

ATTACKS ON JUSTICE – CENTRAL AFRICAN REPUBLIC

Highlights

After a coup d'état in March 2003, General Bozizé established a transitional government until general elections to be held in March 2005. A new Constitution was adopted by referendum in December 2004, following a September 2003 National Dialogue and the October 2003 creation of a Truth and Reconciliation Commission. The judiciary is ineffective, unaccountable, corrupt and dependent on the executive. There is collusion between lawyers and judges, and a tribalization of the judiciary. The High Council of the Magistracy malfunctions. The judicial system is slow, making access to justice ineffective. Impunity remains problematic as human rights violations are ongoing.

BACKGROUND

The Central African Republic has had a recent history of instability and violence. With an outbreak of fighting and General Bozizé's rebellion on 25 **October 2002**, the African Central Republic was divided between rebels loyal to former army Chief of Staff **General François Bozizé** and government forces. From **October 2002 to March 2003**, fighting between government forces and troops loyal to General Bozizé brought widespread and systematic human rights abuses (www.fidh.org/article.php3?id_article=1092).

On 15 **March 2003**, a coup overthrew the democratically elected **President Ange Félix Patassé**. General Bozizé declared himself President, suspended the 1995 *Constitution* and enacted two new *Constitutional Acts*. He also dissolved the National Assembly and imposed a curfew, subsequently lifted on **31 October 2003**.

Bozizé appointed a Prime Minister and members of a transitional Government until the next legislative and presidential election re-scheduled for **13 March 2005**, which he intended to contest. He established by *Decree No 03.007 of 3 April 2003* the **National Transitional Council**, a consultative body, consisting of political parties and civil society representatives. A **Ministry of Justice, Human Rights and Good Governance** and a **High Commissioner for Human Rights** were also created.

A **National Dialogue** aimed at national reconciliation was held from **9 September to 15 October 2003**. The main recommendations, which have an executory character, called for the restoration of security and the establishment of a **Truth and Reconciliation Commission**, of a **National Council for Mediation** and of a **Training Centre** in charge of conflict prevention, management and resolution. They also proposed that a new Constitution be drafted based on the 1995 Constitution and that credible general elections be held. An autonomous follow-up **Committee for the National Dialogue Acts** (*Comité de Suivi des Actes du Dialogue National*) was then established.

A new Constitution was adopted by referendum on 5 **December 2004**. It will be in force at the investiture of the new President on **11 June 2005**, and at the installation of the National Assembly after the elections on **13 March 2005**. The military and security situation remains problematic endangering the forthcoming elections. Former combatants are reported today to be responsible for human rights violations.

On **7 January 2005**, Bozizé dismissed **Minister of Justice Lea Koyassoum-Doumta** by presidential decree, giving no reason for it.

JUDICIARY

Title 1 of *15 March 2003 Constitutional Act No 2* guarantees, pertaining to the judiciary, the enforcement of laws and of judicial decisions and the President's presidency over the **High Council of the Magistracy** (*Conseil Supérieur de la Magistrature*). Title 3 relates to the judiciary and proclaims its independence (Article 8). Justice is delivered in the name of the people by the **Court of Cassation**, the **State Council**, the **Court of Audit** (*Cour des Comptes*), the **conflict tribunals**, the **appeal courts** and the **ordinary tribunals**. Judges are independent and subject only to the authority of the law. Sitting judges are irremovable (Article 9). The **President of the Republic** is the guarantor of the independence of the judicial power. He is assisted by the **High Council of the Judiciary**, the **Consultative Commission of the State Council** and the **Conference of Court of Audit presidents and Attorney General**, over which he presides (Article 10). Article 11 of this Act provides that judges are appointed by presidential decree, after advice from the three aforesaid bodies. The judicial power, guardian of freedoms and property, must ensure the respect of the principles established as fundamental bases of the society (Article 12).

On **23 April 2003**, President Bozizé enacted *Ordinance No 03.001* providing for the dissolution of the **Constitutional Court** (governed by *organic law No 95.006 of 15 August 1995*). Likewise, *Ordinance No 03.002 of 23 April 2003* holds for the dissolution of the **High Court of Justice**, created for trying high officials for acts committed in exercise of their duties that could amount to treason.

Articles 265 to 269 of the *Electoral Code (Ordinance No 04.014* enacted by President Bozizé on **11 August 2004**) relate to a **Transitional Constitutional Court**, which has a mandate in electoral and referendum matters. This Court functions on a temporary basis until the establishment of a new Constitutional Court after the end of the transitional period in **March 2005**.

The **September-October 2003 National Dialogue** identified the weaknesses of the judiciary and considered it as ineffective and corrupt. The neutrality of some judges is being questioned, through court decisions politically motivated, not objective, iniquitous and contrary to the existing laws. There is a lack of independence of judges from the executive, collusion between lawyers and judges and a tribalization of the judiciary. Likewise, the slowness of the judicial system is deplored. The **High Council of the Magistracy** does not function properly, nor does the hierarchical control and disciplinary action of judicial officers. The shortage of adequate infrastructures, material resources and trained personnel is another crucial impediment facing the judiciary. Corruption within the court system is also problematic. The

judiciary does not enforce constantly the right to fair trial. Despite the fact that executory recommendations had proposed a national conference (*Les Etats Généraux de la Justice*) to examine and solve problems faced by the judicial system, judges had to call again on 16 **February 2004** for a national judiciary conference, and for more courts to be constructed especially in rural areas to solve the problems facing the judiciary. This would put an end to impunity, which would allow refugees living in southern Chad for fear of highway robbers to return and reassure victims of abuses committed by security forces.

The new *Constitution* adopted on **5 December 2004**, still not in force until the establishment of a democratic new government between **March and June 2005**, provides for an independent judicial power with independent judges (Title VII) as well as for a **Constitutional Court** (Title VI). Article 73 provides that the Constitutional Court has the mandate, among others, for electoral regularity and disputes, the interpretation of the Constitution and the constitutionality of the laws. It consists of nine members (three of whom have to be women), two of whom are appointed by the President of the Republic and two by the President of the National Assembly. The members, or counsellors, cannot be removed during their seven-year mandate (Article 74). Moreover, Article 81 states that the judiciary is the protector of freedoms and property and ensures the respect of the fundamental rights enshrined in Title 1 of the Constitution.

Since **February 2002** and in **2003**, the **Ministry of Justice** and the **United Nations Peace Building Support Office in Central African Republic** (BONUCA) have been revising the **Criminal Code** and the **Criminal Procedure Code**, new codes which should be adopted by the National Assembly after the **2005** elections. This reform allows for the inclusion of the **International Criminal Court** and the **Convention against Torture's** provisions, as well as new forms of offences, such as sexual harassment, money laundering or child trafficking. It also provides for strengthening the role of the criminal judge (*juge pénal*) and of the judge in charge of sentence execution (*juge d'application des peines*), the inclusion of alternate detention measures, the reform of pre-trial detention length (*délais de garde à vue*) and lawyer intervention in the first hours after arrest.

LEGAL PROFESSION

There were about 60 lawyers in the country in **2004**. Lawyers have access to pre-trial detainees. They can question witnesses and present evidence at trial. They have to participate in legal aid and defend indigent detainees assigned to them. However, some are corrupt and collude with judges.

On **14 May 2003**, **Maître (Me) Emilien Bizon**, lawyer and human rights defender, was arrested by Chadian soldiers backing President Bozizé after he publicly protested against the beating of a taxi driver in the capital Bangui. The Bar association and human rights organizations protested against this arrest. Bizon was released the same day.

On **25 May 2004**, **Maître (Me) Goungaye Wanfiyo**, president of the NGO "**Ligue centrafricaine des droits de l'homme** (LCDH)", publicly denounced violations of

judicial procedure and of defendants' rights at a press conference. The Attorney General's office had exerted pressures on the examining judge in the cases of Wanfiyo's clients, Mr **Oumarou** and Mr **Boykota Zouketia**. Oumarou (arrested for state security offences) had been detained despite dismissal of his case. Boykota Zouketia (charged with embezzlement of public funds) had also been illegally detained. Reportedly, the Attorney General of the Bangui Court of Appeal, **Sylvain N'Zas**, menaced Me. Goungaye Wanfiyo publicly and threatened to refer him to the Council of Order if he continued "to treat the judges like [his] servants".

ACCESS TO JUSTICE

Suspected persons can be arrested without judicial warrants for 48 hours renewable. A judge should hear them within 96 hours after arrest and inform them of the charges. Persons suspected of crimes against state security can be held without charge up to two months. In practice however, civilians are still subject to arbitrary arrest and prolonged detention without being charged or without trial and to harsh prison conditions. Detainees are usually informed of the charges against them, but many stay imprisoned before being brought before a judge. Some detainees remain in prison for years due to bureaucratic obstacles. They have the right to challenge the legality of their detention and be released pending trial. Detainees have access to a lawyer and to their family, except in cases of state security where they do not have this access pending investigation. Legal aid is available to detainees who cannot afford a lawyer.

The weaknesses and slowness of the judicial system as well as the lack of tribunals in some cities have led citizens to establish parallel courts to handle cases, such as witchcraft, in some cities.

Impunity

On **23 April 2003**, **President Bozizé** granted **amnesty**, through *Ordinance 03.003*, to more than 600 persons. –These included **former President Kolingba** (in power between 1981 and 1993), 24 officers sentenced to death for endangering national security, and over 500 soldiers sentenced to prison who were convicted in absentia on 26 August 2002 of involvement in a coup attempt on 28 May 2001 against **former President Patassé**. On **7 October 2002**, **former Minister of Defence Jean-Jacques Démafouth**, arrested on 25 August 2001, and 50 other persons were acquitted of guilt on grounds of insufficient evidence. Their trials were reportedly in breach of the right to fair trial, many of the accused had not been granted access to a lawyer when the trial started on 4 February 2002 before the Bangui Criminal Court.

Impunity for human rights abuses committed by security forces and state officers remains very problematic and no legal proceedings have been launched against many of those responsible for these violations (www.fidh.org/article.php3?id_article=697). Following numerous denunciations of these abuses, the **Minister of Justice** publicly asked the State Prosecutor to initiate public legal proceedings on these cases, as the victims did not institute legal proceedings for fear of retaliation. President Bozizé and members of the National Dialogue decided to set up in **September 2003** a **Truth and Reconciliation Commission (TRC)** within the National Dialogue forum in order to "tell the truth to ask for forgiveness. Tell the truth to make amend for his misdeeds". The TRC, essential for national reconciliation, does not advocate accountability for

human rights abuses, but recommended in **October 2003** the pursuit of its work after the National Dialogue's conclusion. It aims to receive victims' complaints, to hear the main political and administrative leaders as well as witnesses of human rights violations, and to take appeasement measures for citizens and favour their participation in the political transition. The TRC highlighted human rights violations and widespread looting committed after the coup, and requested public apologies from politicians and the army for abuses and mistakes committed in the past. Following an apology from ex-dictator Jean-Bedel Bokassa's son, the Reconciliation Commission of the National Dialogue recommended, on **10 October 2003**, posthumous forgiveness of former **Dictator Bokassa**. This was in spite of his excesses, including executing scores of schoolchildren and political opponents, and cannibalism, during his 13-year rule of the Central African Republic from 1966 to 1979.

On **22 August 2003**, the Prosecutor of the Republic launched an international arrest warrant against former **President Ange Félix Patassé** living in Lomé, Togo. Patassé was accused of gross human rights abuses, rape, murder, theft of state funds, financial malpractices and attacks on state security during the repression of Bozizé's first coup attempt of 25 October 2002. He should have been judged in absentia on **22 December 2004** before the Criminal Court in Bangui, but the hearings were postponed indefinitely at the request of prosecutors.

The trial in absentia of **former Minister for Defence Jean-Jacques Démafouth**, in exile in France, began on **14 December 2004** at the Bangui Criminal Court. Démafouth was charged with assassination and complicity in the killings of villagers of Kembé in the night of 18-19 November 1999.

Permanent Military Tribunal

Reportedly, the Permanent Military Tribunal, created in 1981, had resumed in **December 2003** after eight years of suspension. This tribunal comprises five judges: one civilian judge acting as president of the tribunal, two military judges appointed by the President of the Republic and two military officers acting as assessors. Military judges are to have at least the same grade as the accused. The procedure before this tribunal does not respect due process. There is no right to appeal to a higher jurisdiction. This tribunal has jurisdiction, under the control of the Cassation Court, over members of the military for offences committed in a military establishment or while on duty. During **2004**, it heard cases on human rights abuses, including extrajudicial executions, rape and armed robbery committed by security force members.

Press offences decriminalized

Press offences were decriminalized on **25 November 2004**. The **National Council of Transition** adopted the project of *Ordinance on the freedom of communication*, suppressing the prison terms of six months to five years for defamation, publication of false news and slandering the Head of State (provided for in the Criminal Code). President Bozizé enacted it as *Ordinance No 05.002* in **February 2005**.

International Criminal Court (ICC)

On **21 December 2004**, the **Prosecutor of the International Criminal Court (ICC)**, **Mr Luis Moreno-Ocampo**, received a letter on behalf of the government of the

Central African Republic. The letter referred to the jurisdiction of the Court the investigation of crimes that may have been committed anywhere on the country's territory since the entry into force of the *Rome Statute* on **1 July 2002**. (The Central African Republic signed the *Rome Statute of the ICC* on **7 December 1999** and ratified it on **3 October 2001**.) The Prosecutor is carrying out an analysis to determine whether to initiate investigation. On **19 January 2005**, the **Presidency of the ICC** decided that the situation in the Central African Republic be assigned to Pre-Trial Chamber III (http://www.icc-cpi.int/library/organs/chambers/Decision_Assigning_the_Situation_in_the_Central_African_Republic_to_Pre-Trial_Chamber_III.pdf).

LEGAL REFORMS DURING THE PERIOD

Since **February 2002** and in **2003**: the BONUSCA and the Ministry of Justice have revised the *Criminal Code and the Criminal Procedure Code*, which should be adopted by the National Assembly after the March 2005 elections.

15 March 2003: General François Bozizé enacted *Constitutional Act No 1* and *Constitutional Act No 2*.

3 April 2003: President Bozizé enacted *Decree No 03.007* creating a National Council of Transition (*Conseil National de Transition*).

23 April 2003: President Bozizé enacted *Ordinance 03.003* granting amnesty to more than 600 persons who were convicted in absentia on 26 August 2002 of involvement in an attempted coup on 28 May 2001 against former President Patassé.

26 August 2003: President Bozizé enacted *Decrees No 03.219* and *03.220* creating the Preparatory Committee of the National Dialogue and appointing its members. This Committee includes six commissions: Commission truth and reconciliation, Commission politics and diplomacy, Commission national defence and security, Commission economy and finances, Commission social education, culture, youth and sports, Commission organization and logistics.

12 December 2003: President Bozizé enacted *Constitutional Act No 3*.

11 August 2004: President Bozizé enacted *Ordinance No 04.014* providing for the electoral code of the Central African Republic, which was drafted with the assistance of the BONUSCA.

5 December 2004: a new Constitution was adopted by national referendum.

2004: the Ministry of National Defence, the Ministry of Justice and the BONUSCA drafted a Code of Military

Justice, which should be presented to the National Assembly during 2005. Likewise, in 2004, the Ministry of Justice and the BONUCA drafted a Code of Labour Law

25 November 2004:

the National Council of Transition adopted the project of Ordinance on the freedom of communication decriminalizing press offences, which was subsequently enacted as Ordinance No 05.002 by President Bozizé.

31 December 2004:

President Bozizé enacted Ordinance No 04.020 creating the High Council of Communication.