



CONFERENCE REPORT:

SPECIAL CRIMINAL COURT FOR THE CENTRAL AFRICAN REPUBLIC

Context, Challenges and Perspectives

22 SEPTEMBER 2016

BANGUI, CENTRAL AFRICAN REPUBLIC

With the financial support of:



Audience at "Special Criminal Court for Central African Republic – Context, Challenges and Perspectives."

CONFERENCE REPORT: SPECIAL CRIMINAL COURT FOR THE CENTRAL AFRICAN REPUBLIC: CONTEXT, CHALLENGES AND PERSPECTIVES

Executive summary: On 22 September 2016, the Africa Group for Justice and Accountability (AGJA) hosted a multi-stakeholder conference in Bangui, Central African Republic (CAR). Entitled "Special Criminal Court for Central African Republic – Context, Challenges and Perspectives" the conference offered an opportunity to reflect on how the soon-to-be-established Special Criminal Court (SCC) would operate and what challenges its mixed international and national court staff would face.

Cover image: The Africa Group for Justice and Accountability's expert delegation meets Procureur Général de la République of the Central African Republic Emmanuel Ndakala.

Inaugurated by the CAR's Chief Cabinet Secretary Jean-Christophe Nguinza, the conference brought together Central African government representatives and judicial officials, members of the diplomatic community, international organisations (especially the UN's Multidimensional Integrated Stabilization Mission in the Central African Republic/MINUSCA), NGO

representatives, as well as ordinary CAR citizens wanting to find out more about the proposed hybrid tribunal.

Moreover, two AGJA members, Catherine Samba-Panza and Hassan Bubacar Jallow, led the Group's mission to the CAR and contributed to the conference discussions. Samba-Panza underscored the fact that "The global human rights

community rejoiced at news of the Special Criminal Court's establishment." This was a great honour for the Central African Republic.

"We organised this conference so that Central Africans could take ownership of the court," Samba-Panza told the gathering. "You, me, all of us here, national actors, we are learning... and now

we know where our national efforts to build this Special Criminal Court are.”

She concluded by saying that, “Most crimes will be dealt with by the ordinary national courts. It is necessary to support these courts which are the foundation of the Special Criminal Court, so that the entire Central African judicial system can make progress.”

AGJA member and former Prosecutor at the International Criminal Tribunal for Rwanda and International Residual Mechanism for Criminal Tribunals, Hassan Bubacar-Jallow, kicked off the first panel with an overview of prosecutorial strategies used at other international criminal tribunals, arguing that the SCC will have to strike a balance between the need to provide justice to a large number of victims and the operational realities and resource constraints of a hybrid tribunal.

The Head of MINUSCA’s Justice and Corrections Unit, Frank Dalton, and the first President of the Court of Cassation, Jose Christian Londoumon, both focused on the legal framework and procedural aspects of setting up the tribunal, in particular the challenges of recruiting international and national magistrates to staff the SCC.

Stephen Rapp, the former United States Ambassador-at-Large for War Crimes Issues, moderated the second panel and provided context to the whole debate, drawing on his experience at the Special Court for Sierra Leone (SCSL) and the International Criminal Tribunal for Rwanda (ICTR) to flag potential challenges and opportunities for the SCC.

In the second panel, four panellists addressed the practical needs of various groups that will be involved with the SCC, specif-

was of the utmost importance, and that it was fundamental to inform the population about what the court could and could not do.

There was a wide range of comments from various stakeholders, marked by an enthusiasm for the SCC and a firm belief that it must be established and operationalised as soon as possible.

However, there were also a number of practical concerns. When the debate was opened to

„The global human rights community rejoiced at news of the Special Criminal Court’s establishment.“

– Catherine Samba-Panza

ically victim and witness protection, rights of the accused and defence counsel, the challenges of effective outreach and securing a lasting legacy for the Tribunal.

In his presentation, Didier Preira, former Deputy Registrar of the International Criminal Court and expert consultant of the AGJA, underlined the importance of outreach and legacy. He said that expectation management

the floor, many members of the public reflected on the uncertainty about what the SCC could do for them. Judges, prosecutors and police officers voiced concerns about how the SCC could guarantee their safety. Other questions focused on procedural and substantive issues regarding the SCC’s legal framework, showing a clear need to provide more information about the SCC and progress made thus far.



Office of Ghislain Gresenguet, Prosecutor of the Republic at the Tribunal de grande instance of Bangui.

DETAILED CONFERENCE REPORT

INTRODUCTION

The conference was inaugurated by CAR's Chief Cabinet Secretary Jean-Christophe Nguinza, followed by Mrs. Bettina Ambach, who explained the AGJA's mission, Mr. Frank Dalton, MINUSCA representative who spoke briefly about the Special Criminal Court's legal framework, and then the Chief Cabinet Secretary once again, who gave a longer talk about the history of conflict and the fight against impunity in the CAR.

PANEL 1

In his introductory remarks, **Justice Hassan Bubacar Jallow** congratulated the people of the Central African Republic and their partners on the establishment of the hybrid court. He stated that consultations with various groups in the CAR had disclosed a deep desire for the acceleration of the process "to get the court off the ground". Justice Jallow therefore called on all those involved in the project to do their utmost to make the court operational.



Justice Jallow noted that the context in the CAR was unique, in that the SCC would be operating alongside the ICC and the national courts; this raised new challenges for the system of international criminal justice, but one had to build on the accomplishments of other tribunals in this area.

In his presentation, Justice Jallow focused on four areas: case selection; witness protection; management of trial evidence and information; and the Special Court's legacy for the CAR legal system. Justice Jallow stressed that the Special Court, and perhaps the local courts as well, might not be in a position to prosecute all the cases. A selection of which cases were to be tried would therefore have to be made by the appropriate authority. This was a delicate and sensitive process in which tribunals rarely escaped criticism. It

was therefore vital that the case-selection was made in accordance with objective criteria and in a transparent manner. The public should be informed of the criteria and the procedure. This would enhance public confidence in the process.

Secondly, it was probable that the trial process would rely overwhelmingly on witness testimony, which would form the building blocks of the cases. Witnesses would thus have to be protected from interference and danger, and properly cared for. If this were not done, witnesses might, out of fear, be reluctant to come forward and testify, something that would obviously be bad for the accountability process.

Thirdly, both the prosecution and the Court would need to install modern data-management systems, in order to ensure that the vast amount

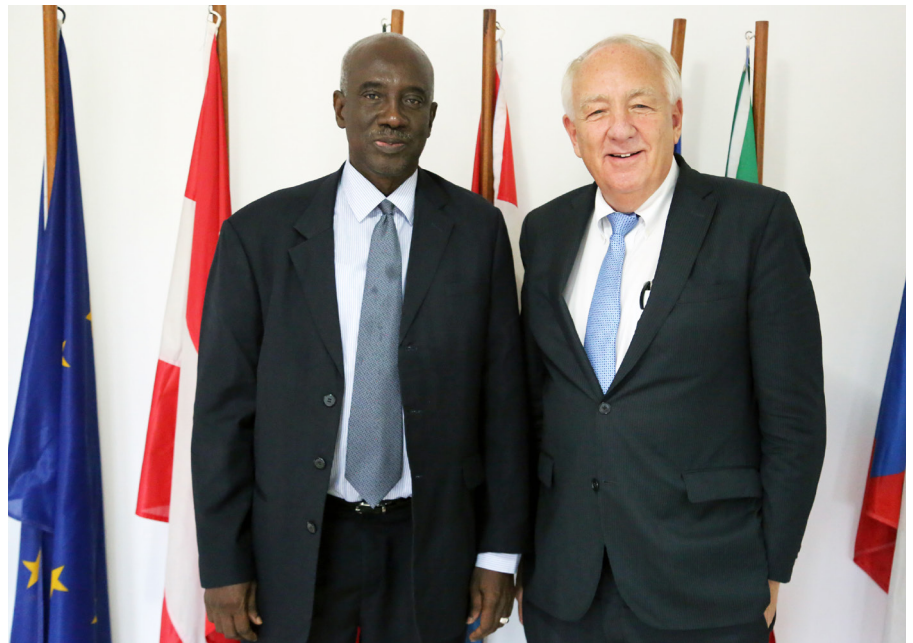
of evidence likely to be generated could be efficiently stored, analysed and generally managed. This would also help the prosecution to manage cases more efficiently, present a more coherent and consistent case theory, and discharge its disclosure obligations appropriately.

Lastly, Justice Jallow stressed that, while much attention was focused on the Special Court, it was necessary that serious investment also be made in the national legal system to enhance its efficiency. This would in turn ensure that it could deal with the majority of the cases as expected, and that it could adequately support the Special Court's operations. In this way, the Special Court project could leave a lasting legacy for the people of the CAR.

Mr. Dalton addressed the issue of MINUSCA's financial and technical support for the SCC, noting that the peacekeeping mission had a mandate to help operationalise the SCC through its Justice and Corrections Unit. He reminded his audience of the historical context and MINUSCA's role in setting up the SCC, namely the August 2014 Memorandum of Understanding and the Act of 3 June 2015. He noted the staggered establishment process of the SCC, with the setting-up of the prosecution (international prosecutor and national deputy) preceding that of the three investigative chambers (chambres d'instruction) and one indictment chamber (chambre d'accusation) and, subsequently, the actual trial chambers. It was not necessary to have all these institutions in place from the beginning, said Mr. Dalton, and so a 'progressive approach' was to be preferred: the first phase divided into three stages would concentrate on investigation support, bringing prosecutions, victim and witness protection, legal aid to victims, and outreach to the general population; the second phase would include trial support and continued investigation support.

With respect to ongoing activities, Mr. Dalton highlighted the recruitment procedures for international and national staff: a selection committee had been established with the help of MINUSCA, national actors and civil society, and it was hoped that it would begin recruiting soon (informal discussions were already under way so that time would not be lost). MINUSCA also supported the CAR authorities with recruitment of national staff (topic of the following presentation).

Other areas of intervention were mentioned, including security experts, mapping of crimes, victim and witness protection, and funding in particular. With respect to funding, MINUSCA and UNDP had drawn up a 'project document' that had been signed by the CAR authorities: it envisaged a budget of USD 7 million (5.2 of which had already been allocated by the Netherlands, USA and UNDP) for



Africa Group member Hassan Bubacar Jallow with former U.S. Ambassador-at-Large for War Crimes Issues Stephen Rapp.

Q & A

14 months. He added that the CAR authorities would provide the SCC's premises, though the international community was already refurbishing the main building that would be used by the Court.

Mr. Christian Londoumon concentrated on the procedural aspects of the SCC, especially where the Court derogated from ordinary national procedures. He emphasised that there was no functional immunity before the SCC, and so a member of parliament or government could be charged. With respect to national staff, he noted that there would be different appointment procedures, depending on the status of the appointee, and distinguished between national magistrates, professors and attorneys. A selection committee for national candidates had already been established to ensure transparency in the appointment process. Mr. Londoumon then highlighted one fundamental difference in the SCC's jurisdictional mandate, namely that the Appeals Chamber's decisions would not be appealable to the Cour de Cassation, as was normally the case in the CAR. He concluded his presentation by saying that the SCC was no longer just an idea but a reality.

Ms. Samba-Panza took the floor to briefly explain the rationale of the conference and the AGJA's activities in CAR. She explained that the SCC had to become more than a mere project – it was essential to help operationalise the Court and the AGJA would assist the authorities in overcoming obstacles and challenges, not just regarding the SCC but vis-à-vis the entire judicial system.

Two questions concerned the temporal mandate of the SCC and specifically whether crimes committed before 2012 would be justiciable. Mr. Londoumon explained that the SCC law gave the Court jurisdiction to try crimes dating back to 2003, and so Lord's Resistance Army crimes in particular would be justiciable before the SCC. Mr. Dalton noted that the Prosecutor of the SCC would have to establish a prosecutorial strategy so as to define the SCC's priorities, but that in any event it might not be possible to adjudicate all crimes committed in the CAR.

DETAILED CONFERENCE REPORT

PANEL 2

Mr. Stephen Rapp moderated the second panel. He provided context to the debate, with examples from the ICTR and SCSL. He emphasised that the Special Court was a partnership between Sierra Leonean magistrates and the local population, which enhanced the Special Court's reputation among locals. This should be the aim in the CAR as well, he suggested.

Ms. Brigitte Balipou reflected on the historical context, emphasising that the SCC represented a sovereign decision to integrate the court into the local judiciary, with the support of international actors. Ms. Balipou explained the relationship between the SCC and **transitional justice**, noting that the SCC

was part of a bigger project to restore justice and security in CAR. She also noted several challenges facing the establishment of the SCC, especially security problems confronting magistrates, police officers and witnesses. She concluded that it was essential to promote co-operation between the SCC, ICC and the national courts, in order to deliver justice to victims.

Mr. Richard Malengule concentrated on the role of victims and witnesses in the law establishing the SCC. He noted that the Act established only a general framework but that it would be essential to provide more concrete guarantees, as MINUSCA has already begun to do. He formulated several

recommendations in this regard: a clear strategy and realistic procedures for victim support; clarification of the relationship between individual and collective reparations, and establishment of a special unit within the Registry with the help of international experts.

Mr. Jean Hilaire Désiré Zoumalde spoke of the right to counsel and the right to a fair trial in the CAR. The SCC Act established a general legal framework for defence attorneys but several issues remained problematic at this stage: 1) a special unit of defence attorneys existed only on paper; 2) under the Act a request for defence counsel had to come from an organ that did not yet exist; 3)



EU Ambassador Jean-Pierre Reymondet-Commy and Catherine Samba-Panza at the EU Delegation in Bangui.

there was no law on legal aid in the CAR. Thus, it remained unclear how this legal framework would actually be operationalised in practice. Mr. Hilaire reminded all those present of the **importance of the right to a fair trial** under international, constitutional and national law. He encouraged the international community to give more thought to how defendants would be given a fair trial, rather than just focusing on the appointment of a prosecutor.

Mr. Didier Preira raised several issues in his presentation, beginning with the problem of double standards between national justice and the SCC. He suggested that this concerned both victim and witness protection, as well as the rights of the defence. Mr. Preira noted that it was necessary to keep in mind the financial implications of various proposals, arguing that it would be essential to avoid a situation where there was a two-tiered system of

justice, with some victims enjoying more rights than others. Mr. Preira then focused on outreach and legacy at the SCC. He noted that it would be essential to sensitise the population to both the opportunities and the limitations of international criminal justice, adding that the legitimacy of the SCC and the ordinary courts depended on expectations not outstripping reality.



Wayamo Foundation Director Bettina Ambach and Africa Group member Catherine Samba-Panza meet Fabrizio Hochschild, Deputy Special Representative of the Secretary General, Resident Coordinator of the United Nations System, Humanitarian Coordinator, and Resident Representative of UNDP in the Central African Republic.

Q & A

Several participants suggested that the issue of **security** had to go beyond victim and witness protection and include judges, prosecutors and police officers. A MINUSCA representative explained what measures had been put in place to protect magistrates and victims, adding that experts in this area were already assisting in the CAR. The issue of **outreach** came up several times, with people asking for more information about the SCC; several participants expressed amazement at what progress had been made and regretted that the

entire population was not aware of these developments. Further comments concerned **reparations for victims and legal aid**, with one participant suggesting that a mapping exercise of victims should be undertaken, in order to study what could realistically be done for victims and not give them false hope. He noted that it would probably not be possible to satisfy victim demands, and so efforts had to be made to address this aspect of the SCC's operations. Mr. Rapp emphasised the need to **co-ordinate international and national actors**

so as to not waste precious resources. Some participants also raised the issue of co-ordination between the SCC, national courts and other **transitional justice** mechanisms, particularly in truth-seeking, social justice and amnesty. Mr. Rapp reminded everyone of the Sierra Leone experiment, where a court and a Truth and Reconciliation Commission (TRC) worked together to address issues of impunity. Some participants noted that the TRC and the SCC should be seen as complementary rather than contradictory mechanisms.



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