

**This is a self-archived version of an original article. This version may differ from the original in pagination and typographic details.**

**Author(s):** Perez-Leon-Acevedo, Juan-Pablo

**Title:** Victims at the Central African Republic's Special Criminal Court

**Year:** 2021

**Version:** Published version

**Copyright:** © 2021 the Authors

**Rights:** CC BY 4.0

**Rights url:** <https://creativecommons.org/licenses/by/4.0/>

**Please cite the original version:**

Perez-Leon-Acevedo, J.-P. (2021). Victims at the Central African Republic's Special Criminal Court. *Nordic Journal of Human Rights*, 39(1), 1-17.  
<https://doi.org/10.1080/18918131.2021.1939607>



## Victims at the Central African Republic's Special Criminal Court

Juan-Pablo Perez-Leon-Acevedo

To cite this article: Juan-Pablo Perez-Leon-Acevedo (2021) Victims at the Central African Republic's Special Criminal Court, Nordic Journal of Human Rights, 39:1, 1-17, DOI: [10.1080/18918131.2021.1939607](https://doi.org/10.1080/18918131.2021.1939607)

To link to this article: <https://doi.org/10.1080/18918131.2021.1939607>



© 2021 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group



Published online: 30 Jul 2021.



Submit your article to this journal [↗](#)



Article views: 21



View related articles [↗](#)



View Crossmark data [↗](#)

# Victims at the Central African Republic's Special Criminal Court

Juan-Pablo Perez-Leon-Acevedo

Department of Language and Communication Studies, Faculty of Humanities and Social Sciences, University of Jyväskylä, Finland; PluriCourts, University of Oslo

## ABSTRACT

The Central African Republic's Special Criminal Court (SCC), the latest hybrid criminal tribunal, may be considered an important legal development concerning victims of mass atrocities in international criminal justice mechanisms due to certain characteristics. Yet there is no academic commentary on victims at the SCC; this piece seeks to fill the gap. First it considers restorative justice as a general framework for victims' roles and rights in criminal justice in contexts of mass atrocities. Second, victim matters at the SCC are examined: victim protection, victims as civil parties, and reparations. Overall, this paper argues that provisions on victims' roles and rights contained in SCC instruments are consistent with restorative justice and international law, but that there are major challenges ahead.


## KEYWORDS

Central African Republic;  
Special Criminal Court;  
victims; restorative justice;  
participation; reparations

## 1. Introduction

Since the International Criminal Court (ICC) was created in 1998, several 'hybrid' or 'internationalised' criminal courts have been established to fight impunity and provide justice to victims of mass atrocities in more local settings. Generally, hybrid criminal courts present the following characteristics.<sup>1</sup> They are established via or as a result of an agreement between an international organisation (such as the UN or the African Union) and a particular state. They are created as separate institutions (for example, the Special Court for Sierra Leone, or SCSL) or as part of a national judiciary (such as the Extraordinary African Chambers in the Senegalese Courts, or EAC). They possess jurisdiction over international crimes and serious domestic offences committed in a state, and they consist of international and national officers. Finally, they are financed jointly by the international community and the respective state.

The most recently created hybrid criminal court is the Special Criminal Court (SCC) of the Central African Republic (CAR).<sup>2</sup> Following a memorandum of understanding

**CONTACT** Juan-Pablo Perez-Leon-Acevedo  [perezlev@jyu.fi](mailto:perezlev@jyu.fi)

<sup>1</sup>See Sarah Williams, *Hybrid and Internationalised Criminal Tribunals* (Hart 2012).

<sup>2</sup>Patryk Labuda, 'The Special Criminal Court in the Central African Republic' (2017) 15 *Journal of International Criminal Justice* 175, 181–86; Philipp Kastner, 'A Resilience Approach to Transitional Justice' (2020) 14 *Journal of Intervention and State Building* 378, 368–88.

between the UN and CAR, the SCC was established through a CAR Organic Law (SCC Law), promulgated on 3 June 2015.<sup>3</sup> It is important to note that human rights organisations had pushed for the SCC.<sup>4</sup> Under the SCC Law (Article 3), the SCC has jurisdiction over serious violations of human rights/international humanitarian law committed in the CAR's armed conflicts since 1 January 2003, as defined in the CAR's Penal Code and international instruments, particularly genocide, crimes against humanity, and war crimes. The SCC Special Prosecutor focuses on these international crimes.<sup>5</sup> Additional defining features of the SCC, whose renewable five-year mandate started on 22 October 2018, include its integration in the CAR's judiciary, its composition made up of international and national prosecutors/judges, its support from the UN peacekeeping mission in the CAR, its funding through voluntary contributions, and its functional independence from the CAR's government and UN.<sup>6</sup> Furthermore, the SCC exercises its jurisdiction alongside CAR-related investigations/cases at the ICC.<sup>7</sup> Procedurally speaking, the CAR adopted the SCC Rules of Procedure and Evidence (SCC Rules) in July 2018,<sup>8</sup> and the SCC's procedure follows CAR's inquisitorial system.<sup>9</sup> Institutionally, the SCC's main organs are its Chambers, Registry, Special Prosecutor, and Judicial Police.<sup>10</sup> The SCC also applies the CAR's Penal Code and CAR's Criminal Procedure Code.<sup>11</sup> Thus the SCC presents the abovementioned main features of hybrid criminal courts.

The SCC is arguably an important legal development concerning victims of mass atrocities in international criminal justice mechanisms for four reasons. First, among international and hybrid criminal tribunals (IHCTs), the SCC is one of the few institutions in which victims of mass atrocities can be witnesses and civil parties and, as civil parties, claim/receive reparations. Some other IHCTs (such as the International Criminal Tribunal for Rwanda and the SCSL) have only included victims as witnesses. The SCC can even be said to be more promising than the ICC. Victims can be participants but not parties in ICC pre-trials and trials.<sup>12</sup> Victims as reparation claimants are parties only in the ICC's *post-conviction* reparation proceedings. At the SCC, victims can be fully fledged parties (civil parties) during *all* proceedings.

Second, the SCC presents interesting features when compared to other hybrid criminal courts in which victims can be also civil parties. Unlike the EAC, which was limited to only one case (*Habré*),<sup>13</sup> the SCC's investigations may lead to several CAR cases. Hence, the numbers and groups of victims may be larger and broader at the SCC. Unlike the Extraordinary Chambers in the Courts of Cambodia (ECCC), which involve persons victimised decades ago (1975–1979),<sup>14</sup> the SCC deals with relatively recent and ongoing atrocities against victims.

---

<sup>3</sup>Law 15.003 <[www.cps-rca.cf/documentation.php?idcategorie=14](http://www.cps-rca.cf/documentation.php?idcategorie=14)>.

<sup>4</sup>Kastner (n 2) 379.

<sup>5</sup>SCC Special Prosecutor, 'Stratégie d'Enquêtes, de Poursuites et d'instruction', [52] <[https://cps-rca.cf/fichiers\\_joints/Strategie\\_de\\_poursuite\\_CPS.pdf](https://cps-rca.cf/fichiers_joints/Strategie_de_poursuite_CPS.pdf)>.

<sup>6</sup>SCC Law, arts 1–10, 20–27, 52–53.

<sup>7</sup>Ibid. art 37.

<sup>8</sup>Law 18010 <[www.cps-rca.cf/documentation.php?idcategorie=15](http://www.cps-rca.cf/documentation.php?idcategorie=15)>.

<sup>9</sup>Labuda (n 2) 184.

<sup>10</sup>SCC Law, arts 7–8.

<sup>11</sup>Ibid. art 3.

<sup>12</sup>ICC Statute, art 68(3).

<sup>13</sup>See EAC's web-site <[www.chambresafricaines.org/](http://www.chambresafricaines.org/)>.

<sup>14</sup>ECCC Law.

Third, the SCC is the first IHCT to exercise its mandate alongside the ICC concerning the same country (CAR). The SCC and ICC have jurisdiction over related, overlapping, and/or the same atrocities committed in the CAR. Under the principle of complementarity (ICC Statute, Article 17), the ICC exercises jurisdiction only if a state is unwilling or unable to genuinely investigate or prosecute crimes under the ICC's jurisdiction. Under a teleological interpretation, this principle potentially applies between the ICC and SCC: investigations or prosecutions by hybrid criminal courts may be regarded as 'domestic' for the purposes of Article 17 of the ICC Statute to prevent impunity.<sup>15</sup> Judicial work may be distributed; for example the ICC may focus on the most responsible offenders, or some of them. Certain innovative avenues for synergy, cooperation, and complementarity may therefore exist between the SCC and ICC that can better deliver justice for victims in the CAR.

Fourth, the SCC's legal framework on victims has arguably built on IHCTs' laws and practices in a way that makes victims the central actors in criminal justice. This is shown via comparative analysis and references in later sections of this article. This framework and prospective case-law suggest IHCTs' potential as mechanisms for strengthening victims' procedural status and rights in and/or in relation to a domestic justice system. This may be particularly significant for victims in African countries in which atrocities of a large scale have been committed and whose national justice systems are deficient. Moreover, victims' rights in criminal justice as recognised in international human rights law can be exercised at the SCC.

Nevertheless, the CAR's ongoing armed violence and limited resources pose major challenges to the SCC, particularly concerning victims. In 2020, the SCC Special Prosecutor urged perpetrators to stop international crimes against victims in the CAR.<sup>16</sup> While the SCC's legal framework on victim matters is promising, strong and diverse international cooperation is necessary to implement norms within the CAR's complex reality. The COVID-19 pandemic has increased the difficulty of such cooperation.

Although scholars have analysed the SCC,<sup>17</sup> no academic commentary focuses on victims at the SCC. This piece seeks to fill that gap by discussing how victim matters are regulated at the SCC, alongside comparative references, and suggesting that this normative framework may be an important legal development. Section 2 provides a general framework for victims and restorative justice in mass atrocities. Sections 3 to 5 respectively analyse victim protection, victims as civil parties, and reparations at the SCC.

## 2. Victims and Restorative Justice: Mass Atrocities

Retributive justice has traditionally guided the punishment of crimes.<sup>18</sup> It invokes the need to punish offenders in a proportional manner to the nature and extent of their

<sup>15</sup>Erika De-Wet, 'The Relationship between the International Criminal Court and Ad Hoc Criminal Tribunals' (2008) 83 *Die Friedens-Warte* 33, 49.

<sup>16</sup>SCC Special Prosecutor, 'Communiqué de Presse' 11 March 2020 <[www.cps-rca.cf/actualites/Communique-de-Presses-du-Bureau-du-Procureur-Special-pres-la-CPS/33/](http://www.cps-rca.cf/actualites/Communique-de-Presses-du-Bureau-du-Procureur-Special-pres-la-CPS/33/)>.

<sup>17</sup>E.g. Labuda (n 2); Kastner (n 2); Godfrey M Musila, 'The Special Criminal Court and Other Options of Accountability in the Central African Republic', International Nuremberg Principles Academy, Occasional Paper No. 2 (2016) <[https://www.nurembergacademy.org/fileadmin/media/pdf/publications/car\\_publication.pdf](https://www.nurembergacademy.org/fileadmin/media/pdf/publications/car_publication.pdf)>.

<sup>18</sup>Mark Drumbl, 'Collective Violence and Individual Punishment: The Criminality of Mass Atrocity' (2005) 99 *Northwestern University Law Review* 539, 600.

crimes because that is what they deserve, and to thus rectify the moral balance.<sup>19</sup> Unlike retributive justice, restorative justice is a forward-looking theory, one which aims to move forward from the crime and which focuses on remedies, agency, and reparations for victims.<sup>20</sup> While retributive justice mainly pays attention to offenders, victims are the focus of restorative justice.<sup>21</sup> Instead of limiting victims' role to witnesses in criminal justice, restorative justice recognises their active roles as proper participants or reparation claimants in legal and non-legal processes.<sup>22</sup> Restorative justice is increasingly influencing national and international criminal justice, particularly concerning victim matters.<sup>23</sup>

Under restorative justice, victims are central to criminal justice processes and outcomes.<sup>24</sup> It seeks to restore justice via victim participation and reparations in judicial and extra-judicial proceedings.<sup>25</sup> It can be integrated into criminal justice systems at various stages.<sup>26</sup> It has the potential to guide victims' roles in criminal justice worldwide because it relies on universal values such as dignity, security, justice, and redress of damages.<sup>27</sup> Restorative justice addresses the emotional dimensions of crimes and can transform the destructive effects of crime into constructive motivations.<sup>28</sup> It therefore directly addresses victims' rights and needs.<sup>29</sup>

In post-atrocity scenarios, restorative justice closely interacts with the notion of transitional justice.<sup>30</sup> As the UN Secretary General<sup>31</sup> and the African Commission on Human and Peoples' Rights (ACmHPR)<sup>32</sup> have remarked, transitional justice includes judicial and non-judicial mechanisms related to a society's efforts to deal with a legacy of atrocities to ensure accountability, justice, and reconciliation, including prosecution and reparations. Concerning Africa, the ACmHPR found that transitional justice processes have sought to, *inter alia*, determine the truth, establish accountability via prosecution, and provide redress via reparations for victims.<sup>33</sup> Moreover, the ACmHPR has recognised that hybrid criminal courts are valid options in African transitional processes, especially when national mechanisms are inadequate or unsuitable to handle extraordinary circumstances and vindicate victims' rights.<sup>34</sup>

In societies undergoing transition after mass atrocities, it can be said that victim protection, victim participation, and reparations in international and national criminal

<sup>19</sup>Ibid. 559–60.

<sup>20</sup>David O'Mahony and Jonathan Doak, *Reimagining Restorative Justice* (Hart 2017) 1–22.

<sup>21</sup>Cyanne Loyle, 'Restorative vs Retributive Justice' in Lavinia Stan and Nadya Nedeslky (eds), *Encyclopedia of Transitional Justice* (CUP 2013) 237.

<sup>22</sup>Brianne McGonigle-Leyh, *Procedural Justice? Victim Participation in International Criminal Proceedings* (Intersentia 2011) 40–41, 55.

<sup>23</sup>Ibid. 33–64; Inge Vanfraechem and others (eds), *Victims and Restorative Justice* (Routledge 2015); Pietro Sullo, 'Restorative Justice' in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (OUP 2016); O'Mahony and Doak (n 20) 75–91.

<sup>24</sup>O'Mahony and Doak (n 20) 76.

<sup>25</sup>Ibid. 77–89.

<sup>26</sup>Sullo (n 23) [14].

<sup>27</sup>John Braithwaite, 'Restorative Justice and a Better Future' in Gerry Johnstone (ed), *A Restorative Justice Reader* (Willan 2003) 89.

<sup>28</sup>Lode Walgrave, *Restorative Justice, Self-Interest and Responsible Citizenship* (Willan 2008) 60.

<sup>29</sup>Loyle (n 21) 238.

<sup>30</sup>Ibid.; Natalie Jaynes, 'Restorative Justice' in Stan and Nedeslky (n 21) 289.

<sup>31</sup>*The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S/2004/616 (2004) [8] and S/2011/634 (2011) [17].

<sup>32</sup>ACmHPR, 'Study on Transitional Justice and Human and Peoples' Rights in Africa' (2019) [7], [30]–[31].

<sup>33</sup>Ibid. [30].

<sup>34</sup>Ibid. [37]–[38].

justice exemplify the recognition of victims' status as prominent actors in transitional justice mechanisms that include restorative justice elements and involve victims' communities and societies.<sup>35</sup> The UN Handbook on Restorative Justice recognises that victims play a central role in justice processes and their rights must therefore be safeguarded.<sup>36</sup> Victims '... must be allowed to tell their story'.<sup>37</sup> Particularly in transitional justice scenarios, restorative justice requires victims' access to justice.<sup>38</sup> Victims can be protagonists in transitional justice,<sup>39</sup> which can indeed be victim-centred.<sup>40</sup> In mechanisms addressing mass atrocities in societies in transition, victim-centred approaches have emphasised the important role that victims play.<sup>41</sup> Although restorative justice is not always victim-centred, and vice versa,<sup>42</sup> restorative justice and victim-related mechanisms/measures are strongly interrelated, especially in dealing with mass atrocities. The ACmHPR emphasises the need to incorporate restorative justice approaches in judicial and non-judicial processes, particularly victim participation and reparations, to address victims' needs and restore social equilibrium.<sup>43</sup>

Although implementing reparations can be challenging in times of transition,<sup>44</sup> many victims of mass atrocities consider reparations the most tangible way to remedy the harms they have endured.<sup>45</sup> If reparations are absent, truth-seeking is just symbolic.<sup>46</sup> Yet reparations (particularly compensation) alone are generally insufficient: victims have diverse interests that require comprehensive, holistic, and interlinked approaches including accountability.<sup>47</sup> As demonstrated by empirical studies in Africa and beyond, victims of mass atrocities do seek international and national criminal justice.<sup>48</sup> Victims' needs trigger calls for justice.<sup>49</sup> In post-atrocity transitional societies, the 'restorative side' of the criminal justice system<sup>50</sup> means that victims should be protected, actively participate, and claim reparations at courts dealing with mass atrocities.

Restorative justice has arguably permeated international human rights law on victims' rights in criminal justice, especially concerning mass atrocities. Indeed, the CAR law contains references to both international human rights law<sup>51</sup> and restorative justice

<sup>35</sup>See Juan Méndez, 'Victims as Protagonists in Transitional Justice' (2016) 10 *International Journal of Transitional Justice* 1–5.

<sup>36</sup>UNODC, *Handbook on Restorative Justice Programmes* (2nd edn, UNODC 2020) 5, 57.

<sup>37</sup>*Ibid.* 78.

<sup>38</sup>*Ibid.* 1.

<sup>39</sup>Méndez (n 35) 1.

<sup>40</sup>See Marcos Zunino, *Justice Framed: A Genealogy of Transitional Justice* (CUP 2019) 36–37.

<sup>41</sup>Raquel Aldana-Pindell, 'A Victim-Centered Reflection on Truth and Reconciliation Commissions and Prosecutions as a Response to Mass Atrocities' (2006) 5 *Journal of Human Rights* 107–126.

<sup>42</sup>Julian Roberts, 'Restorative Justice' in Andrew von-Hirsch and others (eds), *Principled Sentencing* (Hart 2009) 163.

<sup>43</sup>ACmHPR, 'Study on Transitional Justice' (n 32) [31], [52].

<sup>44</sup>Luke Moffett, 'Transitional Justice and Reparations: Remediating the Past?' in Cheryl Lawther and others (eds), *Research Handbook on Transitional Justice* (Routledge 2017) 400.

<sup>45</sup>Pablo de-Greiff, 'Introduction' in Pablo de-Greiff (ed), *The Handbook of Reparations* (OUP 2006) 2.

<sup>46</sup>*Ibid.*

<sup>47</sup>Sarah Fulton, 'Redress for Enforced Disappearance: Why Financial Compensation is not Enough' (2014) 12 *Journal of International Criminal Justice* 769.

<sup>48</sup>Patrick Vinck and Phuong Pham, 'Outreach Evaluation: The International Criminal Court in the Central African Republic' (2010) 4 *International Journal of Transitional Justice* 421, 439. Stephen Cody and others, 'The Victims' Court? A Study of 622 Victim Participants at the International Criminal Court' (Human Rights Center/UC Berkeley School of Law 2015) <[www.humanrights.berkeley.edu/sites/default/files/publications/vp\\_report\\_2015\\_full\\_rev\\_b-4.pdf](http://www.humanrights.berkeley.edu/sites/default/files/publications/vp_report_2015_full_rev_b-4.pdf)>.

<sup>49</sup>See Zunino (n 40) 36.

<sup>50</sup>Charles Villa-Vicencio, 'Restorative Justice: Ambiguities and Limitations of a Theory' in Charles Villa-Vicencio and Erik Doxtader (eds), *The Provocations of Amnesty* (Africa World 2003) 41.

<sup>51</sup>E.g. SCC Law, arts 3, 20.

elements.<sup>52</sup> The following paragraphs present four categories of key international human rights law sources which illustrate the influence of restorative justice in criminal justice proceedings, enhancing victims' roles and rights particularly in contexts of atrocity crimes.

First, there are the UN General Assembly's instruments on victims' rights: the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN Victim Declaration),<sup>53</sup> and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Reparation Principles).<sup>54</sup> Although these are soft-law instruments, academics remark that they reflect well-recognised international human rights law standards on victims' rights.<sup>55</sup> *Inter alia*, IHCTs<sup>56</sup> and the ACmHPR<sup>57</sup> have also invoked these instruments.

Second, the UN Conventions against Torture (Article 14) and Enforced Disappearance (Articles 12(1) and 24) contain some provisions on victim matters, which the respective UN treaty monitoring bodies have interpreted.<sup>58</sup> These treaties are binding on the CAR and other African countries.

Third, there are the African human rights law sources on victims' rights. In its diverse practice (case law, resolutions, general comments, and so on), the ACmHPR has interpreted the right to a fair hearing (Article 7 of the African Charter on Human and Peoples' Rights, or ACHPR) in ways that explicitly recognise victims' rights, such as access to criminal proceedings as a remedy,<sup>59</sup> as well as victims' rights to participate in fair criminal proceedings and obtain reparations.<sup>60</sup> Moreover, the ACmHPR has approached victims' rights in criminal justice holistically, not only conducting a right-by-right analysis but also examining the relationships between those rights. It has accordingly remarked that victims' right to an effective remedy is linked to their right to access justice and includes reparations, and that victims hold a right to protection against intimidation or reprisals.<sup>61</sup> The case law of the African Court on Human and Peoples' Rights (ACtHPR) has discussed fair-trial rights in general,<sup>62</sup> which *mutatis mutandis* apply to victims. The ACtHPR has also undertaken a further key step. By interpreting the ACHPR (Article 7) and the International Covenant on Civil and Political Rights (Article 14), in *Zongo and Burkinabè* it identified certain procedural rights of victims of crimes in legal proceedings.<sup>63</sup>

---

<sup>52</sup>E.g. *ibid.* art 69.

<sup>53</sup>A/RES/40/34, 29 November 1985.

<sup>54</sup>A/RES/60/147, 16 December 2005.

<sup>55</sup>See Cherif Bassiouni, 'International Recognition of Victims' Rights' (2006) 6 Human Rights Law Review 203.

<sup>56</sup>E.g. *Lubanga* (ICC-01/04-01/06-1119), Decision on victims' participation, Trial Chamber-I (18 January 2018).

<sup>57</sup>E.g. ACmHPR, *General Comment No 4: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)*, adopted at the 21st Extra-Ordinary Session of the ACmHPR, 23 February-4 March 2017, Banjul, The Gambia [6].

<sup>58</sup>E.g. Committee Against Torture, *Kabura v Burundi*, Views (11 November 2016).

<sup>59</sup>*Zimbabwe Human Rights Forum NGO v Zimbabwe*, Communication 245/2002, Merits (15 May 2006) [212]-[213].

<sup>60</sup>ACmHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, DOC/OS(XXX)247 (2003) 20-21.

<sup>61</sup>*Ibid.*; ACmHPR, *General Comment No 4* (n 57) [9]-[10], [18], [23]-[24], [29].

<sup>62</sup>E.g. *Viking/Nguza v Tanzania*, App 006/2015, Judgment (28 March 2018) [75]-[105]; *Mohamed Abubakari v Tanzania*, App 007/2013, Judgment (3 June 2016) [116]-[161].

<sup>63</sup>*Beneficiaries of Late Norbert Zongo and Burkinabè Movement on Human and Peoples' Rights v Burkina Faso*, App 013/2011, Judgment (28 March 2014) [114]-[170]; [200]-[202].



Finally, there is the robust victim jurisprudence of the Inter-American Court of Human Rights<sup>64</sup> and the European Court of Human Rights.<sup>65</sup> Although this jurisprudence belongs to other regional courts, the ACtHPR<sup>66</sup> and IHCTs<sup>67</sup> have invoked it. This arguably shows a common ‘grammar’ in victim matters.

Under these international human rights law sources, and as identified by scholars,<sup>68</sup> the rights of victims of atrocities in criminal justice overall include the following. First, the right to the protection of their safety, security, and identity via appropriate protective measures when intervening as witnesses or in other procedural roles to avoid *inter alia* re-traumatization or re-victimization. Second, the right to equal and effective access to justice and the right to be heard via active participation. This includes procedural rights as civil parties, participants, and so on in criminal justice to *inter alia* express their own views and concerns in fair proceedings that aim at finding the truth. Third, the right to claim and receive proportional, effective, adequate, and prompt reparations for harm suffered as a result of atrocities committed against them. As examined later, these general victims’ rights in criminal proceedings underlie victims’ specific procedural rights at the SCC. Since these international human rights law sources recognise, develop, and enhance victims’ rights in criminal justice, they are arguably consistent with and reflect restorative justice.

In principle, retributive and restorative justice are not mutually exclusive,<sup>69</sup> in the sense that both justice paradigms may inspire and be incorporated into IHCTs’ laws and practices. This means that victim participation and reparations may be included in criminal justice, which justifies IHCTs adapting and incorporating restorative justice elements to their mandate. As adapted to IHCTs,<sup>70</sup> restorative justice has been a major force for strengthening victims’ roles and rights in international criminal justice via proper victim participation and reparations,<sup>71</sup> beyond the role of witnesses.

IHCTs have increasingly incorporated victims of mass atrocities as an important part of their mandates, which is consistent with elements of restorative justice. Among IHCTs, the ICC was the first to introduce victim participation to allow victims to express their own views and concerns as well as to receive case-based reparations.<sup>72</sup> IHCTs established after the ICC recognise victims’ rights to intervene as participants or civil parties and/or claim reparations. At the ECCC, EAC, and SCC, victims can be civil parties and can claim reparations against the convicted.<sup>73</sup> At the Special Tribunal for Lebanon (STL) and the Kosovo Specialist Chambers, victims can be participants but cannot claim reparations.<sup>74</sup> IHCTs have also implemented measures to protect

<sup>64</sup>E.g. *Rio-Negro Massacres v Guatemala*, Judgment (4 September 2012).

<sup>65</sup>E.g. *Bazorkina v Russia*, Judgment (11 December 2006).

<sup>66</sup>E.g. *Zongo and Burkinabè* (n 63) [48], [60]–[66].

<sup>67</sup>E.g. *Lubanga* (ICC-01/04-01/06-3129-AnxA), Order for Reparations, Appeals Chamber (3 March 2015).

<sup>68</sup>Bassiouni (n 55); Juan-Carlos Ochoa-Sanchez, *The Rights of Victims in Criminal Justice Proceedings for Serious Human Rights Violations* (Martinus Nijhoff 2013).

<sup>69</sup>See Walgrave (n 28) 62; Sullo (n 23) [14].

<sup>70</sup>Claire Garbett, ‘The International Criminal Court and Restorative Justice-Victims, Participation and Processes of Justice’ (2017) 5 *Restorative Justice* 198.

<sup>71</sup>Luke Moffett, *Justice for Victims before the International Criminal Court* (Routledge 2014) 24–57; McGonigle-Leyh (n 22) 59–64.

<sup>72</sup>ICC Statute arts 68(3), 75.

<sup>73</sup>ECCC Rules 23*bis*–23*quinquies*; EAC-Statute arts 14, 27; SCC Rules, arts 75, 88, 129.

<sup>74</sup>STL Statute, art 17; Kosovo Specialist Chambers Law, art 22.

victims when they intervene as witnesses, participants, or parties.<sup>75</sup> Additionally, IHCTs' victim-related jurisprudence has considered the above-mentioned international human rights law sources,<sup>76</sup> which, as discussed, bear the influence of restorative justice.

SCC instruments likewise reflect restorative justice elements in victim matters, as will be examined later. Indeed, the SCC Law (Article 69) recognises victims' rights to the truth and to memory and invokes victims' interests in preserving SCC case-files. Under SCC Rules (Articles 6 and 15), the SCC must guarantee that victims exercise their rights throughout all proceedings, and the CAR's non-judicial transitional justice mechanisms must respect victims' rights.

### 3. Protection of Victims

Victims as witnesses and civil parties hold the right to protection at the SCC. It is obliged to protect them through measures such as closed hearings and identity protection (SCC Law, Article 3). Unlike the ICC Statute the SCC Law provides no details on this, but, like other IHCTs,<sup>77</sup> its Rules do flesh out victim and witness protective measures. Modelled after other IHCTs, particularly the ICC Victims and Witnesses Unit,<sup>78</sup> the SCC Victim and Witness Support and Protection Unit specifically guarantees victim and witness protection.<sup>79</sup> However, its functioning is yet to be seen in practice in the CAR's challenging context.

With respect for defence rights, the SCC Rules contain provisions on victim and witness protection<sup>80</sup> which are similar to other IHCTs' sources, especially those of the ICC.<sup>81</sup> The SCC has to protect the security, physical and psychological well-being, dignity, and private life of victims, witnesses, and their relatives. It must consider the age, sex, and health of victims/witnesses, and the nature of the crimes, especially concerning sexual violence or attacks against children, as well as ask victims/witnesses about protective measures. It may adopt measures to protect victim/witness identity and special measures to facilitate testimonies of traumatised victims/witnesses, children, elderly persons, and victims of sexual violence. Thus the SCC's legal framework combines general and specific norms on victim/witness protection.

If the disclosure of witnesses' or victims' identities can seriously endanger their life or physical well-being or that of their relatives, the SCC may order protective measures *vis-à-vis* public and/or the media.<sup>82</sup> Most protective measures in the SCC Rules, such as the deletion of identifying information or testimony via special means,<sup>83</sup> are generally unproblematic when they are necessary and adopted proportionally. Certain protective measures may be or become controversial, however. One particular criticism is that IHCTs have used closed hearings excessively, and that the SCC should avoid these under the principle of public hearings.<sup>84</sup> Additionally, the SCC may order protection

<sup>75</sup>E.g. ICC Statute, art 68; ICC Rules of Procedure and Evidence (ICC Rules) 87–88.

<sup>76</sup>E.g. *Lubanga* (n 67).

<sup>77</sup>E.g. ICC Rules 87–88.

<sup>78</sup>ICC Rules 16–19.

<sup>79</sup>SCC Rules, art 46.

<sup>80</sup>SCC Rules, art 151(A)–(E).

<sup>81</sup>ICC Statute, art 68; ICC Rule 87(1).

<sup>82</sup>SCC Rules, arts 151(D), 153(A), 155(B).

<sup>83</sup>*Ibid.*

<sup>84</sup>William Schabas, *The International Criminal Court* (OUP 2010) 825.

*vis-à-vis* the defence (victim/witness anonymity) even during trial if defence rights are not essentially affected.<sup>85</sup> Most IHCT laws and practices have not allowed anonymous witnesses in trial, however, including CAR-related trials at the ICC. The need to fully respect defence rights would generally justify rejecting anonymous witnesses during trial. Whether the CAR's insecure situation may exceptionally justify anonymous witnesses during SCC trials is a very complex question which exceeds this paper's scope.

The SCC has to protect victim/witness safety during evidence production.<sup>86</sup> Since the CAR's context has involved widespread and systematic sexual violence,<sup>87</sup> SCC Rules on sexual violence testimonies are key to avoiding or reducing victims' re-traumatization. Under the Rules, victims' consent cannot be inferred from their words or conduct when they were unable to give real or unimpaired consent.<sup>88</sup> Victims' credibility cannot be inferred from their sexual behaviour before or after the sexual attack; evidence of their prior or subsequent sexual behaviour is inadmissible.<sup>89</sup> These SCC Rules were extrapolated almost verbatim from ICC Rules.<sup>90</sup> They are particularly necessary because they fill a major gap in the CAR's Criminal Procedure Code.

Overall, the SCC's legal framework is consistent with victims' right to protection from attacks against their security, life, integrity, and privacy when they intervene as witnesses or in other procedural roles in criminal justice under international human rights law. The SCC's instruments are generally coherent with diverse UN sources. These include the UN Victim Declaration (paragraph 6(d)), which recognises victims' right to the protection of their privacy and safety from retaliation and intimidation during judicial processes. SCC norms on victim/witness protection are also compatible with UN treaty standards and related case-law. Thus the UN Convention against Torture (Article 13) recognises the complainant/witness right to protection against ill-treatment or intimidation resulting from complaints/testimonies. Similarly, the UN Convention against Enforced Disappearance (Article 12(1)) acknowledges the witness/victim right to protection from intimidation, reprisal, or pressure. In turn, the UN Committee against Torture's case-law prohibits threats against victims and their relatives.<sup>91</sup> Finally, SCC norms on victim/witness protection are coherent with the UN Istanbul Protocol, which contains standards on protecting sexual violence victims/witnesses from re-victimisation or re-traumatisation during legal proceedings.<sup>92</sup>

The SCC's legal framework is also consistent with African sources. The ACmHPR has recognised the right of victims/witnesses and their relatives to protection from intimidation, retaliation, and reprisals before, during, and after judicial proceedings.<sup>93</sup> It has also found that sexual violence victims have the right to receive special support during such

---

<sup>85</sup>SCC Rules, art 155(A)(E)(G).

<sup>86</sup>Ibid. art 166(A).

<sup>87</sup>See Human Rights Watch, 'Central African Republic: New Court Should Step Up Effort' 24 July 2019 <[www.hrw.org/news/2019/07/24/central-african-republic-new-court-should-step-effort](http://www.hrw.org/news/2019/07/24/central-african-republic-new-court-should-step-effort)>.

<sup>88</sup>SCC Rules, art 170.

<sup>89</sup>Ibid.

<sup>90</sup>CC Rules 70–71.

<sup>91</sup>E.g. *Kabura* (n 58) [7.5]–[7.6].

<sup>92</sup>Office of the United Nations High Commissioner for Human Rights, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture* (OHCHR, 2004).

<sup>93</sup>ACmHPR, *General Comment No 4* (n 57) [29].

proceedings,<sup>94</sup> including special protective measures.<sup>95</sup> In turn, the ACtHPR has acknowledged victims' right to protection during legal proceedings.<sup>96</sup>

Since the SCC's normative provisions on victim/witness protective measures realise victims' rights, seek to avoid re-victimisation/re-traumatisation, and address victims' needs and concerns, they are also coherent with restorative justice as adapted to criminal justice institutions. Overall, the SCC instruments provide a strong normative framework to victim/witness protection at the SCC, which is consistent with other IHCTs' sources. Nevertheless, the operationalisation of the SCC's normative provisions on victim/witness protection will likely face important challenges due to the CAR's protracted situation of insecurity. As a human rights defender in the CAR stated, 'The major difficulty is that the victims and the tormentors live in the same neighbourhood [...] We must have the protection of witnesses so that they can testify without fearing for their lives'.<sup>97</sup> The SCC Special Prosecutor has accordingly prioritised security questions, including victim/witness protection.<sup>98</sup>

Within the CAR's transitional justice scenario, the SCC's geographical, institutional, and cultural proximity to the CAR may have the potential to enable the SCC to better protect victims/witnesses than the ICC in certain aspects. These factors may make a difference. For example, since the SCC is integrated into the CAR's judiciary, the SCC should be able to rely on the CAR's existing national institutions and authorities (police, prosecutors, public legal counsellors, and so on) to more effectively or directly enforce victim/witness protection. Additionally, the CAR's government and other CAR actors have so far promoted the creation and operationalisation of the SCC, including its victim/witness protection regime.

Yet factors such as armed groups' control over parts of the CAR threaten the security of witnesses/victims and the SCC.<sup>99</sup> Furthermore, the SCC's victim/witness protection framework is largely imported from the ICC/IHCTs, but its successful implementation may be particularly difficult because the SCC does/will not have the same amount of funding as the ICC, and low funding can negatively impact witness/victim protection. The implementation of witness/victim protective measures is usually expensive and complex. These aspects may cause SCC's deficits. The SCC and the ICC thus each present their own strengths and weaknesses concerning witness/victim protection. This suggests the need for judicial synergies and complementary efforts to better realise victims' right to protection under international human rights law.

#### 4. Victims as Civil Parties

In line with restorative justice, victims can be civil parties, that is full-fledged parties, at the SCC (CAR Criminal Procedure Code, Articles 56–62). This also reflects CAR's civil law/inquisitorial tradition. The SCC's civil party regime is very similar to those of other

<sup>94</sup>*Ibid.* [61].

<sup>95</sup>ACmHPR, *Principles and Guidelines* (n 60) 20–21.

<sup>96</sup>*Zongo and Burkinabè* (n 63) [158]–[170].

<sup>97</sup>Human Rights Watch, 'Central African Republic: New Court' (n 87).

<sup>98</sup>SCC Special Prosecutor, 'Stratégie d'Enquêtes' (n 5) [64].

<sup>99</sup>Human Rights Watch, 'Central African Republic: Events of 2019', 2020 <[www.hrw.org/world-report/2020/country-chapters/central-african-republic](http://www.hrw.org/world-report/2020/country-chapters/central-african-republic)>.

IHCTs related to civil-law countries: ECCC (Cambodia) and EAC (Senegal/Chad).<sup>100</sup> It illustrates the growing influence of restorative justice elements on international criminal justice as victims are increasingly recognised as central actors. They are accordingly endowed with a procedural role and rights as proper parties. Modelled on other IHCT units,<sup>101</sup> the SCC Victims and Defence Aid Service deals with civil party matters.<sup>102</sup> The CAR's complicated scenario will put this organ to the test. To handle the challenge, the said Service conducts victim-related dissemination/outreach.<sup>103</sup>

Victims can direct a request to join proceedings as civil parties to the SCC Special Prosecutor or SCC Investigative Judges.<sup>104</sup> By contacting SCC Investigative Judges, victims can influence investigations, but this may result in many victims' complaints.<sup>105</sup> Overall, civil party constitution at the SCC is consistent with international human rights law because SCC normative provisions on the subject are crucial to fully realising victims' right to equal and effective access to justice as recognised in international human rights law sources, including the UN Victim Declaration (paragraph 4), the UN Reparation Declaration (paragraph 11(a)), and the UN Convention against Enforced Disappearance (Article 8(2)). Under the ACHPR (Article 7), the ACmHPR<sup>106</sup> and ACtHPR<sup>107</sup> also recognise victims' right to access to criminal justice as an effective remedy.

Nevertheless, effectively enabling victims to be civil parties at the SCC in the CAR's complex context will likely be very challenging. There have been ongoing armed attacks, insecurity issues, and access- and communication-related limitations for victims and their communities.<sup>108</sup> These aspects weaken the SCC. As Human Rights Watch has suggested, victims' organisations in the CAR need to better understand the protection available to victims before '... they seek to become civil parties'.<sup>109</sup> This means that these organisations should inform victims in a timely manner of the importance of that potential role but without causing unrealistic expectations among victims or ignoring CAR's security problems. Moreover, the SCC '... will need to continue to make information available to affected communities about the opportunity to be civil parties, and to develop procedures for handling questions and concerns that may be raised about the process'.<sup>110</sup>

Like at the ECCC, the EAC, and within the CAR's system, victims can be civil parties at the SCC across procedural stages: investigation, pre-trial, and trial.<sup>111</sup> The SCC Rules recognise several diverse procedural rights of civil parties. Procedural rights such as the presentation of written or oral observations enable victims as civil

<sup>100</sup>ECCC Rules 23–23ter; EAC Statute, art 14.

<sup>101</sup>E.g. ECCC: Victims' Support Section.

<sup>102</sup>SCC Rules, art 47.

<sup>103</sup>SCC, 'Bulletin', June 2020, 19–20 <[https://cps-rca.cf/documents/Newsletter\\_JUIN\\_2020\\_VF.pdf](https://cps-rca.cf/documents/Newsletter_JUIN_2020_VF.pdf)>.

<sup>104</sup>SCC Rules, art 67(D).

<sup>105</sup>Patryk Labuda, "Open for Business": The Special Criminal Court Launches Investigations in the Central African Republic' EJIL-Talk! 8 February 2019 <[www.ejiltalk.org/author/plabuda/](http://www.ejiltalk.org/author/plabuda/)>.

<sup>106</sup>Zimbabwe Forum (n 59) [212]–[213].

<sup>107</sup>Zongo and Burkinabè (n 63) [136]–[170].

<sup>108</sup>Ver Amnesty International, 'Human Rights in Africa: Review of 2019', 2020, pp. 27–28 <<https://www.amnesty.org/download/Documents/AFR0113522020ENGLISH.PDF>>; Amnesty International, "On Trial these Warlords Lowered their Eyes" The Central African Republic's Challenging Pursuit of Justice', 2020, 10–16, 41–43.

<sup>109</sup>Human Rights Watch, 'Central African Republic: New Court' (n 87).

<sup>110</sup>Ibid.

<sup>111</sup>SCC Rules, arts 75–76, 88(A)–(E), 113–22, 131; SCC, *Guide de Sensibilisation sur la CPS à l'usage des Organisations de la Société Civile* (2017) 20–21.

parties to be heard at the SCC. Other procedural rights such as filing evidence, calling witnesses, and requesting experts concern directly evidentiary matters. Finally, certain procedural rights such as notification and access to the case file are necessary to exercise other procedural rights. Such procedural rights correspond to and realise victims' status as civil parties at the SCC, meaning that victims are full-fledged parties. As at other IHCTs, however, civil parties' procedural rights will largely be exercised via their lawyers at the SCC. Overall, civil parties' procedural rights at the SCC are very similar to civil parties' procedural rights at the ECCC, the EAC, and in the CAR's system.<sup>112</sup> Moreover, civil parties' procedural rights at the SCC are arguably *mutatis mutandis* similar to victim participants' rights at the ICC and STL.<sup>113</sup>

It is important to note that civil parties' procedural rights at the SCC are generally consistent with international human rights law. Concerning UN sources, *inter alia*, the UN Victim Declaration (paragraphs 4–6), the UN Reparation Principles 11–14, the UN Convention against Enforced Disappearance (Articles 12(1) and 24(1)), and Committee against Torture's case law<sup>114</sup> have recognised victims' general rights to access criminal justice, to be heard, and to participate in fair criminal proceedings, which in turn include more specific procedural rights of victims, such as rights to notification and information, legal representation and assistance, expression of views and concerns with respect for defence rights as well as timely, fair, and accessible participation. Thus the UN sources recognise victims' rights that are necessary for victims to meaningfully participate in criminal justice.

Furthermore, civil parties' procedural rights at the SCC are generally coherent with African sources, which contain similar criteria to UN standards. This indicates a common grammar in procedural rights related to victim participation in criminal justice. Under the ACtHPR's jurisprudence, victims' procedural rights include being heard as civil parties or in other roles by a competent and independent court; timely, diligent criminal proceedings and effective remedies; equality before the law; legal representation, including free legal assistance if needed; and adversarial proceedings between civil parties and the defendant when necessary.<sup>115</sup> Likewise, the ACmHPR recognises some procedural rights of victims in criminal justice, including the right to be informed, participate in fair proceedings, and present their concerns and viewpoints.<sup>116</sup> African sources have thus increasingly fleshed out victims' procedural rights in criminal proceedings.

However, IHCTs' practices concerning civil parties/victim participants have received criticism for having negative impacts on procedural efficiency and the accused's rights, as well as for causing some disappointment among some victims.<sup>117</sup> Enhanced victim participation at IHCTs has meant a substantial allocation of financial, human, and time resources to victim matters, which has slowed down proceedings. The strengthened procedural role and rights of victim participants/civil parties have also caused tensions and

<sup>112</sup>E.g. ECCC, *Case 001*, Appeal Judgment (3 February 2012), [488]; EAC, *Habré*, Trial Judgment (30 May 2016), [68]–[125].

<sup>113</sup>E.g. ICC Statute, art 68(3); ICC Rules 89–93; STL Rules 86–87; *Lubanga* (n 56).

<sup>114</sup>E.g. *Kabura* (n 58) [7.2]–[7.6].

<sup>115</sup>*Zongo and Burkinabè* (n 63) [114]–[170]; [200]–[202].

<sup>116</sup>ACmHPR, *Principles and Guidelines* (n 60) 20–21.

<sup>117</sup>E.g. Eric Stover and others, 'Confronting Duch-Civil Party Participation in Case 001 at the Extraordinary Chambers in the Courts of the Cambodia' (2011) 93 *IRRC* 503–46; Sergey Vasiliev, 'Victim Participation Revisited' in Carsten Stahn (ed), *The Law and Practice of the International Criminal Court* (OUP 2015) 1133–1202.

potential conflicts with the rights of the accused at IHCTs because it sometimes appears that they are facing two accusers: the prosecutor and the victims.<sup>118</sup> Furthermore, victims' procedural role and rights at IHCTs have not necessarily meant that victims have been completely satisfied with victim participation.

The SCC's civil party regime may face similar problems. The SCC should benefit from the lessons contained in past IHCT practices on civil parties/victim participants to avoid or reduce such flaws. It should particularly consider IHCT practices that have struck a balance between victims' rights and other competing interests such as defendants' rights and procedural efficiency. Moreover, the SCC should avoid generating excessive expectations about what victims as civil parties can actually do and achieve at the SCC. All of this could contribute to a more feasible application of restorative justice elements and goals for civil parties at the SCC, while also more fully realising victims' rights in criminal justice in light of international human rights law.

The SCC Special Prosecutor has considered the need for victims' better understanding of the SCC's tasks and prosecutorial decisions.<sup>119</sup> As with other IHCTs,<sup>120</sup> however, the likely high volume of victims/civil parties at the SCC will mean that their participation will be largely intermediated through common lawyers and take place mainly via written rather than oral submissions. The high volume of civil parties expected corresponds to the widespread atrocities in the CAR, where large numbers of victims have suffered harm for several years.<sup>121</sup> Like at other IHCTs,<sup>122</sup> written participation via common lawyers will make civil party participation mostly 'symbolic' in some aspects, at the SCC. This partially symbolic civil party participation at the SCC means that the large majority of civil parties will most likely be unable to express their statements before SCC judges *directly, orally, and individually*.

Despite the flaws and limitations of civil party/victim participant regimes at IHCTs, empirical studies on victims and the ICC show that victims of atrocities in the CAR and other African countries have generally welcomed victim participation at IHCTs because it is very important to them.<sup>123</sup> Indeed, civil party participation reflects and implements the restorative justice elements and goals adapted to the SCC as a transitional justice mechanism in the CAR. Victims' procedural roles as civil parties and related procedural rights at the SCC can potentially channel victims' claims for justice effectively, which is coherent with international human rights law. CAR's victim organisations have voiced these claims.<sup>124</sup>

At the SCC, victims' status as full-fledged civil parties rather than victim participants (ICC, STL, Kosovo Specialist Chambers) certainly constitutes a step forward under restorative justice, and it demonstrates the importance of increasing restorative justice elements in criminal justice. Civil party status also further enforces victims' rights in criminal proceedings under international human rights law, and reflects the CAR's civil-law/inquisitorial tradition. The SCC's civil party regime is partially extrapolated

<sup>118</sup>See e.g. Vasiliev (n 117) 1172; McGonigle-Leyh (n 22) 355.

<sup>119</sup>SCC Special Prosecutor, "Stratégie d'Enquêtes" (n 5) [14], [70].

<sup>120</sup>See e.g. Vasiliev (n 117) 1143, 1181.

<sup>121</sup>See Human Rights Watch, 'Central African Republic: New Court' (n 87).

<sup>122</sup>See e.g. Vasiliev (n 117) 1143, 1181.

<sup>123</sup>Vinck and Pham (n 48) 439; Cody and others (n 48).

<sup>124</sup>Gael Grilhot, 'Central African Courts Outpace the ICC and Special Court' 26 September 2019 <[www.justiceinfo.net/en/tribunals/national-tribunals/42467-central-african-courts-outpace-icc-special-court.html](http://www.justiceinfo.net/en/tribunals/national-tribunals/42467-central-african-courts-outpace-icc-special-court.html)>.

from other IHCT regimes. To work successfully in the CAR's setting, which is characterised by armed violence and limited resources, such a regime will require legal, policy, and financial synergies. Since victims' rights at the SCC are arguably as important as prosecuting those most responsible for atrocities committed in the CAR, support from the CAR and international actors will be needed.<sup>125</sup>

## 5. Reparations for Victims

As discussed, restorative justice pays particular attention to reparations for victims of crimes. During the process to establish the SCC, the CAR's population considered reparations and justice as necessary conditions to participate in dialogues and achieve reconciliation.<sup>126</sup> The CAR's Criminal Procedure Code (Articles 2–3) recognises victims' right to reparations as civil parties. Although the SCC Law is silent on reparations, Article 129 (judgment on civil interests) of the SCC Rules has filled this gap. Upon a conviction, the SCC decides on reparation requests against the convicted, after hearing civil parties, the convicted, and the SCC Special Prosecutor. It may order individual or collective awards that include compensation, training or socio-professional integration, medical/psychological care, an agrarian/industrial development fund, and educational programmes. To determine civil parties' harm and reparations, the SCC may collect opinions of civil parties, the SCC Victims and Defence Aid Service, and experts. If the convicted is indigent or their wealth is insufficient to finance reparations, the SCC may invite the SCC Victims and Defence Aid Service to request external funding. Civil parties can appeal awards.

Like other IHCTs' units, the SCC Victims and Defence Aid Service under SCC Rules (Article 47(b)) deals with reparations via guidelines and funding proposals for SCC judges, civil parties, and so on. The SCC Awareness Guide for civil society organisations (SCC Guide) states that victims as civil parties may claim reparations against the convicted, and the SCC can order individual reparations such as individual restitution and compensation as well as symbolic or collective reparations such as stelae, monuments, and memorials.<sup>127</sup>

Civil parties' right to reparations as well as reparation types (individual or collective) and reparation modalities (compensation, rehabilitation, satisfaction, and so on) detailed in the SCC Rules/SCC Guide are overall consistent with international human rights law. Concerning UN sources, UN Reparation Principle 15 recognises victims' right to 'adequate, effective and prompt reparation' for harms suffered, provided by *inter alia* liable individuals; the UN Convention against Enforced Disappearance (Article 24(4)) and UN Convention against Torture (Article 14(1)) recognise the same right; and the UN Reparation Principles 18–23 and the UN Convention against Enforced Disappearance (Article 24(4)–(5)) list the abovementioned reparation modalities or types. UN bodies' practices also follow these reparation standards.<sup>128</sup>

As for African sources, the ACmHPR has recognised victims' right to reparations, which include restitution, compensation, rehabilitation, satisfaction (including the

<sup>125</sup>Musila (n 17) 26.

<sup>126</sup>SCC, *Guide de Sensibilisation* (n 111) 6.

<sup>127</sup>*Ibid.* 21.

<sup>128</sup>E.g. CAT, *Kabura* (n 58) [7.6].



right to truth), and guarantees of non-repetition given as individual or collective awards to redress individual or collective harm inflicted on victims and their communities, and to be obtained from liable individuals.<sup>129</sup> The ACtHPR's emerging reparation case law has adopted similar reparation standards and findings.<sup>130</sup>

The UN and African sources are thus very similar, reflecting a common vocabulary of reparations for victims of gross atrocities. To redress harm holistically, SCC awards should combine the listed reparation types or modalities as much as possible rather than focus exclusively on one. To address victims' demands for comprehensive individual and collective reparations that include compensatory, rehabilitative, and symbolic measures in the CAR's transitional justice context,<sup>131</sup> the SCC can and should consider, *inter alia*, the above-examined international human rights law sources when construing its future reparations jurisprudence. This should be subject to some SCC's mandate-related adaptations. For example, the SCC can order reparations only against convicted individuals (not states, in this case the CAR).

The SCC Rules/SCC Guide on reparations are also consistent with ICC's law and practice.<sup>132</sup> They are stronger than the ECCC's law and practice: ECCC awards are limited to collective and moral reparations and, thus, compensation/individual awards are excluded.<sup>133</sup> Civil parties' right to appeal SCC reparations is consistent with other IHCTs' sources,<sup>134</sup> but in light of IHCTs' experiences and the CAR's situation, SCC reparation implementation will likely be very challenging, particularly when the convicted is indigent. All ICC awards (*Lubanga*, *Katanga*, *Al-Mahdi*, and *Ntangada*) and ECCC awards (*Cases 001*, *002/01*, and *002/02*) have so far been ordered against indigent convicted persons. At the EAC, compensations in *Habré* exceeded the offender's wealth.<sup>135</sup> The fact that the convicted persons are indigent or possess limited financial resources has generally resulted in reparation implementation processes that are challenging.

The SCC Guide acknowledges that the extent of damages and the absence of a SCC trust fund should be considered if victims claim material reparations and compensation.<sup>136</sup> This absence is a weakness of the SCC. The SCC Rules should be amended to include such a fund for victims. The ICC and EAC Trust Funds for Victims<sup>137</sup> have been pivotal in designing and/or implementing reparation projects despite limitations.<sup>138</sup> Victims' demands for individual or collective awards that include compensation, rehabilitation, and symbolic measures in the CAR's transitional justice scenario<sup>139</sup> strongly suggest the need for a trust fund as a key body towards meaningful reparations at the SCC. It would enable SCC awards to more effectively address civil parties' needs and requests.

To fully realise victims' right to reparations under restorative justice and international human rights law, other national transitional justice mechanisms must also complement the SCC's work. Crucially, it is suggested herein that the CAR's policies must distribute

<sup>129</sup>ACmHPR, *General Comment No 4* (n 57) [9]–[10], [33], [54]–[55].

<sup>130</sup>E.g. *Mtikila v Tanzania*, App 011/2011, Ruling on Reparations (13 June 2014).

<sup>131</sup>See ICTJ/Cordaid, *A Drop of Water on a Hot Stone' Justice for Victims in the Central African Republic* (March 2021) 32–33.

<sup>132</sup>ICC Statute, art 75; ICC Rules 97–98; *Lubanga* (n 67).

<sup>133</sup>ECCC Rule 23*quinqies*; *Case 001* (n 112) [658].

<sup>134</sup>E.g. ICC Statute, art 82(4).

<sup>135</sup>*Habré*, Appeal Judgment (27 April 2017).

<sup>136</sup>SCC, *Guide de Sensibilisation* (n 111) 18.

<sup>137</sup>ICC Statute, art 79; EAC Statute, art 27(2).

<sup>138</sup>E.g. *Lubanga* (n 67) [53]–[70].

<sup>139</sup>See ICTJ/Cordaid (n 131) 32–33.

reparations among all victims fairly, which means benefiting not only civil parties.<sup>140</sup> Furthermore, ‘false hopes’ concerning SCC awards must be avoided because these awards will only benefit civil parties.<sup>141</sup> The existence of the CAR’s Truth, Justice, Reparations and Reconciliation Commission is therefore important.<sup>142</sup> If SCC reparation outcomes and implementation are limited, complementary reparation mechanisms will be crucial. This should help to avoid or reduce victims’ disappointment and frustration, which has emerged at other IHCTs.<sup>143</sup> Furthermore, the combination of judicial (SCC) and non-judicial (the CAR’s Truth Commission) mechanisms to better realise victims’ right to reparations and other rights recognised in international human rights law is consistent with restorative justice and transitional justice.

Although the SCC cannot order reparations against the CAR, the CAR should cooperate to implement or enforce SCC reparation orders and adopt its own state reparation measures and/or programmes. In a general sense, the CAR’s Truth Commission Law does mention national reparation programmes and funds. As an example of a national reparation measure, the CAR’s authorities have actually established a national remembrance day.<sup>144</sup> Yet the EAC’s experience demonstrates that governments involved may be or become uncooperative regarding IHCT reparations.<sup>145</sup> In the CAR, a comprehensive reparations programme is indeed pending.<sup>146</sup>

The SCC will also need to receive support from international partners to finance and implement SCC awards. Rather than the CAR’s authorities, international actors will likely provide expertise, funding, and other resources,<sup>147</sup> including those needed for meaningful SCC reparation awards and effective implementation thereof. International governments have financed ICC and ECCC awards.<sup>148</sup> Nevertheless, the SCC had a funding gap of about US\$1 million for 2019, and no funds pledged for future years of operations; existing and potential donor states must increase or initiate donations.<sup>149</sup> This is a necessity for funding and implementing SCC reparations in the future. Otherwise, civil parties at the SCC can hardly realise their right to adequate reparations as international human rights law demands. If the COVID-19 situation leads to a protracted economic crisis, funding for future SCC reparations implementation may be affected for some time, resulting in either no reparations or only limited, symbolic ones.

Empirical studies concerning the CAR and beyond evidence that victims generally consider reparations to be highly important.<sup>150</sup> Furthermore, SCC reparations may crucially help to fill certain gaps left by CAR-related cases at the ICC or cases at CAR’s courts that end up in acquittals and, hence, no reparations for victims. This happened in *Bemba* (ICC), leading to deep frustration among the victims.<sup>151</sup> Such negative outcomes

---

<sup>140</sup>SCC, *Guide de Sensibilisation* (n 111) 18.

<sup>141</sup>*Ibid.*

<sup>142</sup>Law 20.009 (7.4.2020).

<sup>143</sup>Stover and others (n 117) 534–35.

<sup>144</sup>SCC, *Guide de Sensibilisation* (n 111) 21.

<sup>145</sup>*Habré*, Appeal Judgment (n 135) [843]–[849].

<sup>146</sup>CTJ/Cordaid (n 131) 33.

<sup>147</sup>Labuda (n 2) 205.

<sup>148</sup>E.g. *Katanga* (ICC); *Case 002/02* (ECCC).

<sup>149</sup>Human Rights Watch, ‘Central African Republic: New Court’ (n 87).

<sup>150</sup>Vinck and Pham (n 48) 439; Cody and others (n 48).

<sup>151</sup>FIDH, ‘Press Release’ 1 October 2018 <[www.fidh.org/en/region/Africa/central-african-republic/the-bemba-case-heavily-criticised-the-icc-must-maintain-victims-legal](http://www.fidh.org/en/region/Africa/central-african-republic/the-bemba-case-heavily-criticised-the-icc-must-maintain-victims-legal)>.

generally contradict restorative justice goals and victims' right to reparations under international human rights law.

## 6. Conclusion

Victim matters at the SCC exemplify restorative justice elements as adapted to IHCTs. Overall, the victim-related provisions of the SCC instruments constitute an important framework for achieving a central role for victims at the SCC, which is generally consistent with restorative justice in contexts of mass atrocities, international human rights law, and the laws and practices of other IHCTs. The SCC Rules contain measures to protect victim/witness security and avoid victims' re-traumatization when intervening at the SCC. Significantly, victims are civil parties at the SCC, and thus hold related procedural rights throughout all procedural stages. Finally, victims as civil parties can claim and receive reparations from the convicted at the SCC to redress harm inflicted on them.

The real test will take place once the SCC applies these victim-related provisions. Its normative framework, partially extrapolated from other IHCTs, faces serious obstacles to its successful application. These challenges include the CAR's complex situation, which involves armed violence and insecurity, as well as scarce resources to fulfil victims' rights at the SCC. The SCC's potential concerning victims is therefore partially limited, which reveals some of its weaknesses. Yet the SCC's geographical, institutional, legal, and cultural proximity to the CAR's victims as well as a number of victim-related norms are arguably strengths and, at least in some aspects, potentially advantages *vis-à-vis* both the ICC and CAR's courts.

External or international cooperation is key to fully realising victims' rights at the SCC and, thus, victims' central role in international criminal justice can be materialised under restorative justice. Yet the COVID-19 situation and its worldwide economic consequences will likely constitute hurdles to internationally funding the SCC (and other institutions) for some time. In transitional justice contexts, various mechanisms must address this and other challenges in diverse ways. For example, within its mandate and resource limits the SCC must develop jurisprudence that guarantees victims' procedural roles and rights at the SCC under restorative justice, international human rights law, and IHCTs' best practices.

## Funding

This work was supported by the Academy of Finland [grant number 325535] ('Negotiating International Criminal Law: A courtroom ethnography of trial performance at the International Criminal Court').