



Process of Transitional Justice in the Central African Republic
Case of the “Truth, Justice, Reconciliation and Reparation Commission”

TJRRC

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List of abbreviations

AU: African Union

PAPR: Political Agreement for Peace and Reconciliation

CAR: Central African Republic

CSO: Civil Society Organization

DDRR: Desarmament, Demobilization, Reintegration and Repatriation

ECCAS: Economic Community of Central African States

ILA: I Londo Awe

NFB: National Forum of Bangui

RM: Regional Mechanism

SCC: Special Criminal Court

SOS CIVISME: SOS Civisme RCA

TJRRC: Truth, Justice, Reconciliation and Reparation Commission

TJ: Transitional Justice

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Introduction

Since 2002, the CAR was devastated by multiple armed conflicts opposing armed groups and government forces, as well as flagrant and repeated violations of international humanitarian law as well as international human rights law throughout this period.

The experience of transitional justice indicates the essential place of national reconciliation process in the post-crisis and restructuring phases of a nation in order to prepare the development phase.

Societies in which violent conflict or oppressive regime emerge often find it difficult to recover, to build a better future and to prevent new conflicts from falling back into the same trap of the past. This presents them with a major dilemma. On the one hand, victims and survivors feel a strong need for justice; on the other, perpetrators have no hope but for forgiveness and clemency. In the meantime, the country needs peace and stability. To build this peace, a balance must be struck between justice and forgiveness. Important decisions must be taken to limit the frustration and despair of the victims while uncovering the truth about what happened in the past. Transitional justice is a field that deals with such sensitive issues.

The participants of the Bangui national forum highlighted four main pillars of transitional justice:

- 1) The search for truth;
- 2) Legal proceedings;
- 3) Reparations;
- 4) Institutional reforms.

The issues of reconciliation, gender, memory and memorials are closely linked to these four pillars. In order to achieve these objectives, transitional justice mechanisms such as Truth and Reconciliation Commissions need to be set up appropriately to address each of these concerns. When a society attempts to rebuild the bonds torn apart during a particular period of its national history, transitional justice mechanisms can address issues of massive human rights violations, widespread violence, gross structural inequalities, dictatorship and civil war. These mechanisms are used as tools to re-establish a just society and democratic participation in governance. They both seek to address the problems of human rights violations and the resolution of ongoing conflicts that can threaten sustainable peace and development.

Transitional justice encompasses the full range of processes and mechanisms used by a society to address massive past abuses, with a view to establishing responsibility, delivering justice and enabling reconciliation.¹

- **The first national transitional justice process in CAR**

Public life in the CAR over the past two decades has been marked by recurring social and military-political crises, which have had disastrous consequences for the country's socio-economic development. In 2003, one of the potential solutions identified for crisis recovery was broad national consultation, comprising political parties, trade unions and other national stakeholders, unanimously called for a Dialogue of the RCA's citizens.

On 26 August 2003, the former President of the Republic, François Bozizé, signed decrees no. 03-219 and 03-220 respectively creating the preparatory committee for the national dialogue and appointing its members. The Truth and Reconciliation Commission has made a number of proposals as part of the national dialogue, with the aim of:

- establishing an accurate account of the events that have plagued Central African society since the 1960s to the present day;
- helping retrace the country's history and the disputed actions of the government and the opposition;
- helping bring out the truth that is necessary to improve human rights practices and to implement genuine reform;
- promoting understanding and genuine national reconciliation.

But the bitter conclusion was that this commission lacked sufficient resources and did not succeed in bringing peace to the country.

In May 2015, the Bangui Forum was held, which led to the creation of a Truth and Reconciliation Commission. We had to wait until June 2019 for a national consultation prior to the drafting of the bill establishing the new commission to be launched. This popular national consultation was organized in the country's seven administrative regions on the basis of the Commission's operating pillars (truth, justice, reparation, reconciliation). The work and conclusions were compiled in a report that served as the basis for drafting the preliminary bill. The Truth, Justice, Reparation and Reconciliation Commission (TJRRC) was created by Law No. 20.009 of 7 April 2020, to investigate and establish the truth about the serious national events of 1959 to 31 December 2019, in order to render justice and restore the dignity of the victims and thus achieve national reconciliation. A presidential decree creating the committee to select the members of the future TJRRC was signed on 30 July 2020. This committee selected

¹ United Nations, Guidance Note of the Secretary General: United Nations Approach to Transitional Justice, march 2010. Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), 23rd August 2004.

the 11 members of the commission, and the President of the Republic made this decision official by a presidential decree on 30th December 2020.

I/ The link between the continental framework on TJ and the National Policies on TJ as well as the process of setting up the TJRRC

The reconstruction of the state structure and institutions, on the one hand, and the restoration of the Nation in the sense of "wanting to live together", through the punishment and reparation of individual violations, on the other, are the main objectives that justify the introduction of a process of justice, truth, reconciliation and reparation.

Rebuilding a state destroyed by conflict into a state governed by the rule of law, and restoring peaceful governance after political violence or committed atrocities, is a difficult task. In the long term, this reconstruction must enable the rebuilding of a solid political relationship within a well-ordered and organized society. Because without rebuilding a sense of common belonging, there can be no national dialogue and no reconciliation. Without rebuilding the nation's collective memory, by establishing the facts, forgiveness, reparation and compensation, it will not be possible for individuals to find a common identity after a period of massive human rights violations.

It is important to understand the reconstructive and reconciliatory approach of the Truth, Justice, Reparation and Reconciliation Commission in the CAR. This institution was created first and foremost to reveal, understand and establish the history of past violations in order to rebuild a national identity rooted in a shared history of violence. By bringing the lost dignity out into the open, the personal stories come together to establish a truth and reconstruct the collective history that is the basis for rebuilding a certain social consensus and redefining a new political and moral order. This new order can only be based on national reconciliation, without which the pillars of the society to be rebuilt will be shaky.

Reconciliation is always seen as the main objective of transitional justice processes. Reconciliation has various meanings, which change according to the political and constitutional histories of states and the reasons for the crisis. Thus, reconciliation can be equated with recognition, repentance, forgiveness, peaceful coexistence, *modus vivendi*, restoration of patriotism, re-establishment of dialogue between communities or between victims and perpetrators of abuses, etc. The processes of transition, justice, truth and reconciliation can therefore have several aims. The high-level hypotheses aim to restore the desire to live in cohesion or to rebuild a previous social harmony; the second hypotheses refer to the regulation of violence, to the redefinition of the minimal rules of life in an acceptable society, in short to simple peaceful coexistence, or even tolerance.

What seems difficult is to find the right balance that will enable this desire to live together, to which all Central Africans wishing to live in peace aspire, to be perfected. Finding the right

balance between a simple *modus vivendi* and the deliberate, even artificial, creation of a forced political unity. The determining factors that justify the introduction of a transition, justice, truth, reparation and reconciliation process that leads to the three systematic moments of implementation (during the crisis, after the crisis and with a view to remembrance) are in reality multifaceted, making any attempt at systematization inherently difficult.

In the CAR, the transitional justice framework was born out of efforts to resolve the country's most recent crisis. With the establishment of a transitional government on 20 January 2014, mediation efforts were undertaken between the former-Séléka and anti-Balaka to end hostilities marked by cycles of killings and reprisals. This framework includes:

- The National Reconciliation Strategy (2014)²;
- The Republican Pact for Peace;
- National Reconciliation and Reconstruction, signed at the Bangui Forum (2015)³;
- The Organic Law on the creation, organization and functioning of the Special Criminal Court (CPS) of 3 June 2015;
- The Agreement on the Principles of DDR and Integration into the Uniformed Forces of the Bangui Forum;
- and the main recommendations in the areas of justice and reconciliation of the Bangui Forum.

A/ The operation of the TJ mechanism and the link with the Special Criminal Court (SCC) in the CAR

Prosecutions can be seen as the pillars of transitional justice, playing an essential role in establishing the responsibilities of the perpetrators of violations, facilitating reconciliation, providing reparation to victims and acting as a deterrent so that such violations and abuses are not repeated in the future, particularly in contexts where impunity has prevailed for decades.

Truth-seeking mechanisms make it possible to analyze and understand the root causes of a conflict or a period of repression in the past. They are often the main transitional justice mechanism for ensuring that victims' voices are heard. They are also well placed to make recommendations to the government and other stakeholders.

B/ “Reparation for victims” mentioned in the Political Agreement for Peace in the CAR of 6th February 2019

Reparations are measures, material or otherwise, that can be taken to repair the damage caused by the violations suffered, in particular in the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The large

² Ministry of National Reconciliation, Political Dialogue and the Promotion of Civic Culture, Global Strategy for National Reconciliation in the Central African Republic, November 2014.

³ National reconciliation and reconstruction Forum Forum, Consolidated report on grassroots popular consultation missions in CAR, March 2015

number of victims in the CAR poses a challenge for the reparation of the harm suffered. Another challenge lies in the restitution of housing and property following the displacement and forced relocation of the population. The United Nations Principles⁴ in this area emphasize the right to restitution as a means of redress in the event of displacement.

However, refugees and displaced persons cannot be forced or coerced to return to their homes or lands, but should have durable solutions to displacement other than return, without prejudice to their right to restitution of their housing, land and property. As one of the measures of satisfaction for the victims, on May 2016, the CAR authorities established a national day in memory of the victims of the conflict. Given the social divisions of the recent conflict, and in particular the attacks on entire communities on the basis of their religion and ethnicity, it is important that commemoration events are well conceived and transformative in nature. It is still the case that a large number of victims of the conflict need specific medical, social, legal and psychological support to be able to start rebuilding their lives. Additional measures should therefore be put in place, under the authority of the government, to integrate rehabilitation as part of a national reparations programme.

II/ The African Union Policy Framework on TJ and its progress in CAR

The African Union Transitional Justice Policy (AUTJP) was unanimously adopted by the Assembly of Heads of State and Government on 12th February 2019 as a comprehensive African framework. It aims to address the consequences of conflicts and violations, governance deficits and obstacles to development on the continent, thereby advancing the achievement of the goals set out in the AU's Agenda 2063, known as "The Africa We Want". In the CAR, the TJRRC, the AU and civil society are doing their best to publicize this policy and make it known to the population. This is done through conferences and seminars. It is being used as a roadmap to provide justice for the victims of the conflict and to restore peace.

A/ The role of civil society organizations (CSO) in TJ according to the AU framework

Section 4 of the African Union's Policy on Transitional Justice (PUAJT) deals with the actors, processes and mechanisms for implementing the PUAJT. Article 127 states that: "Members of civil society, community-based organizations and the media should advocate for and facilitate the required national public dialogue and debate on the continuation of the TJ processes. It should also be borne in mind that these and other actors play their part in creating forums dedicated to JT processes and in documenting and reporting on such processes".

Article 128 also stipulates that: "Beyond the formal structures of the State, the important role of existing religious and cultural processes in providing affected communities and members of society with avenues for healing, reconciliation and local justice should be brought to bear

⁴ Guidance note by the Secretary-General: reparations for victims of sexual violence committed in conflict, June 2014.

as part of the transitional process". This means that for transitional justice to be implemented, all state and non-state structures must be involved. Peace is the common ideal that everyone wants to achieve, and to get there everyone has to contribute their efforts and resources. Like the State and the international community, civil society has a major role to play.

In addition to the AUPFTJ, Articles 16, 28 and 39 of the African Charter on Democracy, Elections and Governance encourage African countries to consolidate democracy through the exchange of experiences, strong partnerships and dialogue between governments, civil society and the private sector. The Charter promotes a culture of respect, compromise, consensus and tolerance in order to mitigate conflict, promote security and political stability, and harness the creativity of the African people.

B/ The duality of jurisdiction's orders on the TJ

For some people, transitional justice excludes traditional criminal justice. But this is not the case, because criminal justice is part of the range of solutions offered by transitional justice and is even one of its pillars. Criminal repression is necessary to recognize the rights of victims and to rebuild the social fabric destroyed by the conflict. However, criminal justice alone cannot ensure the transition to the rule of law and peace after major human rights violations. Past experience demonstrates the need to adopt an approach that relies on several complementary mechanisms. This approach makes it possible to meet the legitimate expectations of victims in their search for global justice.

Legal proceedings can play an essential role in establishing the responsibilities of the perpetrators of violations, in implementing reconciliation processes and in providing reparation to the victims, so that such violations and abuses are not committed again in the future, particularly in contexts where impunity has prevailed for decades.

A striking aspect of the recent conflict has been the tendency to 'collectivize' responsibility by associating entire communities (Muslim or Christian) with those who have perpetrated attacks. This perception of the collective responsibility of the 'other' community has dramatically increased the impact of the conflict on civilians. Bringing to justice those responsible for the most serious violations would make it possible to establish individual responsibility and combat this dangerous collectivization of responsibility on the basis of religious or ethnic identity.

The Special Criminal Court (SCC) and the Central African courts should consider following the positive experiences of other countries where efforts have been made to prosecute serious crimes at national level. And to achieve this, everyone must do their bit. In other words, the national authorities must do most of the work, and then the international partners can provide support so that the SCC can fulfil its mission. Bringing to justice the alleged perpetrators of

serious violations during the conflicts in the CAR requires the involvement of the International Criminal Court (ICC), the SCC, other Central African jurisdictions, and courts in foreign countries by virtue of the principle of universal jurisdiction. This highlights the need to pay particular attention to the issues of complementarity between national jurisdictions and the ICC, the sharing of jurisdiction between different national jurisdictions, and cooperation with foreign jurisdictions.

C/ What is the difference between the SCC and our “national courts” ?

The SCC is a special court within the Central African judicial system, based in Bangui⁵. It is responsible for investigating serious violations of human rights and international humanitarian law committed on the territory of the CAR since 1st January 2003, and for bringing those responsible to justice. It focuses on the most serious crimes, in particular war crimes, crimes against humanity and genocide, and those who played a key role in their commission. It is a hybrid institution made up of national and international members. The creation of the SCC is the materialization of a general desire, on the part of both the population as a whole and individuals particularly involved in efforts for justice at local and international level, to establish an institution specifically mandated to deal with the most serious violence perpetrated in the CAR, to finally bring justice to the thousands of victims still waiting and to put an end to the entrenched impunity of those responsible. This institution was envisaged as a more specialized and independent complement to the ordinary courts, which have limited capacity.

Like other democratic States, the CAR guarantees the effective implementation of the applicable standards and/or those governing the organization and operation of the various institutions on its territory through its different levels of jurisdiction. There are two levels of jurisdiction in the country, established by Law no. 95.0010 on the organization of the judiciary, adopted by the National Assembly on 22nd December 1995. There are judicial courts and administrative courts. Each of these orders of jurisdiction has its own specific features in terms of organization and operation. In terms of the nature of the disputes they rule on. The administrative courts hear disputes between private individuals and persons governed by public law (the State, administrative departments, local authorities, etc.) or between persons governed by public law themselves. The competent judges are administrative judges. Then the courts of law have jurisdiction in private matters. The competent judges are judicial judges.

⁵ CAR, Law n°15.003 on the creation, organization and functioning of the Special Criminal Court, 3 June 2015, article 2 ("Law creating the SPC"). The seat may, however, "be transferred to any other place in the national territory when exceptional circumstances or the needs of the service so require".

III/ The Truth,Justice,Reconciliation and Reparation Commission (TJRRC)

The TJRRC is a temporary body, which operates for a period of four (4) years and whose work ends with the submission of its report. It is not a permanent body similar to a Human Rights Commission, it focuses on a specific period of the CAR's history. Although some events may have taken place in the recent past. The TJRRC investigates a pattern of abuses over a period of time rather than specific events. In its terms of reference, the commission is given the parameters of its investigation, both in terms of the period to be covered and the types of human rights violations to be considered. In principle, these parameters are established when the Commission is set up. It may be granted additional time to complete its work. The TJRRC is officially authorized or mandated by the State. In principle, this gives the Commission better access to information, greater security and some guarantee that its work will be taken seriously. Official approval from the government is crucial as it represents an acknowledgement of past injustices but also a commitment to address different issues and move forward.

As a result, governments are more likely to implement the recommendations made when they are responsible for setting up the Commission. To succeed, there must also be significant changes in the political climate. The TJRRC should not be seen as an option to avoid or replace legal proceedings. The CAR context is unique. It is simply impossible to transfer a given model from one country to another.

A/ The missions and responsibilities of the TJRRC

Missions:

The mission of the TJRRC is to contribute to the establishment of lasting peace through the search for truth, the restoration of the dignity of victims, and to contribute to reconciliation and the consolidation of national unity. To this end, it must:

- hear victims and witnesses;
- hear the alleged perpetrators of violations;
- elucidate serious human rights violations;
- establish individual and/or collective non-judicial responsibilities;
- propose a national reparations program and the creation of a Special Victims' Reparations Fund;
- set up a program of action to promote forgiveness and reconciliation, work towards the construction of a Memorial for victims;
- use traditional and "neo-traditional" mechanisms for reparation and reconciliation;
- identify and propose measures to combat injustice, inequalities of all kinds, corruption, tribalism, nepotism...

It must educate for peace, dialogue, social cohesion and the promotion of respect for differences, and facilitate the collection and archiving of remnants of armed conflict in the CAR⁶.

Responsibilities:

Cases may be referred to the TJRRC on the basis of a complaint, or ex officio on the basis of a denunciation or a detailed and precise admission.

It may:

- hear any person who is the subject of the Commission's investigations, as well as any person likely to shed light on the facts;
- visit any premises or establishments required for the Commission's investigations;
- request the Public Prosecutor's Office to carry out searches with a view to seizing any evidence;
- receive requests for pardon from ex-combatants; may consider organizing a ritual for certain cases of national reconciliation for parties who have appeared before it;
- organize thematic hearings on major violations committed;
- power of injunction to access any public or private information or archives related to the fulfillment of the commission's mandate;
- visit any place or establishment to enlighten its work;
- the commission has no judicial power and therefore no encroachment on the Special Court, even if conciliations between victims and perpetrators of violations are *res judicata*;
- collaborate with the Special Criminal Court and make "recommendations on the transfer of cases to the Special Criminal Court and other competent jurisdictions";
- draw up an annual interim activity report and, at the end of the mandate, a final report including all recommendations.

To this end, the Commission is organized into thematic sub-commissions (art. 30, law of April 7th, 2020): truth, justice, reparation and reconciliation.⁷

1. What is the name of the TJRRC's conflict prevention, management and resolution mechanism?

B/ Collaboration between civil society and the TJRRC

Civil society, community organizations and the media should advocate and facilitate national public debates on TJ. They should also create forums, document and report on TJ processes to facilitate the task of the commission. In addition, religious and cultural processes, beyond

⁶ Law of April 7, 2020 on the creation, organization and operation of the Justice, Truth, Reconciliation and Reparation Commission.

⁷Act of April 7, 2020 creating the CJVRR: <https://www.cps-rca.cf/documentation.php?idcategorie=14>

formal state structures, play an essential role in offering avenues of healing and reconciliation to affected communities. The national dialogue process should involve religious and community leaders at national and local levels, fostering intra- and inter-community dialogue, reconciliation and healing.

The design and implementation of TJ processes must take into account resource constraints and adopt innovative, resource-sensitive approaches. National measures include the allocation of funds in national budgets and the creation of an independent fund for TJ. At regional level, stakeholders should continue to mobilize solidarity resources, share best practices and provide technical support. To implement this policy, strategic communication and advocacy for TJ must be knowledge-based.

C/ /Mechanisms for victims 'compensation

Reparation is synonymous with recognition, i.e. acknowledging responsibility. Reparation also means ensuring reparative impact and relief for victims. It also means introducing new reforms to deter repetition. Reparation means easing procedures for victims, enabling them to claim their rights.

There are several forms of reparation: compensation, restitution, rehabilitation, satisfaction. Reparation can be material:

- monetary compensation, restitution of property, access for individuals to services for example health, education, housing, rehabilitation),

It can be symbolic:

- Official apology from the government, individual (burial of victims) and sometimes collective (affirmative action, building a trauma center, rebuilding destroyed public institutions, national day of commemoration, dedicated public spaces for example parks, memorial sites, museums and memorials).

D/ The TJRRC's assessment

The commission has worked to achieve the following objectives:

- Produce an authoritative report on what happened;
- Provide a platform for victims to give their testimony and seek redress;
- Make recommendations for legislative, structural and other reforms to avoid a repetition of past abuses;
- Provide a measure of justice by ensuring that perpetrators are held accountable for their actions;
- Support societal reconciliation

Conclusion

Today, transitional justice appears to be a necessary and indispensable complement to the traditional courts and special tribunals, which are doing a remarkable effort of restoring hope to the victims of serious human rights violations during times of internal conflict.

While the experience of the various truth, justice and reconciliation commissions has proved successful in some countries such as the CAR, which have experienced serious internal military-political crises; the fact remains however that the CAR, which has just followed in the footsteps of these states by creating the TJRRC, still has a great deal of work to do and can look forward to a better future in this area if its people are truly reconciled.

In order to achieve this, however, it is highly desirable that the government and the international community give the structure all the assistance they can to enable it to continue the work begun by the initial team, whose mandate has just come to an end, and to achieve the objectives assigned to it. This, of course, while respecting its independence and autonomy.