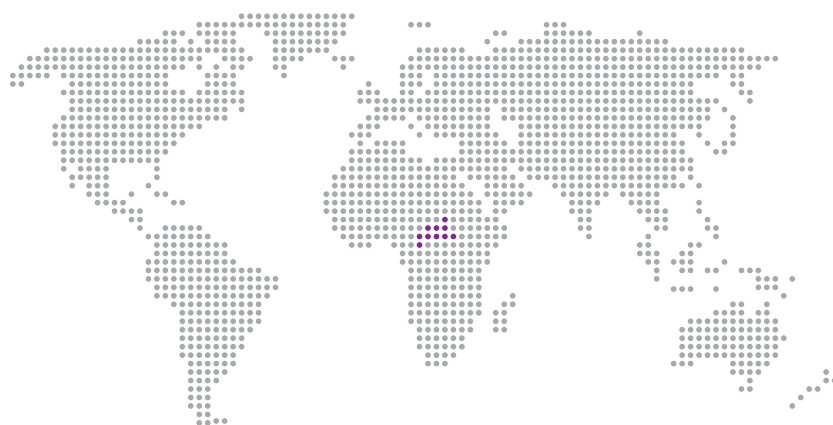


National Legal Requirements:

Prosecution of Sexual and Gender-Based Violence in Central African Republic

Ratification, Implementation and Co-operation



• Central African Republic



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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Executive summary

This report analyses the legal framework for the prosecution of conflict-related sexual violence crimes in Central African Republic ('CAR'). Since 2001, the use of rape and other sexual and gender-based violence ('SGBV') as a weapon of war has become a widespread practice, primarily in the areas controlled by rebels. Despite the high number of reported SGBV incidents, the number of cases investigated and prosecuted by the CAR courts is extremely low. To address these issues, an Organic Law on the creation, organisation and functioning of the Special Criminal Court was enacted in June 2015. The Special Criminal Court has jurisdiction over serious violations of human rights and international humanitarian law committed in CAR since 1 January 2003. It has primacy over the ordinary criminal courts of the criminal justice system. The Special Criminal Court will apply the provisions of the domestic Penal Code and Criminal Procedure Code, but may also consider international substantive and procedural law, where necessary. In addition to the Special Criminal Court, the criminal courts, the courts of appeal and the Court of Cassation can also hear SGBV cases. The justice system in CAR also includes the Permanent Military Tribunal for offences committed by military personnel but its work is frequently disrupted by political and military unrest. Traditional justice is also a component of the justice system in CAR: however, this report focuses on formal justice mechanisms.

The definitions of international crimes were introduced into national legislation through the 2010 Penal Code and include crimes against humanity and war crimes. The national definitions mostly replicate those of the Statute of the International Criminal Court ('ICC') but slight discrepancies can be noted. For example, crimes against humanity includes an additional underlying act: the practice of carrying out mass and systematic summary executions. This definition also omits gender as one of the various grounds for persecution. The provisions on war crimes are limited to listing the broad categories of war crimes, such as grave breaches of the Geneva Conventions, without specifying which underlying acts would fall within the scope of these categories.

Rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilisation are listed as the underlying acts of crimes against humanity, but there are no elements or further definition, as can be found in the ICC Statute and its Elements of Crimes ('EoC') document. Among these crimes, rape is the only one defined as an ordinary crime in a separate provision of the 2010 Penal Code. This suggests that other above-mentioned sexual crimes could only be prosecuted under different charges covering similar conduct. For example, sexual slavery may be prosecuted under the charge of human trafficking. The analysis in this report examines whether applying the definitions of the 2010 Penal Code by analogy to the sexual crimes of the ICC Statute would be suitable and would cover the same elements of crimes. Some definitions are wider and cover a broader range of situations, while others are narrower and do not include all the elements defining the international crimes of the ICC Statute.

The 2010 Penal Code does not include a separate provision on *mens rea*, unlike the ICC Statute. The intent and knowledge is only implied in a provision stating that individual cannot be held responsible if they were compelled by a force they could not resist. The provisions on the modes of liability in the 2010 Penal Code are slightly different from those outlined in the ICC Statute as they are more specific, explicitly stating which forms aiding and abetting may take, and include additional modes of liability. The 2010 Penal Code does not include a provision

on command responsibility. The Organic Law on the creation of the Special Criminal Court, however, replicates the provisions of the ICC Statute on the modes of liability and command responsibility.

Owing to the extremely low number of cases, it is unclear whether the courts will apply other definitions of similar conduct – through analogy – or whether they will refer to international definitions and case law. This can raise challenges to prosecutors as they prepare case files. Considering that none of the sexual crimes, except rape, are explicitly defined in the 2010 Penal Code, it remains to be seen which definitions the CAR courts will apply. The Organic Law on the creation of the Special Criminal Court offers a potential solution to this. One provision states that the Special Criminal Court will apply the definitions of the Penal Code and the Criminal Procedure Code but could also apply international substantive and procedural law if the national provisions are incomplete or unclear. There is, however, no further detail on how this provision will be implemented, nor to what extent the Special Criminal Court will rely on international definitions.

Other possible solutions that could maximise the effect of the law would be to expand the definition of war crimes in the 2010 Penal Code to clearly list the underlying acts falling within the scope of war crimes. It would also be necessary to clarify which definitions will be applied by the courts and, if necessary, to include in the Penal Code explicit definitions of the sexual crimes listed as part of crimes against humanity.

The prosecution of SGBV in CAR also faces broader challenges that are related to victims' access to justice and the lack of suitable training to investigate SGBV incidents. The report identifies a need for suitable training of police personnel and magistrates to investigate and prosecute SGBV more effectively, taking into account their particular nature. This means, for example, training on how to receive complaints from SGBV victims and collecting relevant evidence that can be used in courts. Some procedural rules would also need to be amended as they are disablers to prosecution of SGBV. These rules include, for example, the requirement for the victim to pay a deposit to file a request to become a civil party and trigger the process or the limited protective measures for the victims and the witnesses. Some of these rules have already been amended regarding the procedure applicable to the Special Criminal Court but they are still applicable to procedure applicable to ordinary courts. Other challenges are related to the victims' access to justice and their lack of confidence in the criminal justice system. Security issues are also a major impediment to the prosecution of SGBV since some police stations may still be under the control of the perpetrators, preventing the victims to report the crimes. These latter obstacles are coupled with the lack of personnel and material resources to cover the needs of the population. A final obstacle is the difficulty to access the national legislation and the relevant case law that are not widely available to all the magistrates.

This report was prepared by the CMN Advisers in collaboration with the HRLC. In 2016, the CMN, in partnership with the CIJA and the HRLC received a grant from the United Kingdom ('UK'), through its Magna Carta Fund for Human Rights and Democracy, for the project "Strengthening prosecution of sexual violence in conflict: CAR, Colombia and DRC".

The report identified national legislation, reports and information gathered from online resources and through fields visits conducted by the CIJA SGBV Adviser. Five domestic laws were eventually sourced: the Organic Law of June 2015 on the creation, organisation and functioning of the Special Criminal Court; the 2010 Penal Code; the 2010 Criminal Proce-

dure Code; the 2006 Law on the Protection of Women from Violence in CAR; the 2006 Law in relation to Reproductive Health. The relevant substantive provisions were identified and compared to the definitions found in the ICC Statute and the EoC document as well as the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict (first edition). The challenges faced in accessing relevant national legislation, namely the Penal Code in force prior to 2010 and the Military Justice Code, highlight some of the challenges facing those working to ensure prosecution of conflict related to sexual violence cases in CAR. To help rectify this, copies of all legislation sourced have been added to the [ICC Legal Tools Database](#).

The CMN provides knowledge-transfer and capacity development services to national and international actors, in the field of international criminal law. It seeks to empower those working on core international crimes cases, or on the documentation of serious human rights violations that may amount to core international crimes, by providing access to legal information, legal expertise and through additional knowledge tools.



1. Introduction

1.1. Purpose

1.2. Methodology

Crimes, underlying acts, *mens rea*, liabilities

Penalties, statutes of limitation and procedural law

Sources

Consultations

1.3. Structure

1.4. Glossary of terms

1. Introduction

Sexual violence – committed against females and males – remains a persistent hallmark on numerous armed conflicts, atrocities and national emergencies. Achieving accountability – particularly with regard to individual criminal responsibility – for such violence remains limited in many jurisdictions. The reasons for this are manifold: in many instances, sexual violence crimes are veiled with multiple social stigmas, they are frequently under-reported, inadequately reflected in social and public health policies as well as in domestic criminal law, while criminal justice actors may require additional resources, skills and training to respond appropriately to the complexity and sensitivities of SGBV crimes.

However, the prevalence of sexual violence in conflict and atrocity has gained visibility in recent years.¹ Political momentum from international and domestic spheres has enabled various actors to tackle its causes and effects.² Institutional and policy reforms have enabled more coherent approaches to providing accountability to sexual violence in conflict and atrocity³ while several milestone judgments have been rendered in international and national jurisdictions, building on the legacies of the International Criminal Tribunal for the former Yugoslavia ('ICTY'), the International Criminal Tribunal for Rwanda ('ICTR') and the Special Court for Sierra Leone ('SCSL').⁴

This report is one of a series that contribute towards accountability efforts by assessing the substantive and procedural law frameworks in place in three countries – CAR, Democratic Republic of Congo ('DRC') and Colombia – to investigate and prosecute sexual violence crimes. Each country has experienced high levels of conflict-related sexual violence and has attracted the attention of the ICC. Both CAR and DRC are subject to ICC investigations and active cases concerning the perpetration of sexual violence crimes⁵ while the low level of national prosecutions and convictions of sexual violence crimes has continued to form part of

- 1 A number of initiatives and academic publications have focused on addressing sexual and gender-based violence: see UN Women, *UNiTE to End Violence Against Women Campaign*; UN Action against Sexual Violence in Conflict, *Stop Rape Now*; Serge Brammertz and Michelle Jarvis, *Prosecuting Conflict-Related Sexual Violence at the ICTY*, OUP, 2016; Morten Bergsmo (ed.), *Thematic Prosecution of International Sex Crimes*, TOAEP, Beijing, 2012; Morten Bergsmo, Alf Butenschön Skre and Elisabeth J. Wood (eds.), *Understanding and Proving International Sex Crimes*, TOAEP, Beijing, 2012.
- 2 A number of national and international initiatives have sought to address SGBV. A Global Summit to End Sexual Violence in Conflict, held in London in June 2014, resulted in the adoption of the Foreign & Commonwealth Office, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Basic Standards of Best Practice on the Documentation of Sexual Violence as a Crime under International Law* (1st ed.), London, June 2014 ('PSVI Protocol').
- 3 See ICC, OTP, *Policy Paper on Sexual and Gender-Based Crimes*, June 2014; Government of the CAR and the United Nations, *Joint Communiqué of the Government of the Central African Republic and the United Nations*, 12 December 2012 ('Joint Communiqué of the CAR and the UN'); CAR, *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*; Tessa Khan and Jim Wormington, "Mobile Courts in the DRC: Lessons from Development for International Criminal Justice", *Oxford Transitional Justice Research Working Paper Series*, 2011; International Legal Assistance Consortium ('ILAC') and International Bar Association ('IBA'), *Re-building courts and trust: An assessment of the needs of the justice system in the Democratic Republic of the Congo*, August 2009; Colombia, Attorney General's Office ('AGO'), *Protocol for the Investigation of Sexual Violence*, June 2016.
- 4 ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, TC III, Judgment, Case No. ICC-01/05-01/08, 21 March 2016; DRC, High Military Court, Case *Kakwavu*, Judgment, 7 November 2014; Colombia, Constitutional Court, Order no. 092/08, 14 April 2008; Constitutional Court, Order no. 009/15, 27 January 2015.
- 5 Cases: (CAR) ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Case No. ICC-01/05-01/08; (DRC) ICC, *The Prosecutor v. Bosco Ntaganda*, Case No. ICC-01/04-02/06. Investigation: (CAR) ICC, *Situation in Central African Republic II*, ICC-01/14.

the ongoing ICC preliminary examination in Colombia.⁶ Each country has also undergone different reforms that intend to address the low levels of sexual violence prosecutions, developing their legal as well as policy frameworks to address these limitations.⁷ The availability of an adequate legal framework that supports the investigation and prosecution of sexual violence crimes is one crucial measure to ensure accountability for these offences. Equally, under the principle of complementarity in which the ICC operates, the availability of an adequate legal framework can reduce legal obstacles to their exercise of jurisdiction and subsequent determinations of willingness and ability.

The report finds that, for the most part, the CAR legal framework has adequate provisions to deal with SGBV investigations and prosecutions. However, the lack of sufficient case law, means that many of the provisions in place have not been adequately tested by courts. The way in which the law will be interpreted in practice therefore becomes central to the success of national investigations or prosecutions. In that respect, care should be taken to utilise, as far as possible, those aspects of the national legal system that are likely to enable such prosecutions, whilst ensuring that inhibiting provisions do not impede efforts to address SGBV at the national level.

1.1. Purpose

This report has been prepared for criminal justice practitioners, researchers and policy-makers who wish to gain an in-depth understanding of the legal frameworks for prosecution of sexual violence crimes in CAR. The report analyses the substantive and procedural legal framework for the prosecution of conflict-related sexual violence in the CAR. It does so using the ICC Statute⁸ as its axes of comparison while referring to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict ('PSVI Protocol').⁹ It identifies national provisions on crimes, *mens rea*, liabilities and penalties that are applicable to sexual violence and analyses them using the legal requirements of sexual violence crimes under the ICC Statute, to consider whether national laws restrict or enable the prosecution of sexual violence crimes. It also examines criminal procedures applicable to the investigation and prosecution of sexual violence crimes, assessing if they may enable or disable the prosecution of sexual violence crimes.

As such, the purpose of the report is to enable practitioners to:

- Access relevant national provisions on sexual violence, as well as relevant judgments, policies and practice directions;
- Compare the national legal classifications of SGBV with the ICC Statute and its EoC;

6 ICC, OTP, *Report on Preliminary Examination Activities 2013*, November 2013; ICC, OTP, *Report on Preliminary Examination Activities 2014*, December 2014; ICC, OTP, *Report on Preliminary Examination Activities 2015*, November 2015; ICC, OTP, *Report on Preliminary Examination Activities 2016*, November 2016.

7 For example, CAR has enacted *Loi organique n°15.003 du 3 juin 2015 portant création, organisation et fonctionnement de la Cour Pénale Spéciale*, providing for the creation, organisation and functioning of a Special Criminal Court, with jurisdiction over serious violations of human rights and international humanitarian law committed on the CAR territory since 1 January 2003. In the DRC, *Loi organique n° 13/011-B du 11 avril 2013 portant organisation, fonctionnement et compétences des juridictions de l'ordre judiciaire*, provides for the establishment and functioning of mobile courts. In Colombia, the AGO adopted the Protocol for the Investigation of Sexual Violence in June 2016; moreover, the Peace Agreement reached between the Colombian government and the Revolutionary Armed Forces of Colombia ('FARC') in November 2016 provides a transitional justice system including 1) a Truth Commission; 2) a Special unit for those who have been disappeared during and in pursuance of the armed conflict; 3) a Special jurisdiction for Peace ('SJP'); 4) reparation measures; and 5) guarantees of non-repetition.

8 ICC Statute.

9 PSVI Protocol, *supra* note 2.

- Understand the different institutions responsible for investigation and prosecution of SGBV as well as the context in which such violations occur;
- Identify national provisions, approaches or policies that aid or hinder national prosecutions of SGBV;
- Examine the possible methods of interpretation of provisions or policies that can facilitate effective prosecutions of SGBV.

1.2. Methodology

The report uses a carefully designed comparative analysis framework, which is informed by the ICC Statute and the EoC, the relevant policy papers by the ICC Office of the Prosecutor (‘OTP’), key international jurisprudence on conflict related sexual violence and the PSVI Protocol. It covers each of the crimes and their underlying acts, the *mens rea*, modes of liabilities, penalties, statutes of limitations and procedural law. This ensures accurate and comprehensive comparative analysis of the relevant national provisions.

1.2.1. Crimes, underlying acts, mens rea, liabilities

The report uses the Legal Requirements Framework for Core International Crimes and Modes of Liability (‘Legal Requirements Framework’) to identify the structure of national crimes and underlying acts. The Legal Requirements Framework is a structure to aid the interpretation and analysis of the crimes and modes of liability found within the ICC Statute and its EoC document. It is the same methodological structure that underpins the Case Matrix¹⁰ and the Core International Crimes Database (‘CICD’)¹¹. It provides a clear structure to identify the legal requirements of each crime, underlying act and liability as well as the elements of each requirement.

Against this framework, the report first identifies the national provisions to establish which of the SGBV provisions enshrined in the ICC Statute have been covered. To ensure a comprehensive approach, the report discusses all underlying acts that may be applicable, using the methodology underpinning the National Implementing Legislation Database (‘NILD’).¹² To analyse the provisions, the report employs a comparative textual analysis research method. Having identified the relevant national provisions, the report assesses whether it is identical to the wording of the definitions found in ICC Statute and the EoC (it replicates them). Where different wording has been used, it examines whether the spirit of the provision is captured. Where the national definitions do not replicate or capture the international ones, the report examines whether they are *wider or narrower* than the ICC Statute or the EoC.

By *wider*, it is understood that the national provision goes beyond the ICC Statute. For example, provisions where additional elements have been added that allow for more acts to come under the definition of an international crime, or, where additional punishable acts have been

¹⁰ The Case Matrix is a software platform that provides users with legal information on international criminal law, helps organise case files and manage evidence and contains a database structure for the meeting of law and fact in core international crimes cases. See the [ICC Case Matrix](#) page of the CMN website and Morten Bergsmo (ed.), *Active Complementarity: Legal Information Transfer*, TOAEP, 2011.

¹¹ *CICD* is an online directory that classifies and deconstructs case law and doctrine, according to the means of proof and elements of core international crimes. It consists of three parts: (i) elements of crimes; (ii) means of proof and (iii) modes of liability.

¹² *NILD* is a relational database created by the HRLC, which forms part of the [ICC Legal Tools Project](#).

included or thresholds lowered. *Wider* can also be qualitative, for example where causation is not required, which makes it easier to achieve accountability.

By contrast, a national provision is *narrower* where there are more restrictions on the applicability of international criminal law, or where some elements have been omitted, for example fewer punishable acts or attaching conditions to punishable acts, or the use of different terms that restrict application.

1.2.2. Penalties, statutes of limitation and procedural law

In addressing these issues it is necessary to follow a different approach. Here, the report considers whether the provisions enable or disable criminal prosecution. The report examines all stages of criminal procedure, with the view to identifying obstacles and facilitative provisions throughout the legal process.

The report also identifies national particularities and discusses how these could aid or restrict prosecutions. The report acknowledges that their impact on effective prosecutions is determined by the way courts will be called to interpret the relevant provisions.

1.2.3. Sources

The report reviews national legislation to determine the availability and suitability of national legislation to prosecute SGBV. Where possible, national provisions were identified using the NILD and all additional legislation has subsequently been added to it.¹³ A broad interpretation of *legislation* has been adopted; however, binding legal documents take priority over informal practices. The examination is supplemented by national jurisprudence, where available, and by references to secondary sources that shed light on the practical application of each of the provisions. One of the challenges faced in this regard is the availability of accurate data, which can be attributed both to limited resources at the national level and to the fact that sexual violence in conflict is generally under-reported. International legislation and jurisprudence is also relied upon, where relevant.

1.2.4. Consultations

The report draws on information collected both remotely and in the field and includes sources gathered from a wide range of domestic criminal justice actors, representatives of international organisations and members of the civil society.

1.3. Structure

Section 1 establishes the purpose, methodology and structure adopted in this report. It also includes a glossary of key terms.

¹³ *Ibid.* The updates to NILD include the inclusion of all national laws cited in this report as well as the coverage of each law according to the NILD keywords.

Section 2 introduces the country context where sexual violence occurs. Through an introduction to key facts and figures, as well as the main actors and mechanisms for prosecution, the section aims to briefly introduce the conditions in which the national legal framework operates.

Section 3 presents the justice sector institutions and other actors (formal or informal) that are entrusted with providing accountability for sexual violence. These include the ordinary criminal courts, military courts and specialised or traditional justice mechanisms.

Section 4 analyses the existing national legal framework for the prosecution of sexual violence in relation to crimes. It first examines whether the core international crimes (genocide, crimes against humanity and war crimes) have been implemented at the national level and whether specific definitions for sexual violence in conflict have been adopted. It then outlines the ordinary criminal law provisions to establish which conducts are criminalised. The report reviews national provisions covering rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and other forms of sexual violence of comparable gravity. It also discusses the criminalisation of sexual violence as other offences, such as torture or trafficking. Case law, where available and accessible, has been used to better understand how the national legal framework on SGBV operates in practice and to highlight how the national provisions have been applied.

Section 5 discusses the *mens rea* element required by national law.

Section 6 focuses on the modes of liability and notes any aberrations from the ICC Statute provisions.

Section 7 examines applicable penalties, including aggravated/mitigating factors envisaged, mapping the severity of the national penalty scheme against that provided for in the ICC Statute, before reviewing the statute of limitations applicable to SGBV crimes.

Section 8 covers the procedural regime applicable to sexual violence prosecutions and outlines the various stages of the criminal process from the initiation phase, to the registration of the case, the investigation phase as well as the pre-trial, trial and appeal itself. Discussing also sentencing and reparations, the report examines issues pertaining to evidence and disclosure, as well as victims and witnesses. The focus of this section is on identifying those factors that are likely to enable or disable SGBV prosecutions.

Section 9 includes a complete list of sources used, including legislation and case law. Where possible, materials are also provided in the ICC Legal Tools Database.

1.4. Glossary of terms

The following list contains key terms used throughout this document. Definitions of terms are based on the approach taken by the ICC generally, and the OTP, in particular. Accordingly, when conducting legal comparisons, the terms listed below are defined in line with accepted interpretation of terms in the work of the ICC and the ICC Statute. The terms may be defined differently in national legislation, military systems, traditional justice mechanisms and the general public within a particular state.

Alternative mechanisms: justice mechanisms that are not part of the formal system of justice.

Enabler/enabling: a term adopted to describe provisions, approaches, policies or contexts that enable accountability or are facilitative in nature.

Disabler/disabling: a term adopted to describe provisions, approaches, policies or contexts that make it harder to achieve accountability or impeded investigations or prosecutions.

Gender: a term used as defined in Article 7(3) of the ICC Statute and referring to the two sexes, male and female, within the context of society. This definition acknowledges social construction of gender and accompanying roles, behaviours, activities, and attributes assigned to women and men, and girls and boys.

Gender-based crime: a crime committed against a person, male or female, because of their sex and/or socially constructed gender roles. Such crimes are not always a form of sexual violence.

Gender perspective: a perspective, which requires the understanding of differences in status, power, roles and needs between males and females, and the impact of gender on opportunities and interactions.

Jurisprudence: case law, legal decisions and legal precedents which have developed in a particular system or court, such as the ICC.

Legal Requirements Framework: a structure to aid the interpretation and analysis of the crimes and modes of liability found within the ICC Statute and its EoC document, which has been used in the process of analysis.

National Implementing Legislation Database: a database of enacted national legislation implementing the ICC Statute, which has been created by the HRLC and forms part of the ICC Legal Tools Project.

Narrower: a term adopted to describe provisions where there are more restrictions on the applicability of international criminal law, or where some elements have been omitted.

International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: a non-binding Protocol containing basic standards of best practice on the documentation of sexual violence as a crime under international law, first published in June 2014. The second edition of the PSVI Protocol is expected in early 2017.

Sexual crimes or sexual violence or sexual and gender-based violence: terms that can be and are often used interchangeably. ‘Sexual crimes’ cover both physical and non-physical acts with a sexual element. Sexual crimes falling under subject-matter jurisdiction of the ICC are listed under Articles 7(1)(g), 8(2)(b)(xxii), and 8(2)(e)(vi) of the Statute, and described in the EoC. In relation to ‘rape’, ‘enforced prostitution’, and ‘sexual violence’, the EoC require the perpetrator to have:

- Committed an act of a sexual nature against a person; or
- Caused another to engage in such an act;
- By force, or threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power; or
- By taking advantage of a coercive environment or a person's incapacity to give genuine consent.

An act of a sexual nature is not limited to physical violence, and may not involve any physical contact, for example, forced nudity.

Traditional justice: customary legal practices, which have gained authority among the population of a state from long standing practices and beliefs. Traditional justice systems are diverse, having derived from different societies and localities. They therefore take multiple forms and can encompass procedures or elements unfamiliar to Western models of justice. There is often no professional legal representation, and traditional justice can ultimately focus on community cohesion, rather than being of strictly punitive nature.

Wider: a term adopted to describe provisions that go beyond what is required under the ICC Statute and/or the EoC.

2

2. Context of the country and country-specific issues

2. Context of the country and country-specific issues

Since its independence from France in 1960, the situation in CAR has been characterised by recurring tensions, with periods of relative stability alternating with numerous crises. The occurrence of core international crimes – including SGBV – increased in two 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.¹⁴ Djotodia resigned in January 2014 to be replaced by a transitional government.¹⁵ In February 2016, Faustin-Archange Touadera was elected, succeeding Catherine Samba-Panza who was the interim leader during the transitional period. Violence peaked again around the 2016 elections, during which a high number of SGBV crimes were allegedly committed.¹⁶ Although the crisis has 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.¹⁷

When rebel groups from the DRC came to the government's assistance in 2001, the use of rape and other sexual and gender-based violence as a weapon of war, prevalent in the DRC, spread to CAR as well.¹⁸ This has become widespread practice in areas controlled by the rebels.¹⁹ For example, rape is frequently used as a means of punishing Christian women for trading with members of the Muslim community.²⁰ In addition, Marie-Thérèse Keita Bocoum, the independent expert on the situation of human rights in CAR, made reference in her 2015 report to Anti-Balaka groups holding Fulani women and girls as slaves, including as sexual slaves,²¹ a practice confirmed also in statistics. The Inter-Agency Standing Committee reported that from January to April 2016, the “Ligne Verte”, a telephone hotline, recorded 373 violations of human rights, 46 per cent of which are incidents of rape.²² At least 30 per cent of these violations were committed by members of armed groups whilst 54 per cent of them were committed by civilians.²³ The UN Secretary-General (‘UNSG’) in his report on the situation in CAR in April 2016 also mentioned that from December 2015 to March 2016 the United Nations Multidimensional Integrated Stabilisation Mission (‘MINUSCA’)²⁴ registered 39 allegations of conflict-related sexual violence, 28 of which were investigated and verified.²⁵ Among these reported cases of SGBV, 18 could be attributed to the former Séléka, 12 to the Anti-Balaka and

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

¹⁵ Enough, *ibid.*

¹⁶ UNSG, *Report of the Secretary-General on conflict-related sexual violence*, 20 April 2016, S/2016/361, para. 26 (‘UNSG Report on conflict-related sexual violence’).

¹⁷ Tearfund CAR, *To Make Our Voices Heard: Listening to Survivors of Sexual Violence in Central African Republic*, 2015, p. 8; Enough, *Central African Republic*.

¹⁸ Banque mondiale, *Etude diagnostique sur la situation du genre en République Centrafricaine*, 2012, p. 18 (BM Etude diagnostique).

¹⁹ *Ibid.*

²⁰ UNSG Report on conflict-related sexual violence, para. 13, *supra* note 16.

²¹ UN Human Rights Council (‘UNHRC’), *Report of the Independent Expert on the situation of human rights in the Central African Republic, Marie-Thérèse Keita Bocoum*, 24 July 2015, A/HRC/30/59, para. 67 (‘UNHRC Report of the Independent Expert Bocoum 2015’).

²² Groupe de coordination inter-cluster à l’attention de l’Equipe Humanitaire Pays, *Rapport périodique de monitoring*, 2016, p. 29 (‘Rapport périodique’)

²³ *Ibid.*

²⁴ MINUSCA, created by the UN Security Council Resolution 2149 (2014) S/RES/2149 (2014).

²⁵ UNSG, *Report of the Secretary-General on the Situation in the Central African Republic*, 1 April 2016, S/2016/305, para. 31, (‘UNSG Report on the CAR’).

two to the Lord's Resistance Army ('LRA').²⁶ More accurate data will soon be available as the Office of the High Commissioner for Human Rights ('OHCHR') is in the process of finalising a publication of a comprehensive conflict crime mapping, due to be published in early 2017.

Despite a high number of SGBV incidents reported by MINUSCA, other UN agencies as well as local and international non-governmental organisations ('NGOs'), the number of cases that have been investigated and prosecuted by CAR courts is extremely low.²⁷ In his 2016 report, the UNSG referred to the case of an Anti-Balaka fighter who was sentenced to five years imprisonment for rape on 18 September 2015.²⁸ Different reasons may explain this discrepancy between the frequency of SGBV crimes and the low rate of prosecution. The particular nature of these crimes and how they are perceived by the victims' communities as well as the current weaknesses of the criminal justice system in CAR may explain the current situation. A key issue is the lack of resources and staff to guarantee the functioning of the courts in all parts of the country.²⁹ In addition, there is a significant lack of appropriate professional training available to legal professionals.³⁰ Security issues also impede the proper functioning of the criminal justice system in CAR. Magistrates repeatedly report receiving threats against both themselves and their families and stress that the security of staff, victims and witnesses cannot be guaranteed even inside the courtroom.³¹ There is therefore a serious need to enable adequate protection strategies for court staff and witnesses. Other factors also affect victims' confidence in the criminal justice system. Allegations of corruption, including the fact that magistrates are often perceived to be under the influence of powerful members of the society, impact on victims' trust of the criminal justice system.³² Judicial power is not seen to be fully independent from the executive. This perception is exacerbated when the police or magistrates come from different religious or ethnic groups to the victims.³³ Victims often fear reprisals if they report a crime to an official institution.³⁴ In some instances, victims may not even be able to report the crimes when local police station is occupied by an armed group to which the perpetrator belongs. Finally, the confidence of the victims in the criminal justice system has been also weakened by the prevalence of impunity to date and the repeated use of amnesty laws to reach political agreements, resulting in a high number of victims and their families never obtaining justice or compensation for crimes suffered.³⁵

Other factors preventing the victims from filing a complaint may explain the low number of SGBV incidents investigated, prosecuted or even reported. Owing to its nature, victims are reluctant to formally acknowledge that they have been the target of SGBV.³⁶ Victims fear that their situation may be worsened if their family or community find out that they have suffered SGBV, in particular if their aggressor is in a position of power.³⁷ It is not uncommon,

²⁶ *Ibid.*

²⁷ *Rapport périodique*, p. 9, *supra* note 22; UNSG Report on the CAR, 2016, p. 31, *supra* note 25; Tearfund CAR, *To Make Our Voices Heard: Listening to Survivors of Sexual Violence in Central African Republic*, 2015, p. 9 ('Tearfund CAR').

²⁸ UNSG Report on conflict-related sexual violence, para. 28, *supra* note 16.

²⁹ UNSG, *Special Report of the Secretary-General on the Strategic Review of the United Nations Multidimensional Integrated Stabilisation Mission in the Central African Republic*, 22 June 2016, S/2016/565, para. 22 ('UNSG Special Report on the Strategic Review').

³⁰ *Ibid.*, p. 24.

³¹ *Ibid.*; UNHRC, *Report of the Independent Expert on the Situation of Human Rights in the Central African Republic*, 22 July 2016, A/HRC/33/63, para. 109 (UNHRC Report of the Independent Expert 2016); IRIN, 'La République centrafricaine en quête de justice', 2014, p. 4 ('IRIN').

³² Commission préparatoire du forum de Bangui, *Rapport du groupe thématique 2: Justice et Réconciliation*, 2015, p. 6 ('Rapport Justice et réconciliation'); 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').

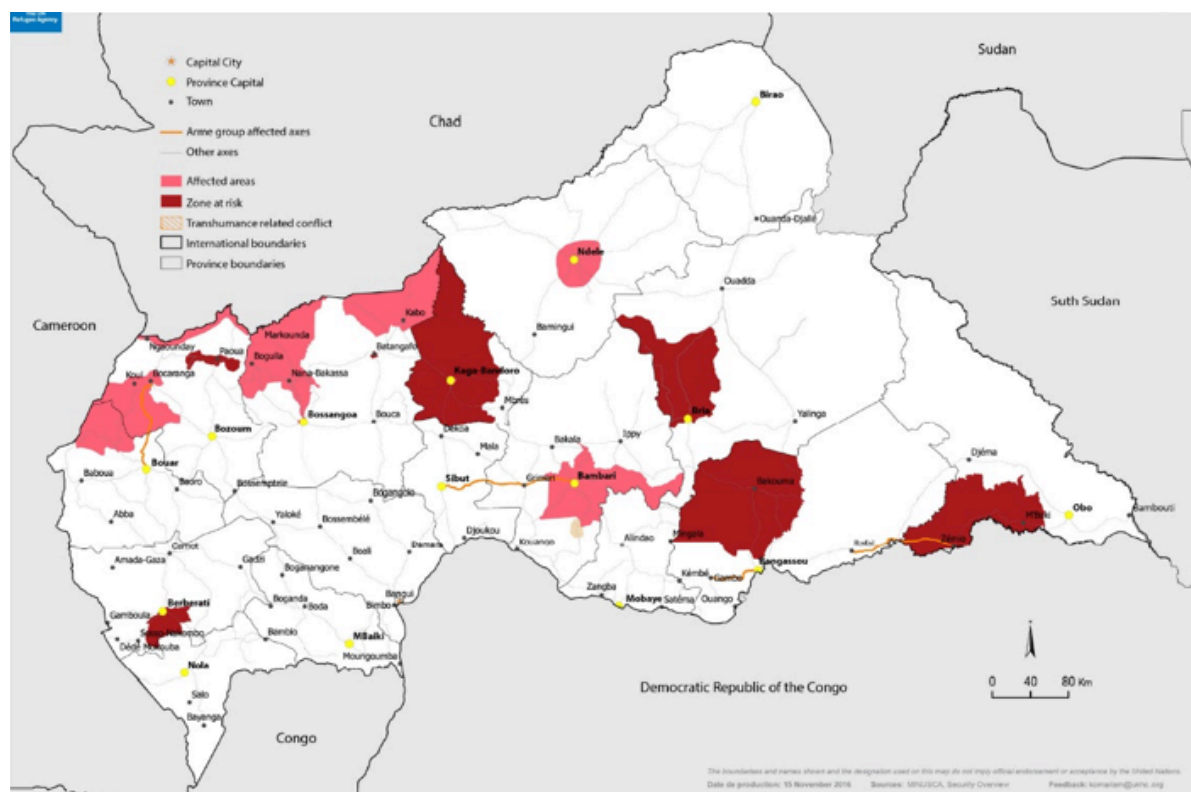
³³ UNHRC Report of the Independent Expert Bokooum 2015, para. 83, *supra* note 21.

³⁴ UNSG Report on conflict-related sexual violence, para. 27, *supra* note 16.

³⁵ *Rapport Justice et réconciliation*, pp. 7 and 17, *supra* note 32.

³⁶ Tearfund CAR, p. 17, *supra* note 27.

³⁷ *Ibid.*



Map 1: OHCHR, Hotspots in the Central African Republic as of 31 October 2016.

for example, for a husband to reject or abandon his wife who has been victim of rape.³⁸ The consequences of the crime for the victim may also be aggravated if, for example, the latter has to undergo an abortion outside suitable medical facilities because of the stigma associated with SGBV.³⁹ This stigma is also extremely strong in relation to male SGBV victims. In his 2016 report, the UNSG highlighted that 2,097 men and boys have reported being victims of gender-based violence in 2015.⁴⁰ Although the number of women victims is almost 15 times higher, SGBV against men is, nevertheless, a major issue in CAR.⁴¹ It is also important to note that these numbers may not fully reflect the reality as men are less likely to report SGBV because of fear of being judged by their families and communities.

Besides victim stigmatisation, the situation in CAR is also characterised by other forms of SGBV that are less common. Despite criticisms by the international community, the practice of witchcraft is still criminalised in the Penal Code and can be seen as a form of gender-based violence, as it targets older women.⁴² Moreover, various international actors, namely the UN General Assembly ('UNGA') and the other agencies, have observed that this crime is often used as an excuse to make false accusations leading to summary executions and torture.⁴³ This, in turn, fuels the conflict, as rebel groups use it as a tool to intimidate civilians.⁴⁴ Although not directly linked to SGBV in conflict, other forms of gender-based violence are

³⁸ *Ibid.*, p. 18.

³⁹ UNSG Report on conflict-related sexual violence, para. 16, *supra* note 16.

⁴⁰ *Ibid.*, para. 26.

⁴¹ *Ibid.*

⁴² BM Etude diagnostique, p. 18, *supra* note 18; Loi n°10:001 du 6 janvier 2010 portant Code Pénal centrafricain 2010 ('Loi portant Code Pénal Centrafricain'), Art. 149; WBG Understanding Access to Justice and Conflict Resolution, p. 45, *supra* note 32.

⁴³ WBG *ibid.*

⁴⁴ UNHRC Report of the Independent Expert Bocarum 2015, para. 60, *supra* note 21; WBG, *ibid.*

widespread in CAR. Violence against widows, including physical violence and material dispossession, is common and related to deep-rooted superstitious beliefs.⁴⁵ This practice is, however, criminalised in the Penal Code.⁴⁶ Domestic violence is also a widespread form of gender-based violence that is widely accepted among the population.⁴⁷ Moreover, early marriage is also an issue relevant to conflict related gender-based violence. Girls who have fallen victim of rape may be forced to marry their aggressor owing to societal pressure.⁴⁸ This is often encouraged in traditional forms of justice.⁴⁹ It is important to note that Article 209 of the Family Code of 1997 provides that the minimum age for marriage is 18, subject to exceptions, and that a marriage must be based on consent.⁵⁰ An indication of the close link between conflict and forced and early marriage can be found in the 2012 government communiqué encouraging commanders of armed forces and groups to refrain from giving orders regarding forced and early marriage.⁵¹ Ongoing crimes of sexual slavery as well as forced marriages can still be observed, despite the 2013 crisis being over. The UNSG also reported that four cases of SGBV registered by MINUSCA between December 2015 and March 2016 related to abduction, forced marriage or sexual slavery.⁵² Human trafficking, mostly internal and often related to sexual violence, is also a major problem in CAR.

An important issue regarding SGBV in CAR are the accusations of sexual abuses committed by UN peacekeepers, notably members of the French Sangaris forces.⁵³ The initial events allegedly took place between December 2013 and June 2014 but more instances have been reported since.⁵⁴ Despite its importance regarding SGBV in CAR, the UN peacekeepers responsible for these crimes will be prosecuted by the troop-contributing states. For example, such an investigation has been opened in France with regard to the allegations of SGBV committed by French peacekeepers.⁵⁵ Consequently, SGBV committed by UN peacekeepers falls outside the scope of this report, which focuses on national SGBV prosecutions.

45 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*, 21 February 2013, CEDAW/C/CAF/1-5, para. 212 ('CEDAW Committee Consideration of Reports: CAR').

46 *Loi portant Code Pénal centrafricain*, Art. 112, *supra* note 42.

47 CEDAW Committee Consideration of Reports: CAR, 2013, para. 207, *supra* note 45.

48 BM *Etude diagnostique*, p. 12, *supra* note 18.

49 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* ('Procédures opérationnelles standards'), 2015, p. 30.

50 *Loi n°97.013 du 11 novembre 1997 portant Code de la Famille 1997*, 11 November 1997, Art. 209 ('Loi n°97.013 portant Code de la Famille 1997').

51 *Joint Communiqué of the CAR and the UN*, p. 3, *supra* note 3.

52 UNSG Report on the CAR, para. 31, *supra* note 25.

53 Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic, *Taking Action on Sexual Exploitation and Abuse by Peacekeepers*, 17 December 2015, p. i.

54 *Ibid.*, p. ii; UN News Service Section, *Probe into Sexual Abuse in Central African Republic Must "Leave No Stone Unturned"*.

55 Kim Willsher and Sandra Laville, "France Launches Criminal Inquiry into Alleged Sex Abuse by Peacekeepers", *The Guardian*, 7 May 2015.

3

3. Institutional framework

- 3.1. The Special Criminal Court
- 3.2. Ordinary criminal justice system
- 3.3. Permanent Military Tribunal
- 3.4. Traditional justice
- 3.5. Other mechanisms and NGOs

3. Institutional framework

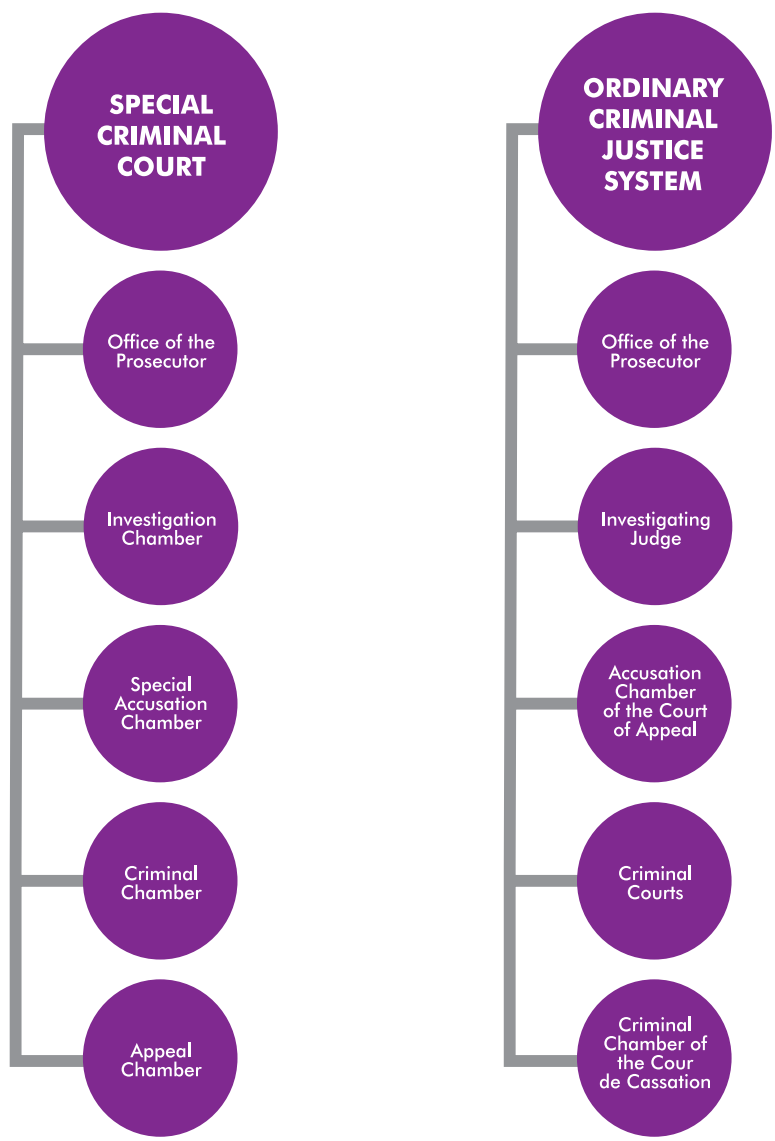


Table 1: Special Criminal Court and the ordinary criminal justice system.

3.1. The Special Criminal Court

Organic Law No. 15-003 was enacted on 3 June 2015 and provides for the creation, organisation and functioning of a Special Criminal Court.⁵⁶ The Special Criminal Court has jurisdiction over serious violations of human rights and international humanitarian law committed

⁵⁶ Loi organique n°15.003 du 3 juin 2015 portant création, organisation et fonctionnement de la Cour Pénale Spéciale ('Loi organique portant création de la Cour Pénale Spéciale').

on the territory of CAR since 1 January 2003.⁵⁷ The Special Criminal Court relies on the CAR Penal and Penal Procedure Code, as well as international substantive and procedural law, if the national provisions do not cover a specific issue or are unclear.⁵⁸ There is, however, no further detail on what this could entail. Organic Law No. 15-003 provides that the Special Criminal Court will take specific measures to guarantee the protection of victims and witnesses, consistently with the Court's rules on procedure and evidence.⁵⁹

The Special Criminal Court has primacy over the ordinary criminal courts and its Special Prosecutor can request the Public Prosecutor to defer a case to it by sending a request to the General Prosecutor of the Court of Appeal.⁶⁰ The Special Prosecutor or the General Prosecutor of the Court of Appeal can refer any jurisdictional challenges to the judge entrusted with deciding on conflicts of jurisdiction within the CAR judicial system.⁶¹ The principle of complementarity, as enshrined in the relevant ICC Statute provisions, still applies in relation to the Special Criminal Court, and the Special Prosecutor is able to share information with the ICC Prosecutor.⁶²

The Special Criminal Court includes the Office of the Prosecutor, an Investigation Chamber, a Special Accusation Chamber, a Criminal Chamber and an Appeals Chamber. The Office of the Prosecutor is composed of an International Special Prosecutor, who is assisted by a National Special Deputy Prosecutor and they are assisted by at least two deputy prosecutors.⁶³ The number of national deputy prosecutors and the number of international deputy prosecutors should be even, but if this is not possible the international deputy prosecutors should be the majority.⁶⁴ The Investigation Chamber undertakes the preliminary investigation of the case.⁶⁵ It is composed of three offices, each including one national and one international judge. The Special Accusation Chamber is entrusted with receiving the appeals against the orders issued by the Investigation Offices.⁶⁶ This Chamber is composed of three judges, including two international judges and one national judge, who holds the Presidency.⁶⁷ The Special Accusation Chamber is equated to the CAR Courts of Appeal.⁶⁸ The Criminal Chamber decides the cases that are referred to it by the Investigation Chamber and the Special Accusation Chamber.⁶⁹ The Criminal Chamber is composed of six national and three international judges.⁷⁰ It has three sections, each of which is composed of one international and two national judges.⁷¹ The Criminal Chamber is at the same level as the CAR criminal courts.⁷² Finally, the Special Criminal Court also includes an Appeals Chamber, which decides on the appeals against the decisions of the Criminal Chamber and the Special Accusation Chamber.⁷³ It is composed of three judges, including one national and two international judges.⁷⁴ The Presidency of

⁵⁷ *Ibid.*, Art. 3.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*, Art. 3.

⁶⁰ *Ibid.*, Art. 36.

⁶¹ *Ibid.*

⁶² *Ibid.*, Art. 37.

⁶³ *Ibid.*, Art. 18.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*, Art. 11.

⁶⁶ *Ibid.*, Art. 12.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*, Art. 13.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*, Art. 14.

⁷⁴ *Ibid.*

this Chamber is held by a national judge. The Appeals Chamber is equivalent to the Criminal Chamber of the Court of Cassation in the CAR judicial system.⁷⁵

To complement the work of the magistrates, Specialised Investigation Teams can be set up in accordance with the internal regulations of the Court to deal with the various types of offences falling under the *ratione materiae* jurisdiction of the Special Criminal Court.⁷⁶ The Special Criminal Court also has a Special Judiciary Police Unit at its disposal composed of police officers from the Gendarmerie and the Police departments, who act under the Special Criminal Court's instructions and solely for it.⁷⁷ The Special Judiciary Police Unit has the same powers as the CAR judiciary police.⁷⁸ MINUSCA officers and the judiciary police can share with the Special Prosecutor any relevant information relating to the commission of serious crimes and/or to identify the perpetrators of these crimes.⁷⁹

Although Organic Law No. 15-003 creating the Special Criminal Court was enacted in 2015, there have been some delays in setting up the Court. Despite its willingness for the Special Criminal Court to become operational, the government continues to face significant challenges that have slowed down the process of establishing this Court.⁸⁰ The government, with the assistance of the UN, has nevertheless taken steps towards establishing the Special Criminal Court, including finding appropriate facilities, recruiting staff and approving the Court's operating budget of US\$ 6.9 million for the first 14 months.⁸¹ Senegal and Belgium have already presented applications for staff members. Issues related to security and protection of victims and witnesses as well as the recruitment of national magistrates and lawyers still need to be addressed before the Special Criminal Court can begin its operations.⁸² The Ministry of Justice is currently working on publishing recommendations on the issue of security and protection of victims and witnesses.

3.2. Ordinary criminal justice system

The CAR government has made efforts to raise awareness on the role of the police and the gendarmerie officers in addressing sexual violence and has committed to train military and police staff on such issues.⁸³ It is also currently working towards the establishment of specialised units to deal with crimes against women and children, and on recruiting and training of female officers.⁸⁴ This demonstrates the government's willingness to focus on SGBV and the role of the police and gendarmerie, as first points of contact, in tackling these crimes. On 15 January 2015, the President enacted a decree creating a Joint Rapid Response Unit to respond to and prevent sexual violence against women and children.⁸⁵ This Unit is located in Bangui but its mandate covers in the entire territory of CAR. It is placed under the joint authority of the Ministry for Public Security and Emigration-Immigration and the Ministry of

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*, Art. 29.

⁷⁷ *Ibid.*, Art. 30.

⁷⁸ *Ibid.*, Art. 28.

⁷⁹ *Ibid.*

⁸⁰ UNHCR Report by the Independent Expert 2016, para. 92, *supra* note 31.

⁸¹ *Ibid.*; Human Rights Watch, *Progress on Special Court: More Efforts Needed to Get It Operating*, 2015..

⁸² UNHCR, *ibid.*

⁸³ Joint Communiqué of the CAR and the UN, p. 2, *supra* note 3.

⁸⁴ *Ibid.*

⁸⁵ 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.

Justice.⁸⁶ This Unit also works closely with the Ministry of Social Affairs and Humanitarian Action, which is generally in charge of dealing with SGBV issues.⁸⁷ The Joint Rapid Response Unit is composed of police and gendarmerie agents.⁸⁸ In addition, the government recently enacted a joint ministerial decree to promote the harmonisation of SGBV responses.⁸⁹ The Ministry of Justice has notably created focal points specialised in SGBV issues in the courts and tribunals in Bangui and works towards establishing other focal points in other tribunals outside the capital.⁹⁰

The relevant criminal justice institutions that may have jurisdiction over SGBV include the Criminal Court, the Youth Court, the Permanent Military Tribunal, the Court of Appeal and the Court of Cassation.⁹¹ Details on the Permanent Military Tribunal are provided in the subsection that follows. The seat of the Court of Appeal determines the presence of a criminal court. They both share jurisdiction *ratione loci*.⁹² It may nevertheless be temporarily moved to another location within the same territorial jurisdiction if the Minister of Justice so decides.⁹³ The criminal court is a judicial body of first instance. There are currently three courts of appeal in CAR, which means that there are also three criminal courts.⁹⁴ However, two of the three courts of appeal, and therefore criminal courts associated with them, are no longer functioning. One is not functioning because of a shortage of magistrates. The functioning of the other is hindered because its location is currently under the control of rebel armed forces.⁹⁵ The courts of appeal are courts of second instance and are tasked with reviewing a case in fact and in law when one of the parties has appealed the decision of a court of first instance.⁹⁶ Finally, the Court of Cassation is the highest court in the judicial system and is a court of last instance. It includes a Chamber dealing specifically with criminal law cases. The role of the Court of Cassation also includes advising the President on legislative reforms required and providing advisory opinions.⁹⁷ Mobile courts operating in various parts of the country complement the system. The purpose of such courts is to ensure that persons living in rural areas of the country have access to formal justice in a timely manner, without having resort to traditional justice mechanisms.⁹⁸ The United Nations Development Programme ('UNDP') reported that the number of hearings offered by mobile courts increased from six in 2010 to 18 in 2011.⁹⁹

Although the organisation of the criminal justice system in CAR appears to be suitable to deal with SGBV, the criminal justice institutions face serious challenges that restrict their ability to function in practice. The Independent Expert on the Situation of Human Rights in CAR pointed out in her last report in July 2016 that "criminal justice remains practically non-existent".¹⁰⁰ Indeed, since July 2015, the Criminal Court of Bangui has only held two sessions,

⁸⁶ *Ibid.*, Art. 3.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*, Art. 4.

⁸⁹ UNDP, *Une Meilleure Coordination Pour Mieux Lutter Contre Les Violences Basées Sur Le Genre et Une Prise En Charge Holistique Des Survivants En RCA*.

⁹⁰ *Ibid.*

⁹¹ Loi n°10.002 du 6 janvier 2010 Code de procédure pénale centrafricain ('Loi de 2010 portant Code de procédure pénale centrafricain'), Art. 209; CEDAW Committee Consideration of Reports: CAR, para. 121, *supra* note 45.

⁹² CEDAW, *ibid.*, para. 105.

⁹³ Loi de 2010 portant Code de procédure pénale centrafricain, Art. 209, *supra* note 42.

⁹⁴ UNHCR Report by the Independent Expert 2016, para. 109, *supra* note 31.

⁹⁵ International Crisis Group, *Centrafrique: quatre priorités pour le nouveau président*, 10 May 2016.

⁹⁶ CEDAW Committee Consideration of Reports: CAR, para. 122, *supra* note 45.

⁹⁷ Legiglobe, *République centrafricaine*.

⁹⁸ UNDP, *L'appui du PNUD à l'Etat de droit en République centrafricaine (2008-2011)*, August 2012, p. 8.

⁹⁹ *Ibid.*

¹⁰⁰ UNHCR Report by the Independent Expert 2016, para. 107, *supra* note 31.

one in July 2015 and another one in August 2016, following a period of inactivity lasting five years.¹⁰¹ Despite efforts to relocate magistrates across several courts in Bangui and other areas of the country, following the collapse of the judicial system after the 2013 events, the lack of resources and staff remains a major obstacle resulting in significant delays in proceedings.¹⁰² Additionally, in certain areas of the country, magistrates regularly face security problems and are forced to leave their posts.¹⁰³ Similarly, all registered lawyers in CAR are located in Bangui alone.¹⁰⁴ As a general rule, most of the judicial services are concentrated in Bangui, impeding access to justice in rural areas.¹⁰⁵ MINUSCA, UNDP and the UN Entity for Gender Equality and the Empowerment of Women have, however, worked to address this issue by focusing their efforts on the decentralisation of the courts through supporting the relocation of magistrates across the country and through organising training sessions. MINUSCA has also provided support in ensuring the protection of key court staff members and assisting the national authorities with the execution of arrest warrants.¹⁰⁶ In addition, MINUSCA plays an important role in gathering information and recording SGBV occurrences, which is crucial in assessing the extent of the commission of such crimes.¹⁰⁷

3.3. Permanent Military Tribunal

The Permanent Military Tribunal operates alongside the criminal justice system for ordinary crimes and deals with offences committed by military force personnel. It has jurisdiction over the whole CAR territory. The Permanent Military Tribunal has not always been able to function and there have been long-lasting periods of inactivity as a result of political or military unrest, including between 1997 and 2004.¹⁰⁸ Inactivity is also down to a lack of resources.¹⁰⁹ The Permanent Military Tribunal is composed of five judges, including four from the security forces, and a Public Prosecutor from the ordinary judicial system. The Permanent Military Tribunal has jurisdiction over SGBV cases and has heard rape cases.¹¹⁰ However, the Permanent Military Tribunal mainly focuses on lower-ranking officials, involved in less serious offences. As such, the extent to which the Tribunal may render judgments in conflict-related SGBV is limited.¹¹¹ Moreover, the victims of violence committed by military personnel appear to be reluctant to file a complaint to the Tribunal because they fear reprisals, thus facing obstacles in accessing justice.¹¹²

¹⁰¹ MINUSCA, *Affaires judiciaires et pénitentiaires*, 1 July 2015; APA, *Démarrage des audiences de la Cour criminelle de Bangui*, 24 August 2016.

¹⁰² UNSG Special Report on the Strategic Review, para. 23, *supra* note 29.

¹⁰³ International Commission of Inquiry on the Central African Republic, *Final Report of the International Commission of Inquiry on the Central African Republic*, 22 December 2014, S/2014/928, para. 57.

¹⁰⁴ CEDAW Committee Consideration of Reports: CAR, para. 109; *ibid.*, para. 61.

¹⁰⁵ UNDP, *L'appui du PNUD à l'Etat de droit en République centrafricaine (2008-2011)*, 2012, p. 7.

¹⁰⁶ UNSG Special Report on the Strategic Review, para. 44; Amnesty International, *Central African Republic: Impunity Is Fuelling Violence*, 2014, p. 11; UNHRC Report of the Independent Expert Bocoum 2015, para. 84.

¹⁰⁷ UNSG Report on the Central African Republic, 2016, p. 17.

¹⁰⁸ UNHCR, *Fiche pays République Centrafricaine*, 2005, p. 16 ('UNHCR Fiche pays République Centrafricaine').

¹⁰⁹ UNHRC, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, 19 May 2010, A/HRC/14/24/Add.5*, para. 46 ('UNHRC Report on Extrajudicial, Summary or Arbitrary Executions'); Human Rights Watch, *Améliorer la protection des civils dans le nord-ouest de la République centrafricaine*, 2008, p. 19.

¹¹⁰ UNHCR, *Fiche pays République Centrafricaine*, 2005, p. 16.

¹¹¹ UNHCR Report on Extrajudicial, Summary or Arbitrary Executions, para. 46.

¹¹² Human Rights Watch, *Améliorer la protection des civils dans le nord-ouest de la République centrafricaine*, 2008, p.18.

3.4. Traditional justice

Traditional justice holds an important place in CAR, particularly given the weaknesses of the formal justice system, and provides a forum to individuals who cannot access justice otherwise.¹¹³ As highlighted in the Standard Operating Procedures, traditional justice is, in most cases, not adapted to deal with SGBV, since it was initially developed to deal with property issues.¹¹⁴ The victim may be required to incur fees to access such process and the sanction imposed may involve symbolic compensation to the victim or oblige the victim to marry the perpetrator.¹¹⁵ Therefore, traditional justice cannot replace formal justice institutions. It is, however, necessary to take into account the role traditional justice plays in CAR society in order to address SGBV. To this end, the Ministry of Social Affairs, Promotion of Gender and Humanitarian Action has taken steps to train the main local actors, including the local chiefs, to increase awareness of SGBV issues and direct victims towards the formal justice system.¹¹⁶

3.5. Other mechanisms and NGOs

The response of civil society to SGBV incidents has helped fill the gap left by formal institutions. In 2014, several NGOs working on SGBV-related issues created the Gender Based Violence Subcluster ('GBV Sub-cluster').¹¹⁷ The purpose of the GBV Sub-cluster is to harmonise the actions of the various actors involved in dealing with SGBV cases, from health to legal sectors, until governmental institutions are able to provide these services. The GBV Sub-cluster has also contributed to the development of the Standard Operating Procedures for Prevention of and Response to Gender-Based Violence, which aim to define the role of the various actors dealing with SGBV cases and to assist them in responding to such cases.¹¹⁸ Among the different NGOs that form part of the GBV Sub-cluster, the Association des Femmes Juristes de Centrafrique ('AFJC') provides victims with legal assistance.¹¹⁹ It assists the victims with both accessing justice and reporting cases of SGBV.

¹¹³ WBG *Understanding Access to Justice and Conflict Resolution*, p.27.

¹¹⁴ *Procédures opérationnelles standards*, p. 30.

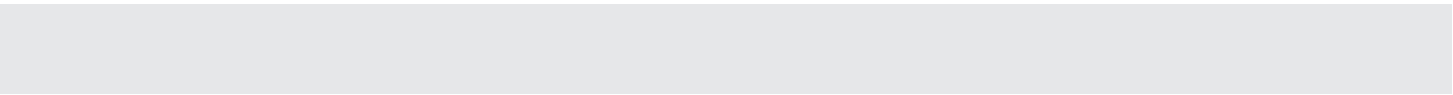
¹¹⁵ *Ibid*; UNSG *Report on conflict-related sexual violence*, para. 27, *supra* note 16.

¹¹⁶ *Procédures opérationnelles standards*, 2015, p. 43, *supra* note 49.

¹¹⁷ *Ibid*, p. 44.

¹¹⁸ *Ibid*, p. 5.

¹¹⁹ *Ibid*, p. 4.



4

4. Legal framework: crimes

4.1. Rape

4.2. Sexual slavery

4.3. Enforced prostitution

4.4. Forced pregnancy

4.5. Enforced sterilisation

4.6. Other forms of sexual violence of comparable gravity

Indecent assault

Female genital mutilation

Sexual harassment

4.7. Other criminalisation of sexual violence

Torture and other cruel, inhuman or degrading treatment or punishment

Violence against women

Violence against widows and widowers

Manslaughter

Imprisonment or other severe deprivation of physical liberty

4. Legal framework: crimes

The CAR legislation encompasses several legal provisions directly applicable to SGBV. The preamble of the 2015 Constitution reiterates the adherence of CAR to the 1948 Universal Declaration on Human Rights as well as the 1981 African Charter on Human and Peoples' Rights.¹²⁰ It also specifically refers to international conventions related to the prohibition of any form of discrimination against women.¹²¹ Other provisions in the Constitution are particularly relevant to SGBV issues. This includes Article 3 which provides for the right to life and physical integrity as well as the prohibition of torture, rape and other cruel, inhuman, degrading or humiliating treatments.¹²² Notably, rape is expressly mentioned as a form of torture. Article 6 focuses on the protection of women and children from violence and insecurity.¹²³ Article 17 provides for a right to reparation and Article 82 refers to the direct applicability of international treaties in the national legislation.¹²⁴ CAR ratified the ICC Statute in 2001. CAR also committed to implementing various protocols of the Pact on Security, Stability and Development in the Great Lakes Region, including the Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination, the Protocol on the Prevention and Suppression of Sexual Violence against Women and Children and the Protocol on Judicial Cooperation.¹²⁵

In addition to the Constitution, the 2010 Penal Code includes a number of articles relevant to the criminalisation of SGBV. Articles 152 to 157 of the Penal Code specifically criminalise genocide, crimes against humanity and war crimes.¹²⁶ Articles 344 to 363 of the 2010 Penal Procedure Code outline the national procedure applicable to co-operation with the ICC.¹²⁷ CAR has also enacted other pieces of legislation to tackle SGBV, including Order No. 66-16 of 1966 abolishing female genital mutilation,¹²⁸ Law No. 06-032 of 2006 on the protection of women from violence in Central African Republic,¹²⁹ Law No. 06-005 of 2006 in relation to reproductive health¹³⁰ and Decree No. 15-007 on the creation of a Joint Rapid Response Unit to respond to sexual violence against women and children.¹³¹ Finally, the 2015 Organic Law on the creation, organisation and functioning of the Special Criminal Court bestowed it with jurisdiction over serious violations of human rights and humanitarian law.¹³² Although CAR legislation includes several legal instruments specifically addressing the problem of SGBV, such instruments are not always implemented in practice. This is partly due to the difficulty

¹²⁰ *Constitution de la République Centrafricaine* 2015, Preamble.

¹²¹ *Ibid.*, Preamble.

¹²² *Ibid.*, Art. 3.

¹²³ *Ibid.*, Art. 6.

¹²⁴ *Ibid.*, Arts. 17 and 82.

¹²⁵ International Conference on the Great Lakes Region, *Pact on Security, Stability and Development for the Great Lakes Region*, 2006.

¹²⁶ *Loi portant Code Pénal centrafricain*, Arts. 152-157, *supra* note 42.

¹²⁷ *Loi de 2010 portant Code de procédure pénale centrafricain*, Arts. 344-363, *supra* note 91.

¹²⁸ CEDAW Committee Consideration of Reports: CAR, para. 54., *supra* note 45

¹²⁹ *Loi n°06.032 du 27 Décembre 2006 portant protection de la femme contre les violences en République Centrafricaine* ('Loi de 2006 portant protection de la femme').

¹³⁰ *Loi n°06.005 du 20. June 2006 Bangayassi relative à la santé de reproduction* ('Loi Bangayassi').

¹³¹ *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*.

¹³² *Loi organique portant création de la Cour Pénale Spéciale*, *supra* note 56.

magistrates have in accessing the most recent versions of the law as well as owing to the lack of appropriate training available to the legal profession.¹³³

The 2010 Penal Code criminalises the core international crimes in separate provisions: Article 152 covers genocide, Article 153 crimes against humanity and Articles 154 to 157 war crimes. The contextual element of the crime of genocide is almost identical to Article 6 of the ICC Statute, except that the national provision specifies that the crimes must be committed as part of an agreed plan and it extends the number of the targeted groups to any other groups based on “any arbitrary criteria”.¹³⁴ The contextual element of crimes against humanity in Article 153 is identical to that found in the ICC Statute.¹³⁵ However, the 2010 Penal Code includes an additional underlying act: the practice of carrying out mass and systematic summary executions.¹³⁶ In contrast to the ICC Statute, the definition of crimes against humanity in the Penal Code does not cover persecution based on gender grounds.¹³⁷ This omission could impact negatively SGBV prosecutions. Finally, the articles criminalising war crimes in the 2010 Penal Code do not require a contextual element for the commission of war crimes, such as being part of a plan or policy.¹³⁸ The national provision merely lists the different categories of war crimes laid out in Article 8 of the ICC Statute, for instance, grave breaches of the Geneva Conventions, without specifying the underlying acts.¹³⁹ It also includes an additional paragraph providing that Article 156 on crimes committed in non-international armed conflict also applies to conflicts between the government and organised armed groups on its territory.¹⁴⁰ This paragraph is consistent with Article 8(2)(f) of the ICC Statute specifying that the provisions on non-international armed conflicts also apply to “protracted armed conflicts between governmental authorities and organised armed groups or between such groups”.¹⁴¹

The following sections aim to compare the CAR provisions on sexual offences to those found in the relevant international instruments, notably the ICC Statute and the EoC. It is important to note that the provisions discussed in this section are meant to address the crimes as ordinary crimes. Whilst genocide, crimes against humanity and war crimes have been incorporated in the Penal Code, the definitions of each of the sexual violence acts have not. Consequently, ordinary law provisions would apply.

4.1. Rape

Rape was criminalised as a separate crime for the first time in the new Penal Code of 2010.¹⁴² The definition of the crime of rape can be found in two different pieces of legislation. Article 87 the 2010 Penal Code defines rape as:

Any act of sexual penetration, whatever its nature, committed against another person by violence, constraint, threat or surprise, is qualified as rape.¹⁴³

¹³³ WBG Understanding Access to Justice and Conflict Resolution, p.19, *supra* note 32.

¹³⁴ *Loi portant Code Pénal centrafricain*, Article 152, *supra* note 42.

¹³⁵ *Ibid.*, Art. 153.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*, Arts. 154-157.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*, Art. 157.

¹⁴¹ ICC Statute, Art. 8(2)(f).

¹⁴² Joint Communiqué of the CAR and the UN, p. 1, *supra* note 3.

¹⁴³ As translated into English by John Rason SPENCER QC in 2006 in the French Penal Code.

Rape is punished by hard labour for a definite period.

If the crime was committed against a child below 18, the person responsible will be sentenced to the maximum of time of hard labour.

Any indecent assault, committed or attempted, on a child below 15 of any gender is qualified as rape.

In previous cases, if the persons responsible are ascending relatives of the person against whom the crime has been committed, if they are from a superior social class having authority on the person, if they are teachers or a servant to the above-mentioned persons, or to a school where the person is a student, if they are minister of a religious group or if the person responsible, whoever he/she is, was assisted to commit the crimes by one or several persons, the penalty will be increased by a degree.¹⁴⁴

Rape is also criminalised in Law No. 06-032 on the Protection of Women from Violence in CAR:

Rape is understood as, any act of sexual penetration, whatever its nature, committed against another person by violence, constraint, threat or surprise.¹⁴⁵

The definition of rape in both provisions is essentially the same. It is worth mentioning that the definition of the 2010 Penal Code is identical to the one used in the French Penal Code in Articles 222-223.¹⁴⁶ Although an effort is made to ensure that the provisions are gender-neutral, the second part of Article 87 of the Penal Code uses “her” on several occasions. While this pronoun may simply refer to the noun “person”, which is feminine in French, its use could potentially lead to confusion.

Article 87, 2010 Penal Code: “[A]ny act of sexual penetration”

The national provision does not provide for further clarification on the exact meaning of the term “penetration”. It is therefore difficult to assess whether it would be consistent with the EoC providing that rape requires an act of penetration “however slight”.¹⁴⁷ Consistent with the rule that the law must be interpreted strictly, the absence of any precision suggests that the act of penetration in rape does not extend to “slight” penetration. As the EoC explicitly specify that penetration can also be slight, this suggests that slight penetration would not have qualified as rape otherwise. The national provision can therefore be seen as narrower than the international rule.

Likewise, the national provision does not expand on the meaning of “sexual penetration”. The EoC explicitly state that the sexual character of the offence is either linked to what is used for the penetration, for example a sexual organ, or it is related to the part of the body of the victim that is penetrated “with any object or any other part of the body”.¹⁴⁸ Therefore, the definition covers a wide range of different situations. That the national legislation does not provide for similar details and the term “sexual penetration” can lead to different interpretations and possibly also restrictions. Moreover, contrary to the EoC, the national provision does not specify whether rape can be committed by using objects. It is difficult to determine

¹⁴⁴ *Loi portant Code Pénal centrafricain*, Art. 87, *supra* note 42.

¹⁴⁵ *Procédures opérationnelles standards*, p. 19, *supra* note 49.

¹⁴⁶ *French Penal Code*, Arts. 222-223.

¹⁴⁷ *EoC*, Art. 7(1)(g)-1.

¹⁴⁸ *Ibid.*, Art. 7(1)(g)-1.

whether the CAR provision is therefore wider or narrower, since such determination would depend on how the courts would interpret it in practice. The interpretation of the provision by the French Court of Cassation can be useful in shedding light on this issue. In its decision dated 6 December 1995, the French Court of Cassation ruled that penetration using an object could be considered as rape if there was the intent to commit an act of sexual nature.¹⁴⁹ In the absence of such intent, the act would be considered as an act of torture.¹⁵⁰ It is important to note, however, that the courts of CAR are not bound to follow the interpretation provided by the French Court of Cassation.

Article 87, 2010 Penal Code: “[W]hatever its nature”

This part of the provision refers to sexual penetration. However, the exact meaning of “whatever its nature” is unclear. At first glance, it suggests the Penal Code provision is very broad, covering any kind of sexual penetration. Since the definition is identical to the one found in the French Penal Code, the French jurisprudence may again be of help in understanding the extent of “whatever its nature”. This term was first introduced by the new French Penal Code of 1992.¹⁵¹ The purpose of including this new provision was to cover all possible rape scenarios. To this end, this term was initially interpreted broadly by the French Cour de Cassation to include cases where the body of the perpetrator was penetrated.¹⁵² This interpretation of “whatever its nature” would be consistent with the definition in the EoC, which also provides that penetration can be of “any part of the body of the victim or of the perpetrator”.¹⁵³ The decision of the Court of Cassation of 16 December 1997 was, however, overturned by another decision of the same Court on 22 August 2001 ruling that rape can only be committed if there is sexual penetration of the body of the victim.¹⁵⁴ This change in the jurisprudence has serious implications regarding a gender-neutral definition of rape. Limiting the definition of rape to sexual penetration of the body of the victim is likely to exclude various forms of sexual acts, notably those committed by women or men against other men or children.¹⁵⁵ It is, nevertheless, important to remember that the courts in CAR may not interpret the provision “whatever its nature” in the same way as the French Court of Cassation did. Depending on their interpretation of the provision, the national provision may be narrower if it excludes the possibility that the act of penetration also covers the penetration of the perpetrator’s body in the definition of rape.

Article 87, 2010 Penal Code: “[C]ommitted against another person”

The EoC provide that the coercive element of the crime of rape can potentially be exercised on a person other than the victim.¹⁵⁶ The national provision, on the other hand, includes violence, constraint, threat or surprise against the victim but does not envisage the involvement of a third party. In this sense, the national provision is narrower because it precludes a situation where the coercive element is not directly exercised over the victim, but on another person instead. In addition, the EoC provide detailed examples of coercion, namely, “fear of violence, duress, psychological oppression or abuse of power”.¹⁵⁷ In contrast, the provisions

¹⁴⁹ French Court of Cassation, *Arrêt du 6 décembre 1995*.

¹⁵⁰ *Ibid.*

¹⁵¹ Catala and Associés, *Les Agressions Sexuelles*.

¹⁵² French Court of Cassation, *Arrêt du 16 décembre 1997*.

¹⁵³ EoC, Art. 7(1)(g)-1, (emphasis added).

¹⁵⁴ French Court of Cassation, *Arrêt du 22 août 2001*.

¹⁵⁵ Catala and Associés, *Les Agressions Sexuelles*.

¹⁵⁶ EoC, Art. 7(1)(g)-1.

¹⁵⁷ *Ibid.*, Art. 7(1)(g)-1.

in the national legislation broadly refer to “violence, constraint, threat or surprise” without further detail on what this could imply. It is again difficult to determine whether the national provision would be wider or narrower, since it depends on how these terms will be interpreted by the courts. Article 87, however, provides for aggravating circumstances when the person responsible holds a special position in relation to the victim, notably a position of superiority. This provides, to some extent, further detail on the meaning of the coercive element of the crime of rape. The different types of persons mentioned in Article 87 could, for example, be in a position to exercise psychological oppression, abuse of power or create a coercive environment. Article 117 of the 2010 Penal Code also provides for aggravating circumstances when rape is committed against a particularly vulnerable woman, including someone suffering from a mental or physical disability.¹⁵⁸ This provision could also correspond to the aspect related to committing the crime of rape against “a person incapable of giving genuine consent”¹⁵⁹ in the EoC.

Article 87, 2010 Penal Code: “Any indecent assault, committed or attempted, on a child below 15 of any gender is qualified as rape”

Article 87 of the 2010 Penal Code extends the scope of the definition of rape to other forms of sexual abuses committed on a child, under 15 years, regardless of whether the child is a girl or a boy. As a result, the range of acts that can be prosecuted as rape is wider because the indecent assault is not limited to acts involving sexual penetration or involving an element of coercion. The indecent assault covered in Article 86 can actually be committed with or without violence.¹⁶⁰ Consequently, equating an indecent assault committed against a child under 15 years with rape stretches the definition of rape. The national provision is therefore wider than the comparable provision under the ICC Statute.

4.2. Sexual slavery

Article 153 of the 2010 Penal Code criminalises sexual slavery as an underlying act of crimes against humanity.¹⁶¹ It explicitly mentions “sexual slavery”, in line with Article 7 of the ICC Statute,¹⁶² but it does not provide further detail on what this entails. The crime of sexual slavery could also, to some extent, be covered by Article 151 of the Penal Code on human trafficking, since it clearly states that the purpose of exploitation could also include sexual exploitation.¹⁶³ The provisions on prostitution could also be used to prosecute crimes related to sexual slavery as will be seen in the next section. The EoC clearly establish the link between enslavement and trafficking of women and children but distinguish sexual slavery from enslavement.¹⁶⁴ On this issue, Patricia Viseur Sellers rightly points out that the distinction between sexual slavery and enslavement may result “in inadequate judicial redress” since victims of sexual slavery are often also victim of other forms of enslavement.¹⁶⁵ She highlights the risk of exclusively using sexual slavery when the victim is a woman and enslavement when the victim is a man.¹⁶⁶

¹⁵⁸ *Loi portant Code Pénal centrafricain*, Art. 117, *supra* note 42.

¹⁵⁹ EoC, Art. 7(1)(g)-1.

¹⁶⁰ *Loi portant Code Pénal centrafricain*, Art. 86, *supra* note 42.

¹⁶¹ *Ibid.*, Art. 153.

¹⁶² ICC Statute, Art. 7.

¹⁶³ *Ibid.*, Art. 151.

¹⁶⁴ EoC, Art. 7(1)(g)-2, footnote 18.

¹⁶⁵ Patricia Viseur Sellers, “Wartime Female Slavery: Enslavement?”, *Cornell International Law Journal*, 2011, vol. 44, no. 1, p. 139.

¹⁶⁶ *Ibid.*, p.140.

In the particular context of CAR, using the definition of human trafficking to prosecute sexual slavery may therefore be welcome to avoid this feminisation of sexual slavery.

Since sexual slavery can be also prosecuted as forced marriage, additional provisions in the CAR legislation may be of relevance. Article 105 of the 2010 Penal Code, which deals with forced marriage of a female minor following her abduction, could be relevant.¹⁶⁷ However, this provision refers to the preceding article (Article 104) and is therefore limited to abduction by a member of the school personnel.¹⁶⁸ The scope of this provision appears too narrow to be applicable. Article 210 of the 1997 Family Code requires consent from both spouses to enter into marriage whereas Article 211 provides that persons having parental authority must give their consent to allow a minor under 18 years to enter into marriage.¹⁶⁹ Article 11 of Bangayassi Law No. 06-005 on reproductive health explicitly states that “every person, having reached the required legal age, can choose freely, in a responsible manner, to marry. The marriage must be contracted with the free consent of the future spouses”.¹⁷⁰ Although this Article reiterates that both spouses must consent to marriage, it does not directly criminalise forced marriage as such; nor does the 2010 Penal Code. Forced marriage in CAR is therefore primarily treated as a civil matter, in the sense that it restricts the rights of the victim to freely marry and establish a family. It does not necessarily involve a sexual or gender-based element, unlike the crime of sexual slavery. The ICC decision on the confirmation of charges against Dominic Ongwen, however, suggests that forced marriage could nevertheless be prosecuted as a criminal act, not of a sexual nature, under the charge of other inhumane act.¹⁷¹ The same could be envisaged in the context of CAR.

The following analysis will focus on a comparison between the national provision in Article 151 and the international definition of sexual slavery.¹⁷²

Article 151 reads:

Human trafficking is the recruitment, transport, transfer, accommodation, or reception of a person¹⁷³ in the following circumstances:

- by 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 person for the purpose of exploitation.

[...]

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.¹⁷⁴

¹⁶⁷ *Loi portant Code Pénal centrafricain*, Art. 105, *supra* note 42.

¹⁶⁸ *Ibid.*, Arts. 104 and 105.

¹⁶⁹ *Loi n°97.013 portant Code de la Famille*, Arts. 210 and 211, *supra* note 50.

¹⁷⁰ *Loi Bangayassi*, Art. 11, *supra* note 130.

¹⁷¹ ICC, *Ongwen*, PTC II, Decision on the confirmation of charges against Dominic Ongwen, ICC-02/04-01/15, 23 March 2016.

¹⁷² EoC, Art. 7 (1)(g)-2.

¹⁷³ As translated into English by John Rason SPENCER QC in 2006 in the French Penal Code.

¹⁷⁴ *Loi portant Code Pénal centrafricain*, Art. 151, *supra* note 42.

This definition is borrowed from the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children of 2000 or Palermo Protocol.¹⁷⁵ It is important to note that Article 151 on human trafficking is, by definition, much broader than the definition of sexual slavery in the EoC of the ICC Statute, since it covers a broad range of acts related to trafficking only. Nevertheless, the fact that this provision explicitly refers to sexual exploitation suggests that it could be used to prosecute some forms of sexual slavery. It is therefore relevant to examine whether Article 151 could reflect the different elements of sexual slavery in the ICC Statute.

Article 151, 2010 Penal Code: “Human trafficking is the recruitment, transport, transfer, accommodation, or reception of a person”¹⁷⁶

A first issue to consider is that the CAR provision does not convey the notion of ownership, which is one of the determining features in the definition of sexual slavery in the ICC Statute. The terms used to refer to trafficking, namely “recruitment, transport, transfer, accommodation or reception of a person” do not explicitly refer to the notion of ownership, as “purchasing, selling [...]” would. The terms “transport, transfer [...]” could nevertheless encompass a similar notion and suggest that the person may not be able to take decisions voluntarily. It is not clear whether the national provision can be considered to be wider or narrower than the ICC Statute. It could be considered wider, since the CAR provision does not explicitly encompass the notion of ownership and is, therefore, not limited to specific actions. However, the scope of each provision is different: the national provision deals with how a person is treated for the purpose of exploitation (“recruited, transported [...]”), whereas the international provision considers what the person is used for (“sold, lent [...]”). Moreover, the definition of human trafficking contains a notion of movement, which is absent from the definition of sexual slavery. It does not mean, however, that the national provision would exclude recruiting a person for the purpose of selling them, especially since the purposes of exploitation included in Article 151 also include slavery.¹⁷⁷

Article 151, 2010 Penal Code: “[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 person for the purpose of exploitation”

This aspect of Article 151 clearly refers to the coercive dimension of the crime of human trafficking. It is therefore consistent with the sexual slavery provision in the EoC, which encompasses the notion of control over the person with the use or threat of using force. The national provision is very detailed on the different means that can be used to induce a person to be used for the purpose of exploitation. It can be argued that the national provision is wider than the international rules since it also includes other means, besides coercive means, such as fraud, deceit or offering remuneration to another person having authority over the victim.

¹⁷⁵ UN, *Protocole additionnel à la convention des Nations Unies contre la criminalité transnationale organisée visant à prévenir, réprimer et punir la traite des personnes en particulier des femmes et des enfants 2000*, Art. 3.

¹⁷⁶ As translated into English by John Rason SPENCER QC in 2006 in the French Penal Code.

¹⁷⁷ *Loi portant Code Pénal centrafricain*, Art. 151, *supra* note 42.

Article 151, 2010 Penal Code: “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”

An essential element of the crime of sexual slavery in the ICC Statute regime is that it must cover acts of a sexual nature. Article 151 does not specifically criminalise acts of a sexual nature but states the “purposes of exploitation” can refer to “prostitution of others and other forms of sexual exploitation”.¹⁷⁸ It would therefore cover acts of sexual nature as well. There is no further detail in the national legislation on the meaning of “forms of sexual exploitation”. Finally, it is important to note that the national provision on human trafficking does not distinguish in accordance with the victim’s gender.

4.3. Enforced prostitution

Like sexual slavery, enforced prostitution is one of the underlying acts listed under crimes against humanity in Article 153 of the 2010 Penal Code.¹⁷⁹ This is the only provision explicitly criminalising enforced prostitution as a separate crime. Bangayassi Law No. 06-005 on reproductive health also makes reference to “enforced prostitution”.¹⁸⁰ However, this law does not criminalise enforced prostitution but states that this crime is criminalised at the national level because it affects rights relating to sexual and reproductive health.¹⁸¹ Other provisions could nevertheless be relevant in order to prosecute the crime of enforced prostitution at the national level, notably the provisions relating to prostitution.

Article 90 of the 2010 Penal Code provides that:

Will be considered as procurer and punished by 1 to 5 years of 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 his/her 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.¹⁸²

¹⁷⁸ *Ibid.*, Art. 151.

¹⁷⁹ *Ibid.*, Art. 153.

¹⁸⁰ *Loi Bangayassi*, Art. 29, *supra* note 130.

¹⁸¹ *Ibid.*, Art. 29.

¹⁸² *Loi portant Code Pénal centrafricain*, Art. 90, *supra* note 42.

Another relevant provision can be found in Law No. 06-032 on the Protection of Women from Violence in the CAR. It contains essentially the same definition as with the 2010 Penal Code, except for slight discrepancies discussed below.

Article 26 of the Law No. 06-032 provides that:

Will be considered as procurer and punished by 1 to 5 years of imprisonment and a fine of 500,000 to 3,000,000 francs CFA, him or her:

- 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 a person, even of the age of majority, for the purpose of prostitution, or to causes 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.¹⁸³

Article 27 of the same law also provides for aggravating circumstances on the basis of different factors, notably the use of coercion, abuse of power or whether the procurer has a special relationship with the victim.¹⁸⁴ Article 28 of Law No. 06-032 criminalises the contribution to the debauchery of minors and the access to facilities for the purpose of prostitution.¹⁸⁵ It is worth noting that the definition in Law No. 06-032 is more clearly gender-neutral than the Penal Code definition, since it explicitly states that the procurer can be a man or a woman.¹⁸⁶ It is also important to bear in mind that these national provisions are about prostitution and procuring and not specifically about the crime of enforced prostitution. These provisions can, nevertheless, be read together with Article 151 of the 2010 Penal Code, covering human trafficking for the purpose of prostitution.¹⁸⁷

Article 90, 2010 Penal Code: “Will be considered as procurer and punished by imprisonment of 1 to 5 years and a fine of 100,000 to 1,000,000 francs, whoever: 1. Habitually, aids, assists or knowingly protects the prostitution of another person or the soliciting for the purpose of prostitution; [...] 5. Serves as an intermediary, on any basis, between the persons engaged in prostitution or in debauchery and the individuals who exploit or pay for prostitution or debauchery of another person”

Enforced prostitution, as defined in the EoC, requires the procurer to be the cause for one or more persons to engage in prostitution. The role of the procurer is therefore central in defining enforced prostitution. The national provisions also make reference to the specific role the procurer plays in relation to prostitution. While the EoC state that “the perpetrator caused

¹⁸³ *Loi de 2006 portant protection de la femme*, Art. 26., *supra* note 129

¹⁸⁴ *Ibid.*, Art. 27.

¹⁸⁵ *Ibid.*, Art. 28.

¹⁸⁶ *Ibid.*, Art. 26.

¹⁸⁷ *Loi portant Code Pénal centrafricain*, Art. 151, *supra* note 42.

one or more persons to engage in one or more acts of sexual nature”,¹⁸⁸ the national provision provides for much more detail in relation to the different modes of liability engaged in procuring. In this sense, the national provision can be seen as narrower since having more detail on the modes of liability can limit the number of situations in which a perpetrator could be held responsible for procuring, and indirectly enforced prostitution. That being said, the terms used to describe the different ways an individual may be involved in causing another person to engage in prostitution are sufficiently broad so as to cover a wide range of situations.

Article 90, 2010 Penal Code: “By any means, shares the products of the prostitution of another person or receive an allowance from a person usually engaged in prostitution; 3. Knowingly lives with a person who is usually engaged in prostitution, and cannot justify sufficient income to allow him/her to be self-sufficient”

Another element of the crime of enforced prostitution is that the perpetrator, or another person, “obtain or expected to obtain pecuniary or other advantage”.¹⁸⁹ This notion is also contained in the national provision which mentions explicitly that the procurer takes advantage of the benefits of the prostitution, either by directly receiving the products or by using the income generated by the prostitution to live from.¹⁹⁰ Both international and national provisions encompass the same idea and all provide that the procurer can directly receive the benefits of prostitution or share them with another person.¹⁹¹ In this sense, the national provision follows the international one. Both envisage that the products can take any form and are not limited to pecuniary benefits. They differ slightly in that the national provision explicitly provides that the advantages may be limited to covering the living expenses of the procurer, while the EoC do not enter into such detail.¹⁹² Another slight difference lies in the fact that the EoC consider that the pecuniary or other advantage may only have been expected and not necessarily obtained, whereas the national provision refers only to obtained benefits. The national provision also uses the term “usually”, suggesting it may exclude sporadic cases of prostitution. Using this provision to prosecute the crime of enforced prostitution in CAR when it is not recurrent may be problematic.¹⁹³ It is important to note, however, that enforced prostitution is not widespread in CAR, unlike prostitution without coercion.¹⁹⁴

Article 90, 2010 Penal Code: “Hires, trains or supports, even with his/her 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”¹⁹⁵

The final element of the definition of the crime of enforced prostitution is that of coercion. The procurer must have exercised pressure on the victim to engage in prostitution. The international legal provision clearly outlines this element, which lists different ways coercion may be exercised: “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, [...] or by taking advantage of a coercive environment or such person’s or persons’ incapacity to give genuine

¹⁸⁸ EoC, Art. 7(1)(g)-3.

¹⁸⁹ *Ibid.*, Art. 7(1)(g)-3.

¹⁹⁰ *Loi portant Code Pénal centrafricain*, Art. 90, *supra* note 42.

¹⁹¹ EoC, Art. 7(1)(g)-3.

¹⁹² *Loi portant Code Pénal centrafricain*, Art. 90., *supra* note 42

¹⁹³ CEDAW Committee Consideration of Reports: CAR, para. 222, *supra* note 45.

¹⁹⁴ *Ibid.*, para 220–223.

¹⁹⁵ Emphasis added.

consent”.¹⁹⁶ Coercion is, however, less straightforward in the national provision. The national provision mainly criminalises the role of the procurer but does not directly criminalise prostitution as such. The focus is less on the victim compared to the procurer who obtains benefit from prostitution. Nevertheless, the coercive aspect of enforced prostitution can be deduced from the terms “even with his/her consent” in paragraph 4 of Article 90.¹⁹⁷ This suggests that a procurer may hire, train or support a person without their consent and this would amount to enforced prostitution. It is also important to remember that Article 90 can be read in combination with Article 151 on human trafficking, which includes prostitution in the purposes of exploitation.¹⁹⁸ As mentioned above, Article 151 explicitly refers to the coercive element of human trafficking.¹⁹⁹ The coercive element of enforced prostitution could therefore be also read into Article 151. In light of the distinct objectives of the national provisions, it is difficult to determine whether they are in line with the EoC with regard to the coercive element of enforced prostitution. The answer depends on whether the prostitution provisions are used to prosecute enforced prostitution and whether they would be used in conjunction with the provisions on human trafficking. The provisions covering prostitution in Law No. 06-032 of 2006 on the Protection of Women from Violence do not encompass the terms “even with his/her consent”.²⁰⁰ The enactment of the Penal Code in 2010, four years after this law, indicates that these terms have been added intentionally and are now the law in force. This supports the idea that the provision on prostitution was meant to be applied to situations of prostitution without the consent of the person engaged in prostitution and would therefore cover cases of enforced prostitution.

4.4. Forced pregnancy

The crime of forced pregnancy is criminalised in Article 153 of the 2010 Penal Code.²⁰¹ Article 153 specifically includes “forced pregnancy” as one of the underlying acts of crimes against humanity. There is no other provision in the national legislation dealing with the crime of forced pregnancy but this crime may potentially be prosecuted under different crimes, such as torture. Since the provision on “forced pregnancy” in the national legislation replicates the one found in the ICC Statute, prosecuting an individual for forced pregnancy would require the same elements. These elements are: the perpetrator confining one or more women; the victim being forcibly made pregnant, and the perpetrator’s intent to affect the ethnic composition of any population or to carry out other grave violations of international law.²⁰² However, given that the national provision, besides incorporating the crimes against humanity provision of ICC Statute provides no further detail on how it would be interpreted by the courts in CAR, no comparative analysis can be made at this stage.

¹⁹⁶ EoC, Art. 7(1)(g)-3.

¹⁹⁷ *Loi portant Code Pénal centrafricain*, Art. 90, *supra* note 42.

¹⁹⁸ *Ibid.*, Art. 151.

¹⁹⁹ *Ibid.*

²⁰⁰ *Loi de 2006 portant protection de la femme*, Art. 26, *supra* note 129.

²⁰¹ *Loi portant Code Pénal centrafricain*, Art. 153, *supra* note 42.

²⁰² EoC, Art. 7(1)(g)-3.

4.5. Enforced sterilisation

Article 153 of the 2010 Penal Code criminalises enforced sterilisation.²⁰³ In addition, Article 7 of Bangayassi Law No. 06-005 on reproductive health provides that every person has a right to procreate and must be free to do so whenever they so desire.²⁰⁴ Article 16 of the same law provides that every person has the right not to be subjected to torture, punishment and cruel, inhuman or degrading treatments on their organs in general and in particular on reproductive organs.²⁰⁵ These provisions do not specifically criminalise enforced sterilisation. They could, however, be relevant in prosecuting SGBV and will be discussed further below. The CAR legislation only includes Article 153 of the 2010 Penal Code, which explicitly criminalises enforced sterilisation as a separate crime.

The Penal Code nevertheless encompasses two other provisions that could be used to prosecute enforced sterilisation. Article 77 criminalises the crime of castration, which is punished by hard labour for life or a death penalty, if the castration caused the death of the victim.²⁰⁶ Article 78 criminalises provoking abortion by using food, beverage, medicines, manipulations or any other means, with or without the consent of the pregnant woman.²⁰⁷ It must be noted, however, that Article 79 of the Penal Code of 2010 authorises abortion, provided that any of the conditions listed in this article are fulfilled.²⁰⁸

The international definition of enforced sterilisation includes the following elements: the perpetrator deprived one or more persons of biological reproductive capacity; the conduct was not justified by a medical or hospital treatment of the person concerned and the conduct was not carried out with the genuine consent of the person or persons concerned.²⁰⁹ The crime of castration seems to be consistent with the first element envisaged in the EoC, since the castration is likely to be permanent and therefore deprive the victim of their reproductive capacity.²¹⁰ Likewise, the wording of Article 77 suggests that castration as a crime is not justified by a medical or hospital treatment and would therefore fulfil the second element of enforced sterilisation.²¹¹ Consequently, Article 77 could certainly be relied upon in for the prosecution of enforced sterilisation. Whether the provision criminalising abortion, outside the authorisation of a committee of medical doctors and under specific circumstances, could be used to prosecute enforced sterilisation is less clear. Indeed, abortion induced by substances listed in Article 78 would not necessarily result in depriving a woman of biological reproductive capacity since it may not permanently affect the reproductive organs of the woman. This could nevertheless happen in certain situations and the abortion could then be considered as an indirect form of enforced sterilisation, as provided for in the ICC Statute.²¹² Article 78 could fulfil the second element of enforced sterilisation as it covers cases when the abortion is carried out without the consent of the woman.²¹³ In a nutshell, Article 77 of the Penal Code, which criminalises castration, could be used to prosecute enforced sterilisation, consistently with

²⁰³ *Loi portant Code Pénal centrafricain*, Art. 153, *supra* note 42.

²⁰⁴ *Loi Bangayassi*, Art. 7, *supra* note 130.

²⁰⁵ *Ibid.*, Art. 16.

²⁰⁶ *Loi portant Code Pénal centrafricain*, Art. 77, *supra* note 42.

²⁰⁷ *Ibid.*, Art. 78.

²⁰⁸ *Ibid.*, Art. 79.

²⁰⁹ EoC, Art. 7(1)(g)-4.

²¹⁰ *Ibid.*, Art. 7(1)(g)-5.

²¹¹ *Ibid.*, Art. 7(1)(g)-5.

²¹² ICC Statute, Art. 7(1)(g).

²¹³ *Loi portant Code Pénal centrafricain*, Art. 77, *supra* note 42.

the ICC Statute, but Article 78 on abortion would only be consistent with the international provision on enforced sterilisation if the abortion occurred under specific conditions.

4.6. Other forms of sexual violence of comparable gravity

Article 7(1)(g) of the ICC Statute is an open-ended provision which, in addition to the SGBV crimes listed, includes “any other form of sexual violence of comparable gravity”.²¹⁴ Such crimes must involve acts of sexual nature, a coercive dimension and must be of comparable gravity as the other crimes listed in the provision.²¹⁵ In addition, the perpetrator must be “aware of the factual circumstances that established the gravity of the conduct”.²¹⁶ The national legislation criminalises various offences of a sexual nature that could possibly fall under the scope of other forms of sexual violence of comparable gravity. The following section will assess whether the provisions criminalising these crimes encompass the different elements contained in the definition of other forms of sexual violence under the EoC.

4.6.1. Indecent assault

A first national provision falling under the scope of other forms of sexual violence of comparable gravity is the criminalisation of indecent or sexual assault in Article 86 of the 2010 Penal Code:

All indecent assault committed or attempted without violence on the person of a child of any gender, will be punished by imprisonment of 1 month and one day to 5 years and by a fine of 100,002 to 800,000 francs.

Imprisonment will be from 2 to 5 years if the child, a female, aged 18 and not emancipated by marriage, is student in a school and the perpetrator is working in this school.

Anyone who would have committed or attempted a crime of indecent assault with violence against individuals of any gender, will be punished by imprisonment of 5 to 10 years.²¹⁷

Article 86 covers indecent assault against a minor. The sexual character of the offence is not explicit but the term indecent assault is an old way of referring to sexual assault. The old French Penal Code also referred to indecent assault but this provision was replaced during the 1994 Penal Code reform by the term “sexual offence”.²¹⁸ Moreover, Article 86 of the CAR Penal Code follows, in terms of its placement within the Code, the criminalisation of indecent exposure and can be found before the criminalisation of rape, in a chapter dedicated to indecent behaviour. This confirms the sexual nature of the acts criminalised by indecent assault.

The national provision stipulates that indecent assault may not necessarily encompass a coercive dimension. The first paragraph of Article 86 explicitly states that indecent assault can be committed against a child without violence.²¹⁹ In this case, the provision fails to encompass the necessary coercive aspect to qualify as “another form of sexual violence” under the

²¹⁴ ICC Statute, Art. 7(1)(g).

²¹⁵ EoC, Art. 7(1)(g)-6.

²¹⁶ *Ibid.*, Art. 7(1)(g)-6.

²¹⁷ *Loi portant Code Pénal centrafricain*, Art. 86, *supra* note 42.

²¹⁸ Legifrance, “Descripteur: ATTENTAT A LA PUDEUR | Legifrance”.

²¹⁹ *Loi portant Code Pénal centrafricain*, Art. 86, *supra* note 42.

ICC Statute. However, the third paragraph of the same provision includes the possibility that indecent assault may be committed with violence, thus attracting a more severe penalty.²²⁰ There is no further detail on what using violence would entail exactly but it is likely to include the forms of coercion covered in the EoC. As a result, provided the indecent assault is committed with violence, it can be deduced that the coercive element required in the EoC is fulfilled. The national provision is therefore wider than the ICC Statute since it also criminalises forms of sexual offences committed without violence.

The last element indicating whether an offence falls under the scope of other forms of sexual violence is that of comparable gravity. The wording of Article 86 does not allow a determination as to whether the offence of indecent assault would be of comparable gravity as the other crimes of sexual violence, because Article 86 could cover a wide range of different forms of sexual offences. It is important to note, however, that indecent assault against a child below the age of 15 qualifies as rape, as discussed in the section on rape above. As a result, indecent assault, at least against a child, is considered to be of a similar gravity to rape.

4.6.2. Female genital mutilation

Another national provision that could possibly fall under the scope of other forms of sexual violence in Article 7 of the ICC Statute is the prohibition of female genital mutilation in the 2010 Penal Code.

Articles 114 to 116 of the Penal Code provide that:

Anyone who, using traditional or modern methods, will have performed or attempted to perform or facilitated the excision or any other methods of female genital mutilations, will be punished by imprisonment of 1 to 5 years and a fine of 100,002 to 1,000,000 francs. The penalty will be doubled in case of recidivism.

If the mutilations have caused the death of the victim, the perpetrators will be punished by hard labour for life.

Will be punished by imprisonment of 6 months to 1 year and a fine of 50,002 to 500,000 francs, whoever, knowing that an excision is planned or performed, will not have informed the relevant national authorities.²²¹

The offence of performing female genital mutilation is inherently of a sexual nature. The sexual character of this crime must, however, be distinguished from the crime of rape or indecent assault. The crime of female genital mutilation is of a sexual nature because it relates to a sexual part of the victim's body, without necessarily involving a sexual act *per se*. In this sense, female genital mutilation may be seen as being closer to torture, cruel, inhuman and degrading treatment, than rape or indecent assault. That being said, it could nevertheless be considered as an act of a sexual nature, similar to enforced sterilisation, as understood in the EoC.²²²

Regarding the coercive dimension of the crime, the national provision is silent on the potential coercive aspect of female genital mutilation. A possible reason explaining this could be

²²⁰ *Ibid.*, Art. 86.

²²¹ *Ibid.*, Arts. 114-116.

²²² EoC, Art. 7(1)(g)-6.

that the coercion may not be as direct as it is when compared to other sexual crimes. The coercion exercised on the victim may be more subtle through the pressure imposed by the culture, the victim's family or community and not by the perpetrator themselves. In the absence of a direct reference to coercion in the national provision, it is difficult to determine whether the criminalisation of female genital mutilation would be considered as another form of sexual violence, in accordance with Article 7(g) of the ICC Statute.

In relation to the gravity of the crime, Article 115 of the Penal Code provides that if the mutilation has caused the victim's death, the penalty will be harsher.²²³ This suggests that the commission of the crime of female genital mutilations is of comparable gravity as the other sexual violence crimes. Another indication of particular gravity is that Article 116 of the Penal Code provides that anyone who knew about a planned or already performed excision and did not inform the relevant national authorities may also be subject to a penalty.²²⁴ As a result, it can be safely assumed that the crime of female genital mutilation is of equal gravity to other forms of sexual violence listed in Article 7(g) of the ICC Statute.

4.6.3. Sexual harassment

The criminalisation of sexual harassment in the 2010 Penal Code can potentially be considered as another form of sexual violence.²²⁵ The same provision can be found in Article 25 of Law No. 06-032 on the Protection of Women from Violence. This crime, however, is not of comparable gravity to the other SGBV crimes covered by Article 7(g) of the ICC Statute. Sexual harassment is criminalised in Article 96 of the Penal Code, which provides:

The act of harassing another person by using orders, threats, constraint or serious pressure, with the aim of obtaining favours of a sexual nature by a person abusing of the authority that is attached to his/her office, is punished by 1 year of imprisonment and a fine of 50,002 to 500,000 francs.²²⁶

The offence of sexual harassment is clearly of a sexual nature since the purpose of harassing is to obtain sexual favours. As the perpetrator causes the victim to engage in an act of sexual nature, sexual harassment would meet the first element of the EoC' definition.²²⁷ However, applying this condition is not as straightforward as it would be in the case of enforced prostitution.

The coercive aspect is present in the national provision on sexual harassment as one of the most important elements of the crime of harassment. The different forms that the coercion can take are explicitly stated in Article 96 and are consistent with the different forms of coercion suggested in the EoC.²²⁸ In this sense, the offence of sexual harassment would also fulfil the coercion element provided for in the EoC.

The offence of sexual harassment may, nevertheless, not qualify as 'other forms of sexual violence' under Article 7(g) of the ICC Statute, because it may lack sufficient gravity. This is

²²³ *Loi portant Code Pénal centrafricain*, Art. 115, *supra* note 42.

²²⁴ *Ibid.*, Art. 116.

²²⁵ *Loi de 2006 portant protection de la femme*, Art. 25, *supra* note 129.

²²⁶ *Loi portant Code Pénal centrafricain*, Art. 96, *supra* note 42.

²²⁷ EoC, Art. 7(1)(g)-6.

²²⁸ *Ibid.*, Art. 7(1)(g)-6.

particularly true since the provision is limited to criminalising the act of harassing, but does not cover any sexual offences that may result from the harassment. Nothing in the national provision indicates the level of the gravity that the sexual harassment may take. Consequently, the offence of sexual harassment may not be sufficiently serious to be prosecuted as a crime under Article 7(g) of the ICC Statute.

Other offences of a sexual nature prohibited in the 2010 Penal Code could also be used to prosecute SGBV. These other crimes include paedophilia in Article 110²²⁹ and child pornography in Article 111.²³⁰

4.7. Other criminalisation of sexual violence

The previous sections discussed national provisions criminalising offences directly related to sexual violence. The following section outlines other options that could be considered to prosecute SGBV as part of another crime, not explicitly of a sexual nature.

4.7.1. Torture and other cruel, inhuman or degrading treatment or punishment

The crime of torture is criminalised by Articles 118 to 120 of the 2010 Penal Code and Article 16 of Bangayassi Law No. 06-005 on reproductive health.²³¹ Torture is relevant in prosecuting SGBV crimes because sexual violence can also be classed as an act of torture or cruel, inhuman or degrading treatment. This has been confirmed by the UNSG who points out in his 2016 report on conflict-related sexual violence that sexual violence, particularly against men, is regularly used as a form of torture, notably in Libya and Syria.²³² Articles 118 to 120 of the 2010 Penal Code provide that torture may be committed before, during or after the commission of another crime.²³³ The relevance of using the crime of torture as a possible avenue for SGBV prosecutions is confirmed by Article 16 of the Bangayassi Law No. 06-005 on reproductive health, which specifically deals with torture or other cruel, inhuman and degrading treatments in relation to reproductive organs.²³⁴

4.7.2. Violence against women

Law No. 06-035 on the Protection of Women from Violence includes provisions that are specifically designed to protect women from different forms of violence. Article 29 of this law does not explicitly refer to acts of sexual nature but it is nevertheless clearly linked to SGBV.²³⁵ Moreover, Article 29 criminalises forms of violence resulting in mutilations, which could potentially be of a sexual nature.²³⁶ Like in the case of torture, these forms of violence may be committed as part of another SGBV crime and can be used to prosecute the perpetrators,

²²⁹ *Loi portant Code Pénal centrafricain*, Art. 110, *supra* note 42.

²³⁰ *Ibid.*, Art. 111.

²³¹ *Ibid.*, Arts. 118-120; *Loi Bangayassi*, Art. 16, *supra* note 130.

²³² UNSG Report on conflict-related sexual violence, para. 8., *supra* note 16

²³³ *Loi portant Code Pénal centrafricain*, Art. 120, *supra* note 42.

²³⁴ *Loi Bangayassi*, Art. 16., *supra* note 130

²³⁵ *Loi de 2006 portant protection de la femme*, Art. 29, *supra* note 129.

²³⁶ *Ibid.*, Art. 29.

when there is no sufficient evidence to prove the commission of another sexual crime.

4.7.3. Violence against widows and widowers

Another form of gender-based violence criminalised in the Penal Code and the Law on the Protection of Women from Violence is violence against widows and widowers. Both Article 30 of the Law on the Protection of Women from Violence and Article 112 of the 2010 Penal Code prohibit physical violence against the widow and depriving the widow of the necessary resources to live, after the death of her husband, during the mourning ceremony and during widowhood.²³⁷ This provision did not exist in the earlier Penal Code. National law criminalises these forms of violence because of traditional widowhood rites. Acts of violence against widows come from the belief that the spirit of the dead husband stays with the widow and psychological and physical violence, as well as dispossession, can help to chase the spirit away.²³⁸ The above-mentioned national provisions are mainly aimed at protecting women from these forms of sexual violence, but the 2010 Penal Code also includes a provision criminalising these acts in gender-neutral terms, therefore covering both widows and widowers, in the section dedicated to assault and battery.²³⁹

4.7.4. Manslaughter

SGBV crimes causing the victim's death could also be prosecuted as manslaughter, provided that the perpetrator did not intend to kill the victim. The provision on manslaughter can be found in Article 70 of the 2010 Penal Code.²⁴⁰ There are also specific provisions dealing with cases where sexual crimes caused the death of the victim, for example Article 88 on rape.²⁴¹ These provisions have already been discussed in the relevant section. The provision on manslaughter does not specifically refer to acts of a sexual nature, but it could nevertheless be used as a generic provision, when SGBV provisions do not cover the possibility of death caused as a result of the crime.

4.7.5. Imprisonment or other severe deprivation of physical liberty

Imprisonment or other severe deprivation of physical liberty is criminalised in Articles 97 to 101 of the 2010 Penal Code.²⁴² There is no specific reference to sexual violence in these articles but Article 101 refers to situations when deprivation of liberty is accompanied by death threats or bodily injury as well as cruel and degrading treatments or the death of the victim.²⁴³ Torture, cruel and degrading treatments can also cover acts of sexual violence. Imprisonment or other severe deprivation of physical liberty could therefore be used to prosecute SGBV crimes, for example sexual slavery or enforced prostitution, where the crimes were committed during the victim's deprivation of liberty.

²³⁷ *Ibid.*, Art. 30; *Loi portant Code Pénal centrafricain*, Art. 112, *supra* note 42.

²³⁸ CEDAW Committee Consideration of Reports: CAR, para. 212, *supra* note 45.

²³⁹ *Loi portant Code Pénal centrafricain*, Art. 75, *supra* note 42.

²⁴⁰ *Ibid.*, Art. 70.

²⁴¹ *Ibid.*, Art. 88.

²⁴² *Ibid.*, Art. 97-101.

²⁴³ *Ibid.*, Art. 101.

Other offences prohibited in the 2010 Penal Code could also be used to prosecute SGBV if there is no sufficient evidence to fulfil the requirements of any of the crimes mentioned earlier. These offences include the abduction of children (Articles 103 to 105), also covering the case of forced marriage between a female minor and a member of staff of the school she habitually attends following her abduction.²⁴⁴ Article 105 specifies that if the girl is married to the person who abducted her, the latter can only be prosecuted if the persons entitled to ask for the annulment of the marriage file a complaint.²⁴⁵ Other relevant offences include assault and battery²⁴⁶ and murder and assassination.²⁴⁷

²⁴⁴ *Ibid.*, Arts. 103-105.

²⁴⁵ *Ibid.*, Art. 105.

²⁴⁶ *Ibid.*, Arts. 67-69.

²⁴⁷ *Ibid.*, Arts. 51-58.

5

5. Legal framework: *mens rea*

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There is no general provision in the 2010 Penal Code that provides for the mental element requirement for the commission of a crime. In other words, the 2010 Penal Code does not explicitly state that the intent and knowledge of the perpetrator must be proven for an individual to be held responsible for a crime. In contrast, Article 121-3 of the French Penal Code provides that “there is no crime or delict without the intent to commit this crime or delict”.²⁴⁸ In the CAR Penal Code, the general requirement for intent can only be deduced from other provisions or is implied in the definition of each of the crimes. Article 6 of the 2010 Penal Code provides that:

[T]here is no crime or delict when the defendant has been compelled, at the time the crime occurred, by a force he or she could not resist.²⁴⁹

This means that no one can be held responsible for an act he or she committed against their will. This provision therefore covers defences, such as mental illness, and indirectly suggests that no crime or delict can be committed without intent. Article 8 also provides that:

[A]nyone can only be held criminally responsible for his/her own act. There is no crime or delict when the acts were committed in a state of psychological or neuropsychological disorder which destroyed his discernment or his/her ability to control his actions²⁵⁰ or when the person acted under an external force or constraint that he or she could not resist.²⁵¹

The relevant provisions requiring intent to attribute responsibility for a crime or a delict also deal with issues related to reasons excluding criminal responsibility. These defences seem, however, to be construed in broader terms than the grounds for excluding criminal responsibility in the ICC Statute.²⁵² These two provisions indirectly confirm that a person can only be held responsible for the commission of a crime or a delict if the *mens rea* can be proven. They do not, however, cover the second aspect of having intent to cause the consequences of the crimes.²⁵³ The latter will be covered in the provisions criminalising the specific prohibited acts. There is no separate provision on knowledge. The notion of knowledge is, however, explicitly mentioned in the section on the modes of liability in relation to the accomplices.

²⁴⁸ French Penal Code.

²⁴⁹ Loi portant Code Pénal centrafricain, Art. 6, *supra* note 42.

²⁵⁰ As translated into English by John Rason SPENCER QC in 2006 in the French Penal Code.

²⁵¹ Loi portant Code Pénal centrafricain, Art. 8., *supra* note 42

²⁵² ICC Statute, Art. 31.

²⁵³ *Ibid.*, Art. 30.

6

6. Legal framework: liabilities

6. Legal framework: liabilities

Provisions relevant to the modes of liability for the commission of crimes in the national legislation of CAR can be found in two different pieces of legislation. Articles 12 to 16 in the 2010 Penal Code deal with the modes of liability of an accomplice.²⁵⁴ Article 3 dealing with the issue of attempts and Article 161 on superior orders to commit genocide, crimes against humanity and war crimes are also relevant in this regard.²⁵⁵ Organic Law No. 15-003 on the creation, organisation and functioning of the Special Criminal Court also encompasses provisions related to the modes of liability, including command responsibility.²⁵⁶ The analysis will start first by comparing the modes of liability for crimes and delicts provided for in the Penal Code. Chapter III of the Penal Code focuses on complicity but it does not provide for any specific provision explicitly covering the responsibility of the main perpetrator of the crime.

Article 12, 2010 Penal Code: “Will be punished as accomplices of an act qualified as a crime or a delict: 1. Those who, by donation, promise, threat, abuse of authority or of power, guilty scheme and gimmicks, would have caused this act or given the instructions to commit this act”

Article 12 of the 2010 Penal Code is the equivalent to Article 25(3)(b) of the ICC Statute on ordering, soliciting or inducing the commission of the crime.²⁵⁷ The national provision is, however, more specific on the different means that can be used to order, solicit or induce a crime. It explicitly lists various forms of participation of the accomplice that could be considered as ordering, soliciting or inducing, for example making promises. The fact that the national provision explicitly states the different forms that ordering, soliciting or inducing can take suggests that the national provision may be narrower, when compared to Article 25 of the ICC Statute. Detailing these different ways of being involved may exclude some situations that could not have been foreseen, but could nevertheless be considered as ordering, soliciting or inducing.

Article 12, 2010 Penal Code: “2. Those who would have provided weapons, tools or any other means that would be used to carry out the act, knowing what they would be used for”

Article 12(2) covers the last part of Article 25(3)(c) of the ICC Statute, which deals with providing the means for the commission of the act.²⁵⁸ The national provision follows the international provision, although it is more specific than the international one. Similarly to ordering, soliciting or inducing, the national provision provides for specific examples that would be considered as providing the means to commit the act. It refers, for example, to the act of providing weapons or tools. The national provision, nevertheless, remains as wide as the in

²⁵⁴ *Loi portant Code Pénal centrafricain*, Arts. 12-16, *supra* note 42.

²⁵⁵ *Ibid.*, Arts. 3 and 161.

²⁵⁶ *Loi organique portant création de la Cour Pénale Spéciale*, Arts. 54-58, *supra* note 56.

²⁵⁷ ICC Statute, Art. 25.

²⁵⁸ *Ibid.*, Art. 25(3)(c).

ternational one, since it also includes any other means. As a result, the national provision is in line with the ICC Statute.

Article 12, 2010 Penal Code: “3. Those who have, knowingly, aided or assisted the main perpetrator(s) of the crime in the commission of the crime, who would have prepared or facilitated or those who would have 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”

This paragraph of Article 12 is equivalent to Article 25(3)(c) of the ICC Statute and covers the participation of the accomplice in aiding and assisting the principal of the crime.²⁵⁹ The national provision explicitly mentions that the accomplice must have knowledge that he or she was aiding and abetting to commit a crime. It is therefore consistent with the ICC Statute. However, the national provision refers to an additional way the accomplice may be involved in the commission of the crimes, namely by receiving benefits from the crime. This form of participation is not present in the ICC Statute. The scope of the national provision may therefore be wider than the ICC Statute, as it is able to capture more individuals.

Article 12, 2010 Penal Code: “4. Those who, knowing the criminal behaviour of the criminals involved in banditry or violence against national security, public peace, persons or properties and usually providing them with accommodation, safe haven or a place to meet”

This paragraph of Article 12 partly covers Article 25(3)(d) of the ICC Statute, although it does not clearly encompass the notion of aiming to further the criminal activity.²⁶⁰ The national provision only covers situations where the accomplice would provide assistance to the criminal group, with knowledge of their criminal purpose. However, it is not clear whether the accomplice actually aims to further the criminal activity of the group. The national provision was not designed to cover the same situation as the provisions on common purpose contained in the ICC Statute, but it may potentially be used for this purpose. This provision also includes indirect involvement in a group’s objective in order to undertake criminal activities.

The national provisions on the different forms of complicity in the 2010 Penal Code do not contain a provision on incitement to commit a crime.

Articles 3 and 4, 2010 Penal Code: “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” and “Attempts to commit delict are considered as delicts only in situations provided for by the Law”

Articles 3 and 4 of the 2010 Penal Code cover attempt for crimes and delicts.²⁶¹ Article 4 clearly states that, as a general rule, an attempt to commit a delict is not considered a delict, unlike

²⁵⁹ *Ibid.*, Art. 25(3)(c).

²⁶⁰ *Ibid.*, Art. 25(3)(c).

²⁶¹ *Loi portant Code Pénal centrafricain*, Arts. 3 and 4, *supra* note 42.

an attempt to commit a crime.²⁶² This may raise issues in relation to prosecuting SGBV since some acts within their scope are considered as delicts and not crimes. Both the international and the national provisions take into account the intent of the perpetrator and whether they changed their mind to determine whether an attempt took place or not. Article 3, however, slightly differs from Article 25(3)(f) of the ICC Statute, as it does not specify that the perpetrator must have taken substantial steps to commence the execution of the crime. Article 3 may therefore be considered to be wider than the ICC Statute because it could cover more situations when the perpetrators have not taken substantial steps. However, this would also depend on how the provision is interpreted by the courts.

Article 3 of the 2010 Penal Code further covers the situation when the perpetrator has not been able to reach the desired effect of the crime.²⁶³ In contrast, Article 25(3)(f) of the ICC Statute stipulates that “a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment”.²⁶⁴ Article 3 of the 2010 Penal Code considers that a person may not be liable for punishment, if they voluntarily abandon the commission of the criminal act before it is completed or if they fail to achieve the desired effect of the crime.²⁶⁵ Consequently, the national provision ensures that an attempt includes situations where only the first steps towards the commission of the crime were taken and where the desired effect of the crime was not reached. However, the provision in the ICC Statute considers as an attempt a situation where substantial steps have been taken towards the execution of the crime but the crime was not eventually committed. This suggests that if the crime is committed but the desired effect is not achieved it will still be considered as completed.

However, the gap between these two provisions may be filled by the mental element found in the ICC Statute which requires the perpetrator to intend to cause the consequences of the crime.²⁶⁶ Consequently, if a person intentionally fails to reach the desired effect of the crime, he or she will not meet the intent requirement under the Statute. Nevertheless, it is therefore difficult to determine whether the national provision would be wider or narrower, as more situations would be classed as attempt under national law. Factual situations that could potentially be considered as a completed crime will be treated as an attempt. That being said, whether it is an attempt or a completed crime is irrelevant in practice, as both would be punishable in the same way.

Article 161, 2010 Penal Code: “[T]he principal and the accomplice of a crime covered in the present chapter cannot escape his/her responsibility because he/she 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.”

Article 161 of the 2010 Penal Code relates to the crimes of genocide, crimes against humanity and war crimes.²⁶⁷ It provides that the perpetrators of these crimes cannot escape responsibility because they obeyed the law or an order from a legitimate authority. The national

²⁶² *Ibid.*, Art. 4.

²⁶³ *Ibid.*, Art. 3.

²⁶⁴ ICC Statute, Art. 25(3)(f).

²⁶⁵ *Loi portant Code Pénal centrafricain*, Art. 3., *supra* note 42

²⁶⁶ ICC Statute, Art. 30.

²⁶⁷ *Loi portant Code Pénal centrafricain*, Art. 161, *supra* note 42.

provision is in line with Article 33 of the ICC Statute on superior orders.²⁶⁸ Article 161 is, however, wider because it is not limited to unlawful orders but expands its application to unlawful laws and regulations. Moreover, while Article 33 of the ICC Statute states that “orders to commit genocide or crimes against humanity are manifestly unlawful”,²⁶⁹ Article 161 does not distinguish between orders to commit genocide, crimes against humanity or war crimes. The national provision is therefore narrower, to some extent, as it does not fully exclude using superior orders as a defence, but instead provides that a superior order may be classed as a mitigating circumstance.

Organic Law No. 15-003 on the creation, organisation and functioning of the Special Criminal Court also includes provisions regarding modes of liability. Article 55 of the Organic Law is almost identical to the provision of the ICC Statute on the modes of liability.²⁷⁰ Article 56 of the same law also refers to the irrelevance of official capacity, using the same terms as the ICC Statute.²⁷¹ The Organic Law also encompasses provisions on command and superior responsibility, while the 2010 Penal Code does not cover this issue. Article 57 of the Organic Law deals with the issue of command responsibility, integrating the same provision as Article 28 of the ICC Statute in the national legislation and Article 58 covers superior responsibility, consistently with the ICC Statute.²⁷²

The 2010 Penal Code also includes other provisions that do not cover additional modes of liability but could, nevertheless, be relevant. Article 13 of the Penal Code, for example, covers the persons who would have assisted the perpetrator of a crime by helping him or her to hide and escape justice.²⁷³ This form of complicity is not explicitly covered in the ICC Statute but could fall within the scope of one of the acts of an accomplice in Article 25.²⁷⁴ Article 14 of the 2010 Penal Code also provides for punishment applicable to individuals who were aware of the commission of a crime and did not inform the relevant national authorities.²⁷⁵ This provision is not directly related to the modes of liability because it does not involve complicity in the crime, but is nevertheless worth mentioning since it aims to encourage bystanders of the crimes to take action. The same can be said about Article 15 of the 2010 Penal Code, which provides that anyone who could have prevented a crime to be committed, without taking a risk for themselves or third persons, should have taken action.²⁷⁶

²⁶⁸ ICC Statute, Art. 33.

²⁶⁹ *Ibid.*, Art. 33.

²⁷⁰ *Loi organique portant création de la Cour Pénale Spéciale*, Art. 25, *supra* note 56.

²⁷¹ *Ibid.*, Art. 56; ICC Statute, Art. 27.

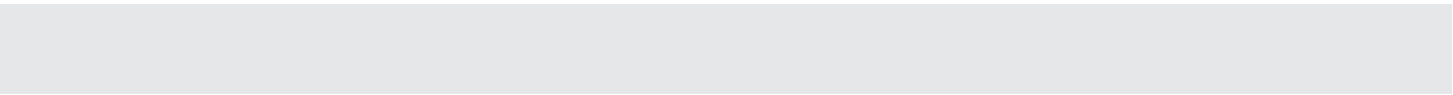
²⁷² *Loi organique, ibid.*, Arts. 57 and 58; ICC Statute, Art. 28.

²⁷³ *Loi portant Code Pénal centrafricain*, Art. 13, *supra* note 42.

²⁷⁴ ICC Statute, Art. 25.

²⁷⁵ *Loi portant Code Pénal centrafricain*, Art. 14, *supra* note 42.

²⁷⁶ *Ibid.*, Art. 15.



7

7. Legal framework: penalties

- 7.1. Genocide, crimes against humanity and war crimes
- 7.2. Rape
- 7.3. Sexual slavery
- 7.4. Enforced prostitution
- 7.5. Enforced sterilisation
- 7.6. Female genital mutilation
- 7.7. Sexual harassment
- 7.8. Torture
- 7.9. Other violence against women
- 7.10. Violence against widows
- 7.11. Manslaughter
- 7.12. Imprisonment or other severe deprivation of physical liberty
- 7.13. Statute of limitations

7. Legal framework: penalties

The 2010 Penal Code includes a separate provision on the penalties that are applicable to crimes and delicts.

Article 17 provides that:

[C]riminal penalties that would be applied to physical persons are:

- Death penalty;
- Hard labour for life;
- Hard labour for a definite period.²⁷⁷

Article 18 reads:

The penalties that would be applied to delicts committed by physical persons are:

- Imprisonment for 1 month and one day to 10 years maximum, except in cases of recidivism or other cases when the Law would have determined other limits;
- Community service for 35 hours to 180 hours;
- Fine above 100,000 francs.²⁷⁸

As provided by Article 17 of the 2010 Penal Code, the death penalty is still the maximum sentence that can be applied in CAR. It must be noted, however, that the death penalty has not been administered in CAR since 1981.²⁷⁹ There are also ongoing discussions towards the abolition of the death penalty.²⁸⁰ Imprisonment is not included among the different penalties for crimes but the penalties available are the death penalty, hard labour for life and hard labour for a definite period.²⁸¹ The national legislation contains a broader range of different penalties, since hard labour is not among the penalties available under the ICC Statute.²⁸² Although Article 80 of the ICC Statute guarantees that national penalties are unaffected by the Statute, the national penalty is harsher. Nevertheless, it is important to bear in mind that a harsher penalty scheme does not necessarily mean that the actual crimes are punished more severely. It would first depend on the determination of the sentence in practice by the judges, who may be more lenient when imposing certain types of penalties for particular crimes. Furthermore, offences that would normally be classed as crimes under the ICC Statute may be deemed to be delicts, with a lower sentence, at the national level. The penalties that can be imposed for a delict include imprisonment from one month and one day to 10 years maximum, community service or a fine.²⁸³

²⁷⁷ *Ibid.*, Art. 17.

²⁷⁸ *Ibid.*, Art. 18.

²⁷⁹ Cornell Center on the Death Penalty Worldwide, *La peine de mort en République centrafricaine*, 28 May 2015.

²⁸⁰ UNHRC, “*Report of the Working Group on the Universal Periodic Review: Central African Republic*”, 6 January 2014, A/HRC/25/11, para. 14.

²⁸¹ *Loi portant Code Pénal centrafricain*, Art. 17, *supra* note 42.

²⁸² ICC Statute, Art. 77.

²⁸³ *Loi portant Code Pénal centrafricain*, Art. 18, *supra* note 42.

The 2010 Penal Code further provides that the forfeiture of proceeds, property and assets can be imposed as a main or complementary penalty for crimes and delicts.²⁸⁴ Article 21 of the Penal Code specifies that a complementary penalty of medical treatment for sexual violence offences can be imposed.²⁸⁵ Other additional penalties can be used by the judges to complement a sentence depending on the circumstances. These additional penalties include, for example, local banishment or the suspension of civil, political or family rights listed in Article 24 of the Penal Code.²⁸⁶ Organic Law No. 15-003 on the creation, organisation and functioning of the Special Criminal Court stipulates in Article 59 that the same penalties provided for in the Penal Code can be applied by the judges of the Special Criminal Court.²⁸⁷ However, the highest penalty for crimes therein is life imprisonment and not death penalty; this is to take into account several international instruments listed in Article 59, including the ICC Statute.²⁸⁸ Consequently, the applicable penalties at the Special Criminal Court replicate the penalty structure of the ICC Statute. Finally, the Penal Code also encompasses a specific provision dealing with the effect of mitigating circumstances.²⁸⁹ This provision does not actually list different mitigating factors to be taken into consideration but only outlines the new penalty scheme that would be applicable.²⁹⁰

It is important to note that some sexual offences, including rape, were classed as delicts from 1998 until March 2016 to ensure swift prosecution. This treatment of sexual offences as delicts has, however, been lifted by a circular dated of March 2016.²⁹¹

After considering the general national provisions on penalties that would be applicable to any crime or delict, the analysis will now consider the specific penalties that are included in the provisions dealing with the crimes examined in this report.

7.1. Genocide, crimes against humanity and war crimes

Article 158 of the 2010 Penal Code provides that the crime of genocide, crimes against humanity and war crimes should be punished by death.²⁹² Article 159 also states that additional penalties, such as the temporary suspension of civil, political and family rights, can also be used to complement the initial penalty.²⁹³ This also suggests that the death penalty would apply to any of the underlying acts of the core international crimes examined in this report, such as rape or sexual slavery, committed in the specific context required for the qualification of genocide, crimes against humanity or war crimes. The following subsections discuss the different penalties applicable to these crimes or delicts as ordinary crimes, in the absence of the contextual elements defining core international crimes. In relation to genocide, crimes against humanity and war crimes, it is interesting to note that legal persons can also be held responsible for the commission of these crimes and they are subject to specific penalties listed in Article 10 of the 2010 Penal Code.²⁹⁴

²⁸⁴ *Ibid.*, Art. 21.

²⁸⁵ *Ibid.*

²⁸⁶ *Ibid.*, Art. 24.

²⁸⁷ *Loi organique portant création de la Cour Pénale Spéciale*, Art. 59, *supra* note 56.

²⁸⁸ *Ibid.*, Art. 59.

²⁸⁹ *Loi portant Code Pénal centrafricain*, Art. 50, *supra* note 42.

²⁹⁰ *Ibid.*, Art. 50.

²⁹¹ Lettre circulaire du 8 mars 2016, Ministre de la Justice, chargé de la Réforme Judiciaire et des Droits de l'Homme.

²⁹² *Ibid.*, Art. 158.

²⁹³ *Ibid.*, Art. 159.

²⁹⁴ *Ibid.*, Art. 160.

7.2. Rape

Both the Penal Code and Law No. 06-032 on the Protection of Women from Violence criminalising rape provide for the same penalties. The penalty for rape is hard labour for a definite period, which is the lowest penalty applicable to the crimes category.²⁹⁵ This means that rape is classed as a crime and not as a delict. If the crime is committed against a child under 18 years, the provisions on rape also cover aggravating circumstances.²⁹⁶ The sentence will then be increased to the maximum time of hard labour for a definite period.²⁹⁷ Aggravating circumstances also engage if the perpetrators are direct relatives in the ascending line of the person against whom the crime has been committed; if they are from a superior social class having authority over the person; if they are teachers or a servant to the above-mentioned persons, or to a school where the person is a student; if they are ministers of a religious group or if the person responsible, whoever they are, was assisted to commit the crimes by one or several persons. In such cases, the penalty is increased by one degree.²⁹⁸ Aggravated circumstances also apply if the rape caused the death of the victim, consistently with Article 88 of the Penal Code.²⁹⁹ Finally, the sentence imposed can be increased to hard labour for life if the rape was committed against a woman who is particularly vulnerable, because she is pregnant, ill, disabled or has physical or mental deficiencies, or because 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.³⁰⁰ The aggravated sentence in the case of a vulnerable victim is different in Law No. 06-032 on the Protection of Women, as it only provides for hard labour for a definite period.³⁰¹ This last provision on aggravated circumstances is not gender-neutral as it refers to a vulnerable woman, not a vulnerable victim or person.

7.3. Sexual slavery

The penalty for human trafficking, and indirectly sexual slavery, is imprisonment for five to 10 years.³⁰² In light of the type of penalty associated with this provision, human trafficking is considered to be a delict. If the victims are minors under 18 years, then human trafficking is punished by hard labour for a definite period.³⁰³

7.4. Enforced prostitution

Article 28 of Law No. 06-032 on the Protection of Women from Violence and Article 90 of the 2010 Penal Code provide that the offence of procuring a prostitute is punished by imprisonment from one to five years and a fine.³⁰⁴ The fine included in Article 28 in the Law on the Protection of Women is, however, lower than the one found in the Penal Code. This suggests that the offence of procuring is classed as a delict and this is also likely to be the case in

²⁹⁵ *Ibid.*, Article 87; *Loi de 2006 portant protection de la femme*, Art. 22, *supra* note 129.

²⁹⁶ *Loi portant Code Pénal centrafricain*, Art. 87, *supra* note 42.

²⁹⁷ *Ibid.*, Art. 87.

²⁹⁸ *Ibid.*

²⁹⁹ *Ibid.*, Art. 88.

³⁰⁰ *Ibid.*, Art. 117.

³⁰¹ *Loi de 2006 portant protection de la femme*, Art. 23, *supra* note 129.

³⁰² *Loi portant Code Pénal centrafricain*, Art. 151., *supra* note 42

³⁰³ *Ibid.*, Art. 151.

³⁰⁴ *Loi de 2006 portant protection de la femme*, Art. 28, *supra* note 129; *Loi portant Code Pénal centrafricain*, Art. 90, *supra* note 42.

relation to the offence of enforced prostitution which is criminalised in the same provision. Aggravating circumstances for the offence of procuring a prostitute are laid out in Article 27 of the Law on the Protection of Women: the offence was committed against a minor, with the use of constraint, the abuse of authority or deceit; the possession of a weapon by the perpetrator, whether it was visible or hidden; status of the perpetrator as a spouse, a direct relative in the ascending line, a tutor, a teacher, a paid servant of the victim or of the above-mentioned persons, a civil servant or a minister of a religion; whether the perpetrator was meant to fight against prostitution in their office, to protect health or maintain public order; whether the perpetrator, by threat, pressure, manipulation or by any other means, impeded the prevention, control, assistance or rehabilitation undertaken by qualified agencies in favour of the persons engaged in prostitution or in danger of prostitution.³⁰⁵

7.5. Enforced sterilisation

The relevant national provisions that could be used to prosecute enforced sterilisation criminalise castration and abortion without the consent of the woman, provided that it had a permanent effect on her biological reproductive capacity. Article 77 of the 2010 Penal Code provides that castration is punished by hard labour for life or by death if the castration caused the death of the victim.³⁰⁶ Castration is therefore classed as a crime. Abortion in Article 78 is punished by imprisonment of one to five years and a fine.³⁰⁷ Aggravated circumstances include that the perpetrator repeatedly performed abortions.³⁰⁸ A pregnant woman who induces her own abortion can also be sentenced to imprisonment of six months to two years and a fine.³⁰⁹ Article 78 also includes a list of persons who may be suspended during five years from working if they have assisted in performing or performed an abortion.³¹⁰

7.6. Female genital mutilation

Female genital mutilation is punished by imprisonment of two to five years and a fine, as provided for in the 2010 Penal Code and the Law on the Protection of Women.³¹¹ The penalty can be doubled in case of recidivism.³¹² Considering the penalty applicable to female genital mutilation, this offence is classed as a delict. If the mutilation has caused the victim's death, the penalty applicable becomes hard labour for life.³¹³ There is also a penalty for the offence of not informing the relevant national authorities in relation to female genital mutilation performed or about to be performed, and it is punished by imprisonment from six months to one year and a fine.³¹⁴

³⁰⁵ *Loi de 2006 portant protection de la femme*, Art. 27., *supra* note 129

³⁰⁶ *Loi portant Code Pénal centrafricain*, Art. 77, *supra* note 42.

³⁰⁷ *Ibid.*, Art. 78.

³⁰⁸ *Ibid.*

³⁰⁹ *Ibid.*

³¹⁰ *Ibid.*

³¹¹ *Loi de 2006 portant protection de la femme*, Art. 19, *supra* note 129; *Loi portant Code Pénal centrafricain*, Art. 114, *supra* note 42.

³¹² *Loi de 2006 portant protection de la femme*, *ibid.*

³¹³ *Ibid.*, Art. 115.

³¹⁴ *ibid.*, Art. 21; *Loi portant Code Pénal centrafricain*, Art. 116, *supra* note 42.

7.7. Sexual harassment

Sexual harassment is punished by six months to one year's imprisonment and a fine and it is therefore classed as a delict.³¹⁵ The provisions in the Law on the Protection of Women and the Penal Code are almost identical, except that the penalty in the Penal Code is harsher as it provides for one year's imprisonment minimum.³¹⁶

7.8. Torture

Article 118 provides that torture, cruel, inhuman and degrading treatments and other barbarous acts are punished by hard labour for a definite period.³¹⁷ If torture was committed before, during or after the commission of a crime, it is punished by a death penalty, in accordance with Article 120 of the 2010 Penal Code.³¹⁸ If the acts of torture resulted in permanent mutilation or disability, the penalty applicable is hard labour for life.³¹⁹ The aggravated circumstances listed in Article 119 can also increase the penalty for torture to hard labour for life.³²⁰ In light of the penalties applicable for the commission of torture, torture is classed as a crime.³²¹

7.9. Other violence against women

Other gender-based violence against women that is not of a sexual nature, as provided for in Article 29 of the Law No. 06-032 on the Protection of Women from Violence, is punished by imprisonment of one month and one day to two years and a fine.³²² This form of violence is therefore classed as delict. The same article also includes aggravated circumstances, if the violence caused illness or inability to work of more than 20 days. The offence is then punished by two to five years' imprisonment and a fine.³²³ Further aggravated circumstances can be imposed if the violence was followed by mutilations, amputation or loss of a limb, blindness, loss of sight in one eye or other permanent disabilities. In these cases, the penalty will increase to hard labour for a definite period.³²⁴

7.10. Violence against widows

The different forms of violence against widows encompassed in Article 30 of the Law No. 06-032 on the Protection of Women from Violence and Article 112 of the 2010 Penal Code, provide that these forms of gender-based violence should be punished by imprisonment of three to five years and a fine.³²⁵ The minimum fine determined by the provision in Law No. 06-032 on the Protection of Women is higher than the one determined in the Penal Code. Article 75 also provides for similar forms of violence related to widowhood but this provision is

³¹⁵ *Loi de 2006 portant protection de la femme*, Art. 25, *supra* note 129; *Loi portant Code Pénal centrafricain*, Art. 96, *supra* note 42.

³¹⁶ *Loi portant Code Pénal centrafricain*, *ibid.*

³¹⁷ *Ibid.*, Art. 118.

³¹⁸ *Ibid.*, Art. 120.

³¹⁹ *Ibid.*

³²⁰ *Ibid.*, Art. 119.

³²¹ *Ibid.*, Art. 120.

³²² *Loi de 2006 portant protection de la femme*, Art. 29, *supra* note 129.

³²³ *Ibid.*, Art. 29.

³²⁴ *Ibid.*

³²⁵ *Loi portant Code Pénal centrafricain*, Art. 112, *supra* note 42; *Loi de 2006 portant protection de la femme*, Art. 30, *supra* note 129.

not limited to violence against women.³²⁶ The penalty provided in Article 75 is, however, more lenient than the one in Article 112.³²⁷ Article 76 of the 2010 Penal Code also provides that additional penalties, such as the suspension of civil, political and family rights can be applicable to complement the penalties provided for in Article 75.³²⁸ These penalties suggest that these forms of violence against widows are classed as delicts.³²⁹

7.11. Manslaughter

Manslaughter as assault and battery causing death without the intention to do so, as another way to criminalise sexual violence, would be punished by hard labour for a definite period.³³⁰ Article 70 of the Penal Code of 2010 further specifies that if manslaughter is committed with premeditation or foul play and the victim dies, the penalty will be increased to hard labour for life.³³¹ Article 76 provides that additional penalties encompassed in Article 24 of the Penal Code, such as the suspension of political, civil and family rights, could also be applicable to complement the penalties for manslaughter³³² and indicate that this offence is classed as a crime.

7.12. Imprisonment or other severe deprivation of physical liberty

Article 97 of the 2010 Penal Code provides that those who have arrested, detained or deprived anyone of liberty, without being ordered by national authorities or the law, are punished by five to 10 years' imprisonment.³³³ If the person detained was a minor, the penalty will be increased to its maximum.³³⁴ If the deprivation of liberty lasts for longer than a month, the penalty will be hard labour for a definite period. The penalty may be decreased to two to five years' imprisonment if the victim was freed before the tenth day of their detention.³³⁵ If the perpetrators committed acts of physical torture, cruel or degrading treatment or if the victim died, the penalty will be increased to death.³³⁶

Although the different national pieces of legislation provide for more or less harsh penalties to sanction the commission of SGBV, the penitentiary system is weak and prison escapes occur frequently.³³⁷ Moreover, the penalty imposed on the perpetrators when a case is eventually prosecuted is often seen by the victim as not sufficiently severe in relation to the gravity of the crime. This results in frustration on the part of the victim and fear that when the perpetrator returns to the community after having served their sentence, the victim will be subjected to reprisals or simply will have to live alongside the perpetrator.³³⁸ The penalties that are in the

³²⁶ *Loi portant Code Pénal centrafricain*, Art. 75, *supra* note 42.

³²⁷ *Ibid.*, Art. 75.

³²⁸ *Ibid.*, Art. 76.

³²⁹ *Loi de 2006 portant protection de la femme*, Art. 30, *supra* note 129; *Loi portant Code Pénal centrafricain*, Art. 112, *supra* note 42.

³³⁰ *Loi portant Code Pénal centrafricain*, Art. 70, *ibid.*

³³¹ *Ibid.*, Art. 70.

³³² *Ibid.*, Art. 76.

³³³ *Ibid.* Art. 97.

³³⁴ *Ibid.*

³³⁵ *Ibid.*, Art. 100.

³³⁶ *Ibid.*, Art. 101.

³³⁷ *UNSG Special Report on the Strategic Review*, para. 25, *supra* note 29.

³³⁸ *Tearfund CAR*, p. 18, *supra* note 27.

Penal Code and other pieces of legislation may therefore not reflect how the perpetrators are actually sentenced in practice.

7.13. Statute of limitations

The 2010 Criminal Procedure Code includes a separate provision that deals with the general statute of limitations applicable to all the crimes and all the delicts. This provision was absent in the 1961 Criminal Procedure Code.³³⁹ Article 7 of the 2010 Criminal Procedure Code reads:

- a) In relation to crime, the public right of action ends after 10 years from the day the crime was committed, if, during this period, no action of investigation or proceedings has been undertaken.
- b) If an action has been undertaken during this period, the public right of action will only end after 10 years from the date of the last action undertaken. The same applies to persons who would not be involved in this action of investigation or proceedings.
- c) The crime of genocide, war crimes and crimes against humanity cannot be subject to any statute of limitations.³⁴⁰

The fact that genocide, crimes against humanity and war crimes cannot be subject to any statute of limitations is reaffirmed in Article 162 of the 2010 Penal Code.³⁴¹ The same article also provides that these crimes cannot be subject to amnesties or pardon and it confirms the irrelevance of official capacity.³⁴² The national provisions in relation to the statute of limitations for genocide, crimes against humanity and war crimes are consistent with the provisions of the ICC Statute. It must be noted, however, that if the SGBV crimes mentioned in this report are not classed as genocide, crimes against humanity or war crimes, the general statute of limitations would be applicable, namely 10 years. In relation to delicts, the statute of limitations is three years.³⁴³

³³⁹ *Loi de 2010 portant code de procédure pénale*, *supra* note 91.

³⁴⁰ *Ibid.*, Art. 7.

³⁴¹ *Loi portant Code Pénal centrafricain*, Art. 162, *supra* note 42.

³⁴² *Ibid.*

³⁴³ *ICC Statute*, Art. 8.

8

8. Procedural law

- 8.1. Beginning of the process
- 8.2. The investigation phase
- 8.3. The pre-trial process
- 8.4. Trial and appeal
- 8.5. Evidence and disclosure
- 8.6. Victims' and witness issues

8. Procedural law

Articles 344-358 of the Criminal Procedure Code outline the procedure that governs co-operation with the ICC, including executing the Court's requests.³⁴⁴ Articles 359-363 of the Criminal Procedure Code cover the applicable procedure when CAR chooses to receive a person convicted by the ICC. This procedure also covers enforcement of sentences delivered by the Court.³⁴⁵ These articles deal specifically with issues of co-operation with the ICC and would not be therefore applicable to prosecutions taking place at the national level. As a result, they will not be analysed further.

8.1. Beginning of the process

The formal procedure for national prosecutions, as laid out in the 2010 Criminal Procedure Code, normally starts with the police receiving a complaint. Victims of sexual crimes may, however, be reluctant to go directly to the police to report them because of the particular nature of sexual violence and the stigma attached to it. The process regarding SGBV crimes may therefore actually start before an official complaint is filed by the victim at the police station and include the role of other actors involved in dealing with SGBV. Article 13 of Law No. 06-032 on the protection of women from violence in CAR explicitly states that the duty of social workers includes taking any necessary administrative measure to protect a woman from violence, as well as informing the judiciary police officers and the Prosecutor, when relevant.³⁴⁶ Thus, the case may not only enter the criminal justice system on the initiative of the victim but also through a social worker, to whom the victim may feel more comfortable speaking. Likewise, victims of SGBV may also feel more comfortable using the “Ligne Verte”, a telephone hotline, to ask for help instead of going to the police station to report a crime. This hotline offers victims advice on how to obtain medical, psychological or legal assistance.³⁴⁷ The different medical and psychological actors assisting SGBV victims in CAR have agreed to use standardised forms to collect all necessary information on SGBV cases reported to them.³⁴⁸ These forms are based on the Gender-Based Violence Information Management System.³⁴⁹ It is important to note, however, that this system is not consistently used by all the actors. The process of reporting an SGBV crime and filing a complaint may therefore be initiated by someone other than the victim, including a member of their family, a social or health worker or NGO members, subject to the victim's consent.

The Criminal Procedure Code provides different ways of triggering criminal proceedings. One of them is related to crimes or flagrant offences, namely when the crime or delict is being committed or has just occurred.³⁵⁰ In situations of crimes or flagrant offences, the judiciary

³⁴⁴ *Loi de 2010 portant Code de procédure pénale centrafricain*, Arts. 344-358, *supra* note 91.

³⁴⁵ *Ibid.*, Arts. 359-363.

³⁴⁶ *Loi de 2006 portant protection de la femme*, Art. 13, *supra* note 129.

³⁴⁷ *Procédures opérationnelles standards*, p. 13., *supra* note 49

³⁴⁸ *Ibid.*, p. 41.

³⁴⁹ Gender-based violence information management system, *GBVIMS Tools*.

³⁵⁰ *Loi de 2010 portant Code de procédure pénale centrafricain*, Art. 35, *supra* note 91.

police officer whom the situation is referred to, will immediately inform the Prosecutor. The latter will go to the location where the crime occurred and make the necessary observations and take measures to preserve evidence.³⁵¹ In situations of flagrant crimes, the Prosecutor is automatically involved at an early stage of the proceedings. Although the procedure for flagrant offences is one of the various options to start criminal proceedings, it is only relevant for a small number of SGBV crimes committed.

SGBV prosecution is more likely to be triggered by a complaint filed at a police station. Article 14 of the Criminal Procedure Code outlines the role of the judiciary police officers, including receiving complaints and denunciations.³⁵² According to Article 15, the officers write the minutes of their observations and police operations and inform, without delay, the Prosecutor of all the crimes and delicts they became aware of.³⁵³ With regard to the juvenile police, the process can be triggered in three ways: the investigation is triggered by the police itself, by a complaint or upon request by the Prosecutor.³⁵⁴ Filing a complaint at the police station incurs no charge.³⁵⁵ The Standard Operating Procedures provide more detail on the procedure to follow when receiving a complaint.³⁵⁶ These guidelines also encompass measures on the protection of victims and their privacy. It is advised, for example, that the victim should be heard in a private room or a different place in order to guarantee their privacy.³⁵⁷ The police officer who takes the victim's statement should be trained to receive SGBV victims.³⁵⁸ The officer should preferably be a woman.³⁵⁹ The preference of SGBV victims to be heard by female police officers was confirmed in an NGO report.³⁶⁰ The officer should also give the victim a document addressed to the forensic medicine office or a medical practitioner in order to obtain a medical certificate.³⁶¹ The reference manual for the police and gendarmerie on managing SGBV recalls that psychological and medical examination is compulsory in these cases and the consent of the victim must be obtained.³⁶² Once the police have obtained sufficient evidence, they can proceed with the arrest of the alleged perpetrator and transfer the file to the Prosecutor.³⁶³ In most cases, the victim must have given their consent before the procedure can be triggered.³⁶⁴ It is clearly stated in the Standard Operating Procedures that using mediation is prohibited in SGBV cases.³⁶⁵ The reference manual also states that all SGBV crimes reported to the police must be investigated and the victim's complaint should be dealt as a priority.³⁶⁶

There is, however, a gap between theory and practice. The lack of personnel and material resources mentioned in the section on context slows down the process triggered by a complaint or even prevents a victim filing a complaint.³⁶⁷ Moreover, the reference manual reports that police officers often rely on the alleged perpetrator's confessions and fail to collect addi-

351 *Ibid.*, Art. 36.

352 *Ibid.*, Art. 14.

353 *Ibid.*, Art. 15.

354 *Procédures opérationnelles standards*, p. 29, *supra* note 49.

355 *Ibid.*.

356 *Ibid.*.

357 *Ibid.*.

358 *Ibid.*.

359 *Ibid.*.

360 *Tearfund CAR*, p. 18, *supra* note 27.

361 *Procédures opérationnelles standards*, p. 29., *supra* note 49.

362 International Organisation for Migration, *Manuel de référence pour la police et la gendarmerie sur la gestion de cas de violences basées sur le genre* ('IOM Manuel de référence'), 2016, p. 26.

363 *Procédures opérationnelles standards*, p. 29, *supra* note 49.

364 *Ibid.*, p. 28.

365 *Ibid.*.

366 *IOM Manuel de référence*, p. 41 and 45, *supra* note 362.

367 *UNHRC Report of the Independent Expert Bocoum 2015*, para. 83, *supra* note 21.

tional material evidence, risking the alleged perpetrator withdrawing their confession.³⁶⁸ Another issue identified in relation to the role of the police and gendarmerie receiving the complaint is that the gendarmerie officers do not always transfer the file to the Prosecutor.³⁶⁹ In some areas, the gendarmerie officers solve the dispute themselves, in exchange for a payment, rather than transferring the file to the court.³⁷⁰ Although this practice may not be used in relation to crimes, including SGBV crimes, victims may be reluctant to go to the gendarmerie to report an SGBV crime when they see how other issues are dealt with by this body.

Following a complaint by the victim, the police or gendarmerie will normally transfer the file to the Prosecutor.³⁷¹ In accordance with Article 28 of the 2010 Criminal Procedure Code, the Prosecutor receives the complaint and decides whether or not to open an investigation.³⁷² The Ministry of Justice can also inform the General Prosecutor of a criminal law violation and may request the Prosecutor to open an investigation or refer the case to the relevant court.³⁷³

Alongside the action carried out by the Prosecutor, the victim can also decide to file a request to become a civil party.³⁷⁴ The investigating judge, who receives the request, transfers it to the Prosecutor who will decide whether or not to open an investigation.³⁷⁵ The Prosecutor can only request the investigating judge not to investigate if the facts of the case cannot lead to a criminal prosecution.³⁷⁶ The civil party who files a request, triggering public action, must provide a deposit of the required sum to cover the costs of the proceedings determined by the investigating judge, which is then transmitted to the Registrar of the Tribunal de Grande Instance within 30 days.³⁷⁷ It is important to note that these legal fees are beyond the financial reach of most people. If the civil party's claim is dismissed, the accused may start an action for damages within three months.³⁷⁸ By using this procedure, the victim risks being subjected to an action for damages by the accused in the case, where there is not sufficient evidence that they have been affected by the crimes.

The procedure that applies to the Special Criminal Court is similar to that regarding ordinary crimes. The Prosecutor can receive complaints and denunciations from anyone.³⁷⁹ The Prosecutor is independent but the Ministry of Justice can nevertheless inform the Prosecutor about crimes committed that could fall under the scope of the jurisdiction of the Special Criminal Court.³⁸⁰ The Prosecutor initiates the proceedings and examines, in every case, whether the Special Criminal Court has jurisdiction over the case.³⁸¹ If the case falls outside the Special Criminal Court's jurisdiction, the Prosecutor will transfer the case to the jurisdiction of ordinary courts.³⁸² Conversely, if the Prosecutor considers that a case, under investigation by an ordinary court, should be prosecuted by the Special Criminal Court, they can request an ordinary court to defer it to the Special Court.³⁸³ The Prosecutor can decide to open a criminal

³⁶⁸ IOM *Manuel de référence*, p. 43, *supra* note 362.

³⁶⁹ WBG *Understanding Access to Justice and Conflict Resolution*, p. 41, *supra* note 32.

³⁷⁰ *Ibid.*

³⁷¹ *Loi de 2010 portant Code de procédure pénale centrafricain*, Art. 15, *supra* note 91.

³⁷² *Ibid.*, Art. 28.

³⁷³ *Ibid.*, Art. 25.

³⁷⁴ *Ibid.*, Art. 56.

³⁷⁵ *Ibid.*, Art. 59.

³⁷⁶ *Ibid.*, Art. 57.

³⁷⁷ *Ibid.*, Art. 59.

³⁷⁸ *Ibid.*, Art. 62.

³⁷⁹ *Loi organique portant création de la Cour Pénale Spéciale*, Art. 34, *supra* note 56.

³⁸⁰ *Ibid.*, Art. 34.

³⁸¹ *Ibid.*, Art. 35.

³⁸² *Ibid.*

³⁸³ *Ibid.*, Art. 36.

or police investigation, depending on the source of the information they received in relation to the case.³⁸⁴

8.2. The investigation phase

Once the police have received a complaint from the victim or another person who reported the crime, the judiciary police will proceed to the investigation phase. The preliminary investigation can be initiated upon request by the Prosecutor or automatically.³⁸⁵ Article 11 of the Criminal Procedure Code outlines the steps the judiciary police may take in relation to preliminary investigation.³⁸⁶ It includes making observations on the offence that occurred, collecting evidence as well as identifying the perpetrators in order to bring them to the Office of the Prosecutor.³⁸⁷ The judiciary police will also carry out the investigation activities requested by the investigating judge³⁸⁸ and report to the Prosecutor.³⁸⁹

Judiciary police officers and agents write *procès-verbaux* on victims' statements and the statements of any other person able to provide information or evidence regarding the perpetrator and their accomplices.³⁹⁰ The statements must be signed by the witnesses.³⁹¹ It is also within the duties of the judiciary police to carry out searches, house searches or body searches.³⁹² In addition to searches, judiciary police officers can also interrogate any person suspected of participating in the commission of the offence.³⁹³ The suspect can accept or refuse to make a statement and they must be informed of their rights.³⁹⁴

The investigation phase regarding the Special Criminal Court is similar to the procedure applicable to ordinary crimes. The Special Criminal Court has, however, its own Special Judiciary Police Unit to investigate and collect evidence on offences falling under its jurisdiction. Article 8 of Organic Law No. 15-003 on the organisation and functioning of the Special Criminal Court specifies that the Special Judiciary Police Unit has the same powers as the Judiciary Police dealing with ordinary crimes and these extend to the whole territory of CAR.³⁹⁵ The Special Judiciary Police Unit reports to the Special Prosecutor and executes requests from the judges of the Special Criminal Court in the Investigating Office, the Special Accusation Chamber and the Criminal Chamber.³⁹⁶ The commander of the Special Judiciary Police Unit can request any assistance necessary for the collection, analysis and preservation of evidence.³⁹⁷ MINUSCA can also assist the Special Prosecutor and judges from the Investigating Chamber in carrying out an investigation, including arresting persons,³⁹⁸ upon reasoned request issued by the Special Prosecutor.³⁹⁹

384 *Ibid.*, Art. 35.

385 *Loi de 2010 portant Code de procédure pénale centrafricain*, Art. 44, *supra* note 91.

386 *Ibid.*, Art. 11.

387 *Ibid.*

388 *Ibid.*

389 *Ibid.*

390 *Ibid.*, Art. 19.

391 *Ibid.*, Art. 39.

392 *Ibid.*, Art. 37.

393 *Ibid.*, Art. 39.

394 *IOM Manuel de référence*, p. 57, *supra* note 362.

395 *Loi organique portant création de la Cour Pénale Spéciale*, Art. 8, *supra* note 56.

396 *Ibid.*, Art. 28.

397 *Ibid.*, Art. 31.

398 *UNSG Report on the CAR*, p. 42, *supra* note 25.

399 *Loi organique portant création de la Cour Pénale Spéciale*, Art. 32, *supra* note 56.

In some circumstances, a Prosecutor of an ordinary court may also decide to create a special investigation unit to investigate particular events. The Prosecutor of the Court of First Instance in Bangui created a special investigation unit to investigate the crimes committed between September and October 2015.⁴⁰⁰ This is less likely to occur when the Special Criminal Court begins its operations, as particularly serious events will fall under its jurisdiction and will be investigated by the Special Judiciary Police Unit.

In addition to the judiciary police, the investigation phase also includes actions taken by the Prosecutor. The Office of the Prosecutor exercises the public right of action.⁴⁰¹ The Office of the Prosecutor ensures that decisions of the court are implemented.⁴⁰² The Public Prosecutor or the deputy prosecutors represent the Office of the Prosecutor before each tribunal and criminal court.⁴⁰³ The Public Prosecutor makes the decisions on opening new investigations, on the acts to be undertaken during an investigation and on the prosecution of criminal offences.⁴⁰⁴ They guide the judiciary police officers under their jurisdiction.⁴⁰⁵ The Public Prosecutor reports every month to the General Prosecutor, who is attached to the Court of Appeal, on the implementation of criminal law under their jurisdiction.⁴⁰⁶ Both the Public Prosecutor and the General Prosecutor can also request the police to take law enforcement action.⁴⁰⁷ The Special Prosecutor, attached to the Special Criminal Court, can request any national authority to share information, evidence or to perform any procedural act that would be necessary to fulfil their mandate.⁴⁰⁸

8.3. The pre-trial process

The CAR criminal justice system is based on the civil law tradition. Therefore, the investigating judge plays a pivotal role in the pre-trial process. Article 50 of the 2010 Criminal Procedure Code explicitly states that a preliminary investigation is compulsory regarding crimes, but optional in relation to delicts.⁴⁰⁹ The investigation procedure is confidential together with all phases of the pre-trial process.⁴¹⁰ The confidentiality of the procedure is particularly important in relation to SGBV crimes.⁴¹¹

The investigating judge can only open an investigation if the Prosecutor has referred an initial indictment against named or unnamed persons or if a civil party filed a request.⁴¹² The investigating judge can request the police to undertake law enforcement activities and indict any person against whom they have sufficient evidence.⁴¹³ If the investigating judge finds new facts that were not included in the initial indictment, they must inform the Prosecutor in order to obtain an additional indictment.⁴¹⁴ The investigating judge can request any investigative act,

⁴⁰⁰ UNHCR Report by the Independent Expert 2016, para. 108, *supra* note 31.

⁴⁰¹ *Loi de 2010 portant Code de procédure pénale centrafricain*, Art. 22, *supra* note 91.

⁴⁰² *Ibid.*, Art. 22.

⁴⁰³ *Ibid.*, Art. 27.

⁴⁰⁴ *Ibid.*, Art. 29.

⁴⁰⁵ *Ibid.*,

⁴⁰⁶ *Ibid.*, Art. 24.

⁴⁰⁷ *Ibid.*, Arts. 24 and 30.

⁴⁰⁸ *Loi organique portant création de la Cour Pénale Spéciale*, Art. 38, *supra* note 56.

⁴⁰⁹ *Loi de 2010 portant Code de procédure pénale centrafricain*, Art. 50, *supra* note 91.

⁴¹⁰ *Ibid.*, Art. 12.

⁴¹¹ *IOM Manuel de référence*, p. 27, *supra* note 362; *Loi de 2010 portant Code de procédure pénale centrafricain*, Art. 12, *supra* note 91.

⁴¹² *Loi de 2010 portant Code de procédure pénale centrafricain*, Art. 51, *ibid.*

⁴¹³ *Ibid.*, Art. 51.

⁴¹⁴ *Ibid.*

in accordance with the law, that would be necessary to determine the truth.⁴¹⁵ The investigating judge collects incriminating and exonerating evidence.⁴¹⁶ They can also request a medical or psychological expert assessment, as well as an expert assessment to clarify a technical question.⁴¹⁷ The Prosecutor, the defendant or the civil party may also ask the investigating judge to request an expert assessment but the requesting party must cover the costs.⁴¹⁸ The Prosecutor can ask the investigating judge to request acts they considers necessary to determine the truth.⁴¹⁹ If the investigating judge considers that the requested acts are not necessary, they must transfer a reasoned order to the Prosecutor.⁴²⁰

The investigating judge can request searches, house searches and seizure of objects that must be carried out in the presence of the person living in the house or two of their relatives, friends or witnesses.⁴²¹ The seized objects are referenced and sealed.⁴²² The procedure is recorded in the minutes. The investigating judge can also summon any person that could contribute to determining the truth to appear before them.⁴²³ The witnesses are heard separately from the defendant. If the witnesses do not speak French or Sango, they can have access to an interpreter.⁴²⁴ Witnesses have a right to an allowance.⁴²⁵ This can be seen as an incentive to encourage witnesses to provide testimony and may have a positive impact on the prosecution of SGBV crimes.

Article 73 of the Criminal Procedure Code encompasses several elements guaranteeing the rights of the accused. The investigating judge must inform the defendant of the charges held against them and they have the right to remain silent.⁴²⁶ The defendant, as well as the civil party can be assisted by a lawyer.⁴²⁷ They must choose their lawyer among the qualified lawyers registered at the Bar and must be able to communicate freely with them.⁴²⁸ Article 74 of the Criminal Procedure Code provides that the investigating judge may interrogate the defendant or order a meeting between the defendant and the witnesses at short notice if a witness is in danger of death or evidence may disappear.⁴²⁹ The possibility of ordering such a meeting raises potential issues in the context of SGBV crimes because witnesses may not be willing to be identified by the perpetrator.

When the investigating judge considers the investigation to be complete, they inform the lawyers of the parties to allow them to submit any relevant element within five days.⁴³⁰ Once the investigation is over, the investigating judge transfers the file to the Prosecutor so that they can make observations within the following five days.⁴³¹ If the Prosecutor considers that the facts are of a criminal nature, the Prosecutor will request an opinion from the General

⁴¹⁵ *Ibid.*

⁴¹⁶ *Ibid.*

⁴¹⁷ *Ibid.*, Arts. 52 and 82.

⁴¹⁸ *Ibid.*, Art. 84.

⁴¹⁹ *Ibid.*, Art. 54.

⁴²⁰ *Ibid.*, Art. 55.

⁴²¹ *Ibid.*, Ar. 64.

⁴²² *Ibid.*

⁴²³ *Ibid.*, Art. 65.

⁴²⁴ *Ibid.*, Arts. 68 and 167.

⁴²⁵ *Ibid.*, Art. 72.

⁴²⁶ *Ibid.*, Art. 73.

⁴²⁷ *Ibid.*

⁴²⁸ *Ibid.*, Arts. 73 and 75.

⁴²⁹ *Ibid.*, Art. 74.

⁴³⁰ *Ibid.*, Art. 113.

⁴³¹ *Ibid.*, Art. 114.

Prosecutor, who must reply within 10 days.⁴³² If the facts constitute a delict the defendant will be transferred to the correctional tribunal.⁴³³ If the investigating judge considers that the offence is of a criminal nature and there is sufficient evidence the case will be transferred to the Criminal Court.⁴³⁴ The defendant and his lawyer will be notified and the former will be arrested.⁴³⁵ The defendant can appeal the decision to transfer the case to the Criminal Court within 48 hours.⁴³⁶ The investigating judge must keep, through the Prosecutor, the General Prosecutor informed of the progress of the investigation.⁴³⁷ The investigation should not last longer than three months.⁴³⁸ If it does, the investigating judge should mention the reasons in their communication to the General Prosecutor.⁴³⁹

Article 131 of the 2010 Criminal Procedure Code provides that the Accusation Chamber should deal with appeals against orders from the investigating magistrates, as well as claims for rehabilitation and applications for declaration of invalidity.⁴⁴⁰ The President of the Accusation Chamber has the same powers as the General Prosecutor. The Prosecutor, the civil party or the defendant can make an appeal.⁴⁴¹

The procedure applicable to the Special Criminal Court is essentially the same as the one applicable to ordinary courts. The Investigation Chamber can open an investigation on the crimes falling under the jurisdiction of the Special Criminal Court following an initial indictment from the Special Prosecutor.⁴⁴² The case can also be referred to the Investigation Office by a request filed by a civil party.⁴⁴³ Unlike in the ordinary criminal justice system, the civil party does not have to bear the costs of the proceedings.⁴⁴⁴ This derogation was introduced as an incentive for victims to come forward in order to fight against impunity.⁴⁴⁵ The orders issued during the investigating and pre-trial phases can be appealed before the Special Accusation Chamber, following the same procedure and delays provided for in the Criminal Procedure Code.⁴⁴⁶ The appeal file must include a statement of facts on the grounds of appeal before being transferred to the Special Prosecutor; the Special Accusation Chamber may reject it otherwise.⁴⁴⁷ If the judges of the Investigation Office disagree, the grounds for disagreements must be filed in minutes that will be transferred to the Special Accusation Chamber via the Special Prosecutor.⁴⁴⁸ The Special Accusation Chamber must then make a decision within five days, with the decision being binding on the judges.⁴⁴⁹ The investigation is first carried out by the Offices composing the Investigation Chamber and may be continued by the Special Accusation Chamber.⁴⁵⁰

⁴³² *Ibid.*

⁴³³ *Ibid.*, Art. 118.

⁴³⁴ *Ibid.*, Art. 119.

⁴³⁵ *Ibid.*, Art. 119.

⁴³⁶ *Ibid.*

⁴³⁷ *Ibid.*, Art. 122.

⁴³⁸ *Ibid.*

⁴³⁹ *Ibid.*

⁴⁴⁰ *Ibid.*, Art. 131.

⁴⁴¹ *Ibid.*

⁴⁴² *Loi organique portant création de la Cour Pénale Spéciale*, Art. 40, *supra* note 56.

⁴⁴³ *Ibid.*, Art. 40.

⁴⁴⁴ *Ibid.*

⁴⁴⁵ *Ibid.*

⁴⁴⁶ *Ibid.*, Art. 44.

⁴⁴⁷ *Ibid.*

⁴⁴⁸ *Ibid.*, Art. 42.

⁴⁴⁹ *Ibid.*

⁴⁵⁰ *Ibid.*, Art. 39.

8.4. Trial and appeal

Once the investigating judge has closed the investigation and has decided to proceed with the next step, the trial phase can begin. The presence of a jury may be of issue in relation to SGBV crimes, as this can raise confidentiality concerns.

The same procedure applies to both crimes and delicts, with the exception of the presence of the jury and the obligation for the accused to be assisted by a lawyer.⁴⁵¹ If the accused has not chosen a lawyer the latter will be court appointed.⁴⁵² The hearing of the cases related to crimes and delicts will normally be held in public, unless it undermines public order or is against decency.⁴⁵³ The President of the Court may also restrict access to the hearing to exclude minors.⁴⁵⁴ The relevant provision in the Criminal Procedure Code does not provide further details. It is not clear whether SGBV crimes cases would be considered as cases requiring a closed hearing. Article 188 of the Criminal Procedure Code provides that the accused, the civil party and the party responsible for civil matters can appear at the hearing in person or can be represented by their lawyer.⁴⁵⁵ Thus, an SGBV victim may not have to attend the hearing at the same time as the perpetrator and may only be represented by a lawyer. The parties may also submit a statement of facts in person or through their lawyer.⁴⁵⁶ Article 223 of the Criminal Procedure Code provides that if the accused or suspect is at large and cannot be arrested they will be tried *in absentia*.⁴⁵⁷ The judgment may be rendered at the end of the hearing, or within eight days for flagrant offences or within 15 days for any other cases, except in cases of *force majeure*.⁴⁵⁸

The accused and the party responsible for civil matters can appeal the decision. The civil party may appeal in relation to compensation, too. The Prosecutor and General Prosecutor may also appeal the decision but only in relation to public action.⁴⁵⁹ The parties have 10 days to appeal the decision from the day of the judgment.⁴⁶⁰ If an appeal has been lodged by one of the parties the other parties can lodge a cross-appeal within five days.⁴⁶¹ The Court of Appeal may request all the parties to be present, as well as the witnesses. The Court of Appeal will follow the same procedure as the one applicable for the trials in first instance.⁴⁶² Article 208 of the Criminal Procedure Code also provides that the civil party, the accused, the Prosecutor and the party responsible for civil matters can file an appeal before the Court of Cassation.⁴⁶³

As a general rule, the Criminal Chamber of the Special Criminal Court will apply the same procedure as the one provided for in the 2010 Criminal Procedure Code for trials and appeals in ordinary courts.⁴⁶⁴ There are, nevertheless, a few exceptions. The procedure for ordinary courts will not apply in relation to the sessions convened by the Ministry of Justice.⁴⁶⁵ There

⁴⁵¹ *Ibid.*, Art. 221.

⁴⁵² *Ibid.*

⁴⁵³ *Ibid.*, Art. 164.

⁴⁵⁴ *Ibid.*

⁴⁵⁵ *Ibid.*, Art. 188.

⁴⁵⁶ *Ibid.*

⁴⁵⁷ *Ibid.*, Art. 223.

⁴⁵⁸ *Ibid.*, Art. 164.

⁴⁵⁹ *Ibid.*, Art. 194.

⁴⁶⁰ *Ibid.*, Art. 197.

⁴⁶¹ *Ibid.*

⁴⁶² *Ibid.*, Art. 202.

⁴⁶³ *Ibid.*, Art. 208.

⁴⁶⁴ *Ibid.*, Art. 47.

⁴⁶⁵ *Loi organique portant création de la Cour Pénale Spéciale*, Art. 47, *supra* note 56.

is also no jury and the Criminal Chamber consists of seven judges, including the President.⁴⁶⁶ The decisions of the Criminal Chamber can be appealed before the Special Court of Appeal within three days from the day after the judgment was delivered.⁴⁶⁷ The Court of Appeal of the Special Criminal Court will apply the same rules of procedure as the Court of Cassation, with the exception of the time limit to lodge an appeal.⁴⁶⁸ The decision of the Court of Appeal must be given within 30 days.⁴⁶⁹ It can reject the appeal or it can confirm, cancel or modify the decision given by the Criminal Chamber of the Special Accusation Chamber.⁴⁷⁰ If the Court of Appeal refers the case back to the Criminal Chamber its composition will be changed and it will take a new decision.⁴⁷¹ The decisions of the Court of Appeal cannot be challenged, unless they are based on an error regarding the identity of the accused, if a witness has been convicted of perjury regarding the same case or if a fact or piece of evidence that was not known during the hearing would exonerate the accused.⁴⁷²

Regarding the sentence imposed, if the accused is convicted of several crimes or delicts only the highest penalty will be imposed.⁴⁷³ Those who are sentenced to forced labour for life, as well as those sentenced to more than one year imprisonment, will serve their sentence in a prison.⁴⁷⁴ A sentence of more than three months of imprisonment can be reduced if the detainee showed satisfactory signs of good conduct.⁴⁷⁵ The reduction of sentence is determined by the judge in charge of the execution of sentences and cannot exceed three months for each year of imprisonment and seven days per month if the duration of imprisonment is less than one year.⁴⁷⁶ The judge in charge of the execution of sentences may modify the reduction of the sentence if the detainee displayed inappropriate conduct.⁴⁷⁷ Article 414 also provides that an exceptional reduction of a sentence may be granted if the detainee successfully passed a professional or academic exam.⁴⁷⁸ The judge in charge of the execution of sentences may decide that the sentence should be served on a part-time basis, meaning that the detainee may work or study outside prison without surveillance but must go back to prison at the end of the day.⁴⁷⁹ The detainee may also benefit from parole after they have served half of their sentence and they fulfil the requirements.⁴⁸⁰ The judge delivering the judgment may also decide in favour of a suspended sentence where the accused has not been convicted in the last five years for a crime or a delict.⁴⁸¹ However, the suspended sentence does not apply to paying the costs of the proceedings and compensation to the victim.⁴⁸² The penalties included in a sentencing judgment in relation to crimes can no longer be implemented if 20 years have passed (or five years in the case of delicts).⁴⁸³ Victims can obtain compensation by filing a request to become a civil party. The judgment delivered by the judge includes the facts, penalties and any civil liability.⁴⁸⁴

⁴⁶⁶ *Ibid.*, Art. 47.

⁴⁶⁷ *Ibid.*, Art. 48.

⁴⁶⁸ *Ibid.*, Art. 49.

⁴⁶⁹ *Ibid.*, Art. 50.

⁴⁷⁰ *Ibid.*, Art. 51.

⁴⁷¹ *Ibid.*,

⁴⁷² *Ibid.*

⁴⁷³ *Loi de 2010 portant Code de procédure pénale centrafricain*, Art. 224, *supra* note 91.

⁴⁷⁴ *Ibid.*, Art. 409.

⁴⁷⁵ *Ibid.*, Art. 413.

⁴⁷⁶ *Ibid.*

⁴⁷⁷ *Ibid.*

⁴⁷⁸ *Ibid.*, Art. 414.

⁴⁷⁹ *Ibid.*, Art. 416.

⁴⁸⁰ *Ibid.*, Art. 426.

⁴⁸¹ *Ibid.*, Art. 434.

⁴⁸² *Ibid.*, Art. 436.

⁴⁸³ *Ibid.*, Arts. 468-469.

⁴⁸⁴ *Ibid.*, Art. 175.

8.5. Evidence and disclosure

Evidence can be material, for instance weapons, documents or photography, or oral, such as witness testimony.⁴⁸⁵ Evidence can incriminate or exonerate a person and is required to convict a person.⁴⁸⁶ A statement from the victim is not sufficient to bring a case involving SGBV crimes before a court; the facts must be supported by evidence.⁴⁸⁷ In the absence of evidence supporting the accusation of SGBV, the reference manual stresses that it is very likely that the accused will be acquitted and released.⁴⁸⁸ The investigators must be able to guarantee the chain of custody, namely that the material evidence that is used is the same as the one that was initially collected and it is in the same condition.⁴⁸⁹ In order to be able to prove that the chain of custody was followed, the investigators must write down any physical detail of material evidence, where it was found and where it has been securely kept.⁴⁹⁰ In practice, police stations are not equipped to guarantee that pieces of evidence are securely stored.

A medical certificate is a very important piece of evidence, in particular in relation to SGBV crimes.⁴⁹¹ A medical certificate often constitutes key evidence in cases of rape.⁴⁹² The victim can obtain a medical certificate in case of a recent incident or a medical report when the incident occurred in the past.⁴⁹³ The certificate must be signed by a qualified medical practitioner.⁴⁹⁴ The medical personnel may be asked to testify at the hearing.⁴⁹⁵ The victims must, however, pay a significant amount to obtain these certificates or reports.⁴⁹⁶ A high number of victims may therefore not be able to afford to obtain a certificate or a report, undermining their chance to provide strong evidence before the court. In order to overcome this obstacle, some NGOs, such as Médecins du Monde or Doctors Without Borders, provide certificates at no cost whereas others help the victims by directly paying for the cost of a medical certificate.⁴⁹⁷ In addition, there is almost no forensic investigative capacity in CAR.

Searches, house searches, body searches and seizing of evidence can only happen with the explicit consent of the person being searched. The consent must be written down in the minutes.⁴⁹⁸ House searches can only occur between 05:00 and 18:00, except in cases of flagrant offences or other exceptions provided for by law.⁴⁹⁹ Witnesses' testimonies are not taken under oath.⁵⁰⁰ In relation to police custody, the individual cannot be held in custody for more than 72 hours before either being brought to the Prosecutor or released.⁵⁰¹ If distance or communication problems create an obstacle to bring the suspect to the Prosecutor, the legal time limit of detention in police custody can be increased to eight days, which can be renewed once in exceptional circumstances that must be justified.⁵⁰² The Prosecutor will then be contacted

485 *IOM Manuel de référence*, p. 59, *supra* note 362.

486 *Ibid.*

487 *Ibid.*, p. 48.

488 *Ibid.*, p. 51.

489 *Ibid.*, p. 60.

490 *Ibid.*

491 *Procédures opérationnelles standards*, p. 19, *supra* note 49.

492 *Ibid.*

493 *Ibid.*

494 *Ibid.*, p. 50.

495 *Ibid.*

496 *Ibid.*, p. 19; *UNSG Report on conflict-related sexual violence*, para. 9, *supra* note 16.

497 *Procédures opérationnelles standards*, p. 19, *supra* note 49.

498 *Loi de 2010 portant Code de procédure pénale centrafricain*, Art. 45, *supra* note 91.

499 *Ibid.*, Art. 45.

500 *Ibid.*

501 *Ibid.*, Art. 40.

502 *Ibid.*

to take a decision to set the person free, transfer them to their jurisdiction or issue a warrant of detention.⁵⁰³ The person in custody must be informed, at the time of their arrest, of the reasons for the arrest and that they have the right to be assisted by a lawyer.⁵⁰⁴ The suspect's relatives must be informed of the custody.⁵⁰⁵ The minutes of investigation must mention the duration of the interrogation, breaks, visit of a medical practitioner or lawyer chosen by the suspect, otherwise it is rendered null and void.⁵⁰⁶

The investigating judge can also issue a summons to appear, a bench warrant, a warrant of detention, an arrest warrant or a search warrant.⁵⁰⁷ In the case of a summons to appear, the investigating judge will hear the individual without delay and will issue the appropriate warrant afterwards.⁵⁰⁸ In the case of a bench warrant, he or she will interrogate the individual within 48 hours of the individual's arrest.⁵⁰⁹ After 48 hours, the accused will be automatically released by the Prosecutor.⁵¹⁰ After the hearing, the investigating judge can issue a detention warrant if the offence committed is sentenced by a custodial sentence.⁵¹¹ In relation to delicts, detention can be ordered at any stage of the investigation and must be justified.⁵¹² The accused must be notified of the detention order.⁵¹³ In relation to crimes, a warrant is required for detention.⁵¹⁴ The accused cannot be held for more than a year.⁵¹⁵ However, under exceptional circumstances, the investigating judge can, at the end of this period, decide to extend the detention for up to four months by a reasoned order, after receiving the Prosecutor's opinion and the observations of the accused and their lawyer.⁵¹⁶

8.6. Victims' and witness issues

The different elements of procedure that are relevant to victims and witnesses can have a great influence on whether the victim or the witness is willing to report a crime or testify. The reference manual particularly stresses the importance of the first contact with the victim to ensure that the victim feels comfortable speaking and bringing the case to court.⁵¹⁷ It is important, for example, that the victim does not wait too long before being heard by a police officer and that they feel that they can trust the investigator.⁵¹⁸ It is equally important that the victim is aware that they will be kept informed of the progress of the procedure and that different persons working on the case may need to hear their version of the facts.⁵¹⁹ The police officer should also mention the possibility for the victim to become a civil party.⁵²⁰ The Standard Operating Procedures also advise that the victim be informed of the advantages and drawbacks

⁵⁰³ *Ibid.*

⁵⁰⁴ *Ibid.*, Arts. 40 and 48.

⁵⁰⁵ *Ibid.*, Art. 48.

⁵⁰⁶ *Ibid.*, Art. 49.

⁵⁰⁷ *Ibid.*, Art. 85.

⁵⁰⁸ *Ibid.*, Art. 88.

⁵⁰⁹ *Ibid.*

⁵¹⁰ *Ibid.*

⁵¹¹ *Ibid.*

⁵¹² *Ibid.*, Art. 92.

⁵¹³ *Ibid.*

⁵¹⁴ *Ibid.*

⁵¹⁵ *Ibid.*, Art. 97.

⁵¹⁶ *Ibid.*, Art. 97.

⁵¹⁷ *IOM Manuel de référence*, p. 44, *supra* note 362.

⁵¹⁸ *Ibid.*, p. 45.

⁵¹⁹ *Ibid.*

⁵²⁰ *Ibid.*, p. 25.

of the different legal options available to them, including safety issues and relevant protection, delays and procedural issues or legal support.⁵²¹

As mentioned above, the role of the police or gendarmerie officers also includes advising the victim of SGBV to receive medical assistance and obtain a medical certificate or a medical report. After receiving the statement of the victim, the police officer must also ensure that the victim received all the medical and psychological assistance needed.⁵²² This will allow the victim to first receive assistance for the medical issues as a result of the attack and also allow taking evidence that may be required in court.⁵²³ The various guidelines for the police upon first contact with an SGBV victim are, however, not always implemented in practice. The lack of resources, unsuitability of the facilities and availability of female police officers mean that the safety of the victim and the confidentiality of the procedure are not always guaranteed.⁵²⁴

The 2010 Criminal Procedure Code includes various provisions on victims and witnesses in criminal proceedings. Articles 56 to 62, for example, cover the possibility for the victim to file a request to become a civil party,⁵²⁵ an option discussed earlier. Article 16 of Law No. 06-032 on the protection of women from violence provides that the investigating judge may take measures to protect the victim, in particular women.⁵²⁶ Article 14 of the same law provides a list of the different actors who can ask the judge to take measures: the victim, a social worker, a public prosecutor, public administration working on issues related to the protection of women, NGOs and other associations dealing with the protection of women and relevant officers of the judiciary police.⁵²⁷ These measures include placing or keeping the victim in a foster family with their consent and requesting a social worker to ensure follow-up.⁵²⁸ The victim may also be placed in a shelter established by local authorities or an NGO, also providing other services, such as legal assistance or psychological support.⁵²⁹ The judge can always reconsider these measures if the situation improves.⁵³⁰ A spouse, the parents or guardian may ask the judge to reconsider such measures.⁵³¹ Another relevant provision in the Criminal Procedure Code for the protection of victims is the possibility for a judge to order provisional detention if the applicable penalty exceeds one year's imprisonment, provided this is the only way to preserve evidence, or avoid the suspect exerting pressure on the victim and witnesses.⁵³² The investigating judge may also order judicial supervision if the accused risks imprisonment or a more serious penalty.⁵³³ Other obligations can complement judicial supervision, such as the obligation to secure a certain amount of money within a certain time frame, both determined by the investigating judge, to guarantee the rights of the victims.⁵³⁴ Following trial, the judge can decide to give a suspended sentence with probation.⁵³⁵ This sentence may include a requirement to fulfil certain obligations, including not visiting certain places or hosting certain persons, in particular the victim of an offence of indecent assault.⁵³⁶

⁵²¹ *Procédures opérationnelles standards*, p. 25, *supra* note 49.

⁵²² *IOM Manuel de référence*, p. 56, *supra* note 362.

⁵²³ *Ibid.*

⁵²⁴ *Procédures opérationnelles standards*, p. 29., *supra* note 49

⁵²⁵ *Loi de 2010 portant Code de procédure pénale centrafricain*, Arts. 56-62, *supra* note 91.

⁵²⁶ *Loi de 2006 portant protection de la femme*, Art. 24, *supra* note 129.

⁵²⁷ *Ibid.*

⁵²⁸ *Ibid.*, Art. 16.

⁵²⁹ *IOM Manuel de référence*, p. 30, *supra* note 362.

⁵³⁰ *Loi de 2006 portant protection de la femme*, Art. 17, *supra* note 129.

⁵³¹ *Ibid.*, Art. 17.

⁵³² *Loi de 2010 portant Code de procédure pénale centrafricain*, Art. 91, *supra* note 91.

⁵³³ *Ibid.*, Art. 108.

⁵³⁴ *Ibid.*

⁵³⁵ *Ibid.*, Art. 438.

⁵³⁶ *Ibid.*, Art. 442.

In addition to these different measures that can be taken to protect the victim directly, other provisions of the Criminal Procedure Code can be seen as protecting victims' rights. These include, for example, the confidentiality of the investigation and pre-trial phases, discussed above.⁵³⁷ According to Article 73 of the Criminal Procedure Code, the civil party may also be assisted by a lawyer at the time of the first hearing with the investigating judge.⁵³⁸

The Criminal Procedure Code also includes provisions related to the rights of witnesses. Article 68, for example, provides that witnesses are heard by the investigating judge separately and without presence of the accused.⁵³⁹ This provision may be particularly useful in the context of SGBV crimes where witnesses may be intimidated by the perpetrator. Witnesses can have access to an interpreter if they do not speak French or Sango.⁵⁴⁰ If the witness is a deaf person and does not know how to write, the person that they are used to communicate with will be automatically appointed as interpreter.⁵⁴¹ Moreover, the relatives of the accused in ascending and descending lines, their brothers and sisters, and wives or husbands (even if divorced), cannot be obliged to testify against the accused.⁵⁴² It can be noted that there is a serious need to increase witness protection, particularly at the Special Criminal Court.

Finally, another important issue that needs to be raised is the right of the victim to abortion. Whether an abortion can be legally performed or not may have consequences on whether the victim is willing to report the case in the first place. Criminal proceedings may, for example, reveal that the victim became pregnant as a result of a rape and it may become more difficult for the victim to have an abortion. A victim, however, may well decide to have an abortion because children born as a result of a rape are not well accepted by society.⁵⁴³ Article 79 2010 Penal Code provides that abortion is allowed under specific circumstances, including if the pregnancy was the result of rape or incest.⁵⁴⁴ Article 26 of the Bangayassi Law No. 06-005 on reproductive health provides that an abortion following rape or incest must be performed within two and a half months after the offence.⁵⁴⁵ This time frame differs from the one provided in Article 80 of the Penal Code, namely that the abortion must be performed within eight weeks.⁵⁴⁶ The same conditions for abortion as in the Penal Code are imposed in Article 25 of the Bangayassi Law No. 06-005 on reproductive health.⁵⁴⁷ This raises questions in relation to how the medical practitioner can determine that the pregnancy was the result of rape and how it relates to the criminal proceedings. Because of these restrictions and the stigma associated with SGBV, a high number of victims have no choice but to resort to unsafe abortions.⁵⁴⁸ Women may also have to resort to unsafe abortions because of the lack of suitable medical facilities, especially in the case of internally displaced persons, or because they cannot afford the cost of an abortion in a suitable hospital.⁵⁴⁹ As a result, the fact that abortion is allowed in the case of rape may encourage the victims to report the crime they have suffered. However, practical obstacles to abortion may result, on the contrary, in undermining the willingness of the victim to file a complaint.

⁵³⁷ *Ibid.*, Art. 12.

⁵³⁸ *Ibid.*, Art. 73; *IOM Manuel de référence*, p. 26, *supra* note 362.

⁵³⁹ *Loi de 2010 portant Code de procédure pénale centrafricain*, Art. 68, *supra* note 91.

⁵⁴⁰ *Ibid.*, Arts. 68 and 167.

⁵⁴¹ *Ibid.*, Art. 167.

⁵⁴² *Ibid.*

⁵⁴³ *UNSG Report on conflict-related sexual violence*, para. 27., *supra* note 16

⁵⁴⁴ *Loi portant Code Pénal centrafricain*, Art. 79., *supra* note 42

⁵⁴⁵ *Loi Bangayassi*, Art. 26, *supra* note 130.

⁵⁴⁶ *Loi portant Code Pénal centrafricain*, Art. 80, *supra* note 42.

⁵⁴⁷ *Loi Bangayassi*, Art. 25, *supra* note 130.

⁵⁴⁸ *UNSG Report on conflict-related sexual violence*, *supra* note 16.

⁵⁴⁹ *Ibid.*



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I-DOC

Investigation
Documentation
System



DOCF

Database on Open
Case Files



CICD

Core International
Crimes Database



CJAD

Cooperation and
Judicial Assistance
Database



CLICC

Commentary on the
Law of the International
Criminal Court



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