessons from the Central African Republic

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1. The Conflict in the Central African Republic

The Central African Republic ('CAR') has been trapped in a cycle of internal conflicts since its independence from France in 1960. The latest is the uprising that started in March 2013, when a coalition of predominantly Muslim armed rebel groups known as the Séléka captured the capital Bangui, forced then-President François Bozizé from power, and declared their leader, Michel Djotodia, president. The violence continued after Djotodia's accession to power.¹ According to the United Nations and local and international human rights non-governmental organisations ('NGOs'), the Séléka committed numerous war crimes such as torturing civilians for money, deliberately destroying over 1,000 homes, looting villages, raping women and girls, stealing or decimating food stock, and intentionally killing hundreds of civilians.²

Some months after the Séléka's entry into Bangui, other armed militia groups known as the Anti-Balaka³ began to emerge around the country. The Anti-Balaka were not only determined to drive out the Séléka, but also expressed virulently anti-Muslim views and often targeted unprotected Muslim civilian communities. Several soldiers from the CAR's former army and Presidential Guard – who had remained loyal to Bozizé – joined the Anti-Balaka.⁴ Like the Séléka, the Anti-Balaka are reported to have committed serious human rights violations, including extrajudicial killings, disappearances, torture, as well as rape and sexual violence.⁵

In January 2014, under strong international pressure, Michel Djotodia resigned and Catherine Samba-Panza was sworn in as transitional president. The same year, the United Nations Security Council authorized the creation of a 10,000 strong Multidimensional Integrated Stabilization

Mission in the Central African Republic ('MINUSCA') with a mandate to protect civilians; support the transition process; facilitate humanitarian assistance; promote and protect human rights; support justice and the rule of law; and carry out disarmament, demobilization, reintegration and repatriation processes.⁶ The political transition came to an end in March 2016 with the election of Faustin-Archange Touadéra.

2. The CAR and the International Criminal Court

2.1. Background

The CAR ratified the Statute of the International Criminal Court ('ICC') on 3 October 2001. The ICC therefore has jurisdiction over crimes committed in the CAR or by the CAR nationals since 1 July 2002.

As early as March 2013 – at the beginning of the Séléka uprising – the ICC Prosecutor expressed alarm over the violence taking place in the country and called on both the Séléka and the Anti-Balaka to “stop attacking civilians and committing crimes, or risk being investigated and prosecuted by my Office”.⁷ A year later, in February 2014, the Office of the Prosecutor ('OTP') announced that it had opened a preliminary examination into the situation in the Central African Republic.⁸ Nevertheless, in May 2014, the CAR transitional president, Catherine Samba-Panza, referred the situation to the ICC.

By September 2014, the ICC Prosecutor had opened an investigation focusing on “alleged war crimes and crimes against humanity committed in the context of a conflict in CAR since 1 August 2012”.⁹ According to the ICC Prosecutor, there is a reasonable basis to believe that both the

⁶ United Nations Peacekeeping, “MINUSCA Factsheet” (available on its web site).

⁷ ICC Office of the Prosecutor, “Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, in relation to the escalating violence in the Central African Republic”, 9 December 2013 (<http://www.legal-tools.org/doc/dbdc24/>).

⁸ ICC, *Situation in the Central African Republic II Article 53(1) Report*, 24 September 2014 (<http://www.legal-tools.org/doc/1ff87e/>).

⁹ ICC, “Central African Republic II” (available on ICC's web site).

¹ International Coalition for the Responsibility to Protect ('ICRtoP'), “Crisis in the Central African Republic” (available on ICRtoP's web site).

² *Ibid.*

³ Mainly Christians or animists.

⁴ ICRtoP, “Crisis in the Central African Republic”, see *supra* note 1.

⁵ *Ibid.*

Séléka and the Anti-Balaka have committed crimes against humanity (murder, rape, forced displacement and persecution) and war crimes (including murder, rape, forced displacement, persecution, pillaging, attacks against humanitarian missions and the use of children under 15 in combat).¹⁰

Since the opening of the investigation in 2014, the OTP has made several statements concerning the situation in the CAR, particularly after surges in violence in the country. In these declarations, the Prosecutor expresses deep concern over recent acts of violence, recalls that such acts may constitute crimes under the jurisdiction of the Court, exhorts perpetrators to cease immediately, and indicates her willingness to investigate and prosecute such crimes and hold perpetrators accountable.¹¹

Serious violence has persisted in the CAR despite the ICC investigation, MINUSCA, and the return to constitutional order. The ex-Séléka rebel factions, the Anti-Balaka militias, and other armed groups have continued to commit mass atrocities against the population. In addition to regular attacks against civilians, they were also increasingly targeting humanitarian organizations and MINUSCA.

The violence has led to waves of displacement. In 2018, it was reported that 642,800 people were internally displaced, 574,600 were refugees in neighbouring countries, and an estimated 2.5 million people – about half the population – remained in need of humanitarian assistance.¹²

A recently signed African Union-brokered peace deal between the CAR government and 14 armed groups has brought new hope for an end to the violence. However, human rights organizations are reporting that shortly after the signing of the peace deal, the fighting had resumed.¹³ At the time of writing, armed groups are reportedly controlling no less than 80% of the CAR's territory.¹⁴

2.2. Prosecutions

As of 2019, two suspects have been brought before the ICC in relation to the violence that erupted in the country between 2012 and 2014.¹⁵ A former Anti-Balaka leader, Patrice-Edouard Ngaïssona, came into ICC custody after his arrest in France and surrender to the Court in January 2019. He is accused of war crimes and crimes against humani-

ty committed in the CAR in 2013-14.¹⁶ Alfred Yekatom, also a former Anti-Balaka leader, has been in ICC custody since November 2018 and is also accused of various crimes against humanity and war crimes committed in 2013 and 2014.¹⁷ In February 2019, ICC Pre-Trial Chamber II joined the two cases.

Although they are the first prosecutions of CAR nationals, these prosecutions are not the first to arise out of conflicts in the CAR. In 2002, while the CAR President Jean-Felix Patassé was unable to counter attacks from rebel groups, he obtained the support of forces of the Congolese rebel Jean-Pierre Bemba Gombo's Congo Liberation Movement (Mouvement de libération du Congo or 'MLC'). Bemba's MLC forces allegedly committed widespread atrocities, including massacres and rapes, during 2002 and 2003. Bemba was arrested by the Belgian authorities in May 2008, pursuant to an ICC arrest warrant, and surrendered to the Court. In March 2016, Bemba was found guilty of two counts of crimes against humanity (murder and rape) and three counts of war crimes (murder, rape, and pillaging) committed in CAR from 2002 to 2003.¹⁸ In June 2018, the ICC Appeals Chamber voted to acquit Bemba from the charges of war crimes and crimes against humanity. Although he was sentenced to 12 months for a related conviction of witness tampering, Bemba was freed because of time already served and returned to the Democratic Republic of the Congo in August 2018.

3. Improved Outreach is a Precondition to the ICC's Deterrent Effect

As part of a three-year study on the potential of the ICC to deter mass atrocity,¹⁹ I have looked more closely at the CAR

¹⁰ *Ibid.*

¹¹ *Ibid.* See also OTP, "Statement by the Prosecutor of the International Criminal Court, Fatou Bensouda, at the conclusion of her visit to the Central African Republic on Friday, 23 March: collaboration is key to closing the impunity gap", 27 March 2018 (<http://www.legal-tools.org/doc/da5880/>).

¹² Human Rights Watch, "Central African Republic: Events of 2018" (<http://www.legal-tools.org/doc/f9b268/>).

¹³ Lewis Mudge, "Just One Month In, Optimism Around CAR's Peace Deal Is Fading", in *Human Rights Watch*, 19 March 2019 (<http://www.legal-tools.org/doc/a9a537/>).

¹⁴ *Ibid.*

¹⁵ ICC, "Central African Republic II", see *supra* note 9 (alleged war crimes and crimes against humanity committed in the context of renewed violence starting in 2012 in the CAR).

¹⁶ Including "murder and attempted murder, torture, cruel treatment, mutilation, intentionally directing an attack against the civilian population, intentionally directing an attack against personnel, installations, material, units or vehicles involved in a humanitarian assistance, intentionally directing an attack against buildings dedicated to religion, pillaging, enlistment of children under the age of 15 years and their use to participate actively in hostilities, displacement of the civilian population and destroying or seizing the property of an adversary, as war crimes; and murder and attempted murder, extermination, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, torture, persecution, enforced disappearance and other inhumane acts, as crimes against humanity", see ICC, "ICC Pre-Trial Chamber II joins Yekatom and Ngaïssona cases", 20 February 2019, ICC-CPI-20190220-PR1439 (<http://www.legal-tools.org/doc/98c286/>).

¹⁷ More specifically, "murder, torture and cruel treatment, mutilation, intentional attack against the civilian population, intentional attack against buildings dedicated to religion, enlistment of children under the age of 15 years and their use to participate actively in hostilities, displacement of the civilian population and destruction of the adversary's property, as war crimes; and murder, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, torture, persecution, enforced disappearance and other inhumane acts, as crimes against humanity". *Ibid.*

¹⁸ ICC, "ICC Trial Chamber III sentences Jean-Pierre Bemba Gombo to 18 years' imprisonment for war crimes and crimes against humanity committed in the Central African Republic in 2002-2003", 21 June 2016, ICC-CPI-20160621-PR1223 (<http://www.legal-tools.org/doc/303e62/>).

¹⁹ For a general discussion on deterrence and international criminal jus-

as a case study. This is a different query from the potential of international criminal justice to contribute to reconciliation.²⁰ In the course of my study, I have undertaken field visits to the CAR and conducted interviews there as well as in The Hague and New York, with the ICC, diplomats, officials and staff from international organizations, civil society, and humanitarian organizations active in the CAR.

The main conclusion of the study is that the ICC should do more outreach work in order to promote its deterrent effect. Specifically, there is a need for increased support for the ICC among local NGOs – particularly those in situation countries – which an improved outreach strategy can help to accomplish. The Court needs to work with partners that are closer to the people it seeks to serve and that reflect the diversity of its cases. This would require diversifying the network of NGO support for the Court to include new groups, particularly in Latin America and Africa. The ICC could, for example, hold more proceedings in situation countries. This would allow local organizations – including human rights organizations – to familiarize themselves with the Court, including its complex legal procedures.

3.1. A Few Suggestions

If the ICC is to deter atrocity crimes, its communication strategy must target those parties who are most likely to commit those crimes. The message also needs to be conveyed in a language suitable for local actors. For example, people need to understand what constitutes a crime under the jurisdiction of the Court, the elements of the crimes and so on. One example of the lack of understanding of ICC crimes is the case of a warlord who insisted he did not commit the crime of recruitment of child soldiers because the children in his troops had ‘volunteered’.

The prosecution of atrocity crimes in the CAR offers an opportunity to conduct ‘deterrence-focused outreach’. In particular, the prosecutions of Ngaïssona and Yekatom could be used to demonstrate how the prosecution of those crimes plays out in practice, and deter others from following their example.

The Court should revisit its policies of conducting outreach activities only after the opening of an investigation, and no outreach in the field at the preliminary examination stage.²¹ These policies are problematic from a deterrence perspective. In the Bemba case, even though the Court issued statements, there were no proper outreach activities

undertaken in the field during the conflict. In CAR II,²² even after the end of the conflict, violence continued throughout the preliminary examination stage. No outreach efforts took place during that time. This was a lost opportunity to realise key deterrence goals.

The Court’s outreach could be improved through reform of its internal processes. This includes strengthening of the Court’s field offices, and improvement of the co-ordination between the different Court organs that conduct their own, separate external communication which often creates confusion. Even within the Court’s Registry, different sections conduct outreach efforts, with what seems to be limited internal co-ordination. Also, the external communication can sometimes be too technical for victims to understand. There is an overreliance by the Court on press releases, which are not always effective and are often too remote to have true effect on the ground. In addition, the Court may improve its outreach strategy by strengthening the flow of case-progress information from the Court’s headquarters to local teams.

3.2. Who Should Conduct Outreach?

3.2.1. Civil Society Organizations

The ICC should improve its partnerships with local organizations and support these organizations and other local structures to help with outreach activities. Civil society organizations are well placed to conduct outreach because they know the local language, understand the local context, and usually understand the issues at stake. They can therefore shape and convey the message in a way that will have the greatest impact. Civil society organizations can also play a role in relaying the ICC message – including to armed groups – thereby acting as a ‘force multiplier’. Most civil society organizations, however, lack the resources required to engage in large outreach programmes, and they themselves require financial support and sometimes help to strengthen their capacity. The Court’s deterrent effect could be significantly enhanced by investing in the capacity of local NGOs.

3.2.2. The Court

The ICC needs to conduct its own outreach, and the States Parties should increase the Court’s outreach budget so that it can effectively fulfil its mission of deterrence. It is particularly important for the Court to better explain its role to audiences at the national level. This could involve participation in national dialogues, such as the Bangui Forum for National Reconciliation.²³ In doing so, the ICC should part-

time, see Linda Carter and Jennifer Schense (editors), *Two Steps Forward, One Step Back: The Deterrent Effect of International Criminal Tribunals*, Torkel Opsahl Academic EPublisher, Brussels, 2017 (<http://www.toaep.org/nas-pdf/1-carter-schense>).

²⁰ On that question and how it relates to outreach, see Olga Kavran, “Public Proceedings, Outreach and Reconciliation”, FICHL Policy Brief Series No. 40 (2015), Torkel Opsahl Academic EPublisher, Brussels, 2015 (<http://www.toaep.org/pbs-pdf/40-kavran>).

²¹ ICC, “Strategic Plan for Outreach of the International Criminal Court”, 29 September 2006, ICC-ASP/5/12, sect. 2.3.1, para. 33: “Outreach pertaining to a situation involves activities conducted throughout all the judicial phases” (<http://www.legal-tools.org/doc/6e05d6/>).

²² ICC, “Central African Republic II”, see *supra* note 9 (alleged war crimes and crimes against humanity committed in the context of renewed violence starting in 2012 in CAR).

²³ Amy Copley and Amadou Sy, “Five Takeaways from the Bangui Forum for National Reconciliation in the Central African Republic”, in *Brookings Institution*, 15 May 2015. In May 2015, two years after the Seleka uprising, the CAR held a week-long ‘Forum on National Reconciliation’ in Bangui bringing together nearly 700 leaders from diverse groups within the country (including the transitional government, national political parties, the main opposing armed groups, the private

ner with local civil society organizations and recruit staff from the affected area. Its message should at all times be simple and clear.

3.2.3. Humanitarian Organizations

Humanitarian organizations are uniquely positioned to engage with armed groups about the ICC and international criminal law in general. They can play a key role in explaining the ICC's activities, thereby amplifying the Court's deterrent effect. Given their political neutrality, humanitarian organizations may be in a better position than civil society organizations in raising awareness of the Court's work. Moreover, humanitarian organizations already conduct training and awareness-raising programmes on international humanitarian law, but they rarely include the ICC in their activities.

One challenge that humanitarian organizations face in awareness-raising activities is that they risk being confused for – or associated with – the ICC. It is against the background of this risk that some are quite categorical in refusing to collaborate with the Court, out of concern that it could jeopardize their work, even endanger their staff.

3.2.4. The United Nations

The UN could also play an important role in promoting the ICC Statute and the Court in the CAR.²⁴ The UN is the organization with the largest presence in the country, and MINUSCA troops and civilian personnel are stationed in areas where armed groups are active. The UN mission, however, does not view the promotion of the ICC as being part of its mandate. Some of the reasons include lack of resources, the inherent dangers of pointing out to armed groups the consequences of their actions, and the UN's reactive rather than proactive role in the conflict.

3.3. Outreach to the Government and Armed Forces

Government actors, particularly the armed forces, have also committed atrocity crimes in the CAR. There is therefore a serious need for government forces to be sensitized about the ICC and its Statute. The Court's lack of action on this front is regrettable. More could be done to provide training and greater assistance to local government forces.

sector, civil society, traditional chiefs, and religious groups) to define their collective vision for the country's future.

²⁴ This discussion on the role of the UN only pertains to its work in the CAR and does not apply to the UN in general or its work in other countries.

4. Conclusion

Twenty years after the adoption of the ICC Statute, the Court has not reached its full potential to deter mass atrocity crimes in the Central African Republic. This is an important and troubling fact at a time when the Court is still struggling to consolidate its legitimacy in the face of growing global unrest, violence, and scepticism from some governments. This policy brief offers proposals for how the Court can improve its impact in the field, by that hopefully increasing its deterrent effect on the commission of mass atrocity.

The ICC's communication and outreach strategy should be significantly enhanced. This must include better co-ordination among the Court's organs to facilitate effective public communication and outreach, adequate information and transparency, and more communication during the early stages (of preliminary examination and investigation). The Court should also look for ways to increase outreach to armed groups, in particular in conflict and post-conflict situations such as in the Central African Republic.

The fight for international justice and the prevention of mass atrocity are not challenges for the ICC alone. Greater support for the ICC is required from international organizations and civil society organizations that are active in ICC situation countries. The international community should work together with the Court, supporting its activities, especially in conflict and post-conflict situations where a deterrent effect of the Court may be most needed.

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