“ON TRIAL, THESE WARLORDS LOWERED THEIR EYES”

THE CENTRAL AFRICAN REPUBLIC’S CHALLENGING PURSUIT OF JUSTICE

AMNESTY INTERNATIONAL

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First published in 2020
by Amnesty International Ltd
Peter Benenson House, 1 Easton Street
London WC1X 0DW, UK

Index: AFR 19/3185/2020
Original language: English

amnesty.org

Cover photo: *Kevin Bere-Bere, a former lieutenant of the Anti-balaka militia from Bangassou, is sitting up during his trial. He is tried for war crimes and crimes against humanity in the 2017 massacre in south-eastern Central African Republic, at the Bangui criminal court in Bangui on January 15, 2020. - According to the UN, 72 people were killed, 76 were wounded and 4,400 people fled their homes during the attack. (Photo by FLORENT VERGNES/AFP via Getty Images)*

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GLOSSARY

WORD	DESCRIPTION
ACHPR	African Charter on Human and Peoples' Rights
CAR	Central African Republic
ECCAS	Economic Community of Central African States
EU	European Union
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
MINUSCA	United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic
SCC	Special Criminal Court
UN	United Nations
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
UNPOL	United Nations Police

1. EXECUTIVE SUMMARY

Central African Republic (CAR) has suffered waves of violence and armed conflicts since 2002, with numerous crimes under international law and other serious violations and abuses being committed with impunity. Thousands of civilians were killed, raped, abducted, mutilated, wounded, displaced or had their homes burned. These war crimes and crimes against humanity were committed especially in 2002-2003 conflict between troops of the former President Ange-Félix Patassé and armed groups headed by François Bozizé, and after 2012 by the Seleka, initially led by former President Michel Djotodia and the anti-Balaka groups associated with Bozizé. Despite the presence of UN peacekeeping forces since 2013 and successive negotiations to end violence, including the February 2019 peace agreement, violence continues to this day, with regular attacks against civilian populations, killings and other crimes and violations at the hands of the ex-Seleka and the anti-Balaka armed groups.

Political authorities have on many occasions committed to fight impunity for these horrendous crimes. The people of CAR, victims and civil society groups in CAR have also repeatedly and strongly called for criminal accountability. This was one clear message coming out of the 2015 Bangui forum, one of the country's major consensus building conference in history. But some suspected perpetrators were appointed in the government in 2017 and 2019, and the most serious crimes largely remain unpunished.

Amnesty International analyzed justice efforts in CAR to understand progress made and the challenges. This research was primarily based on interviews with 23 individuals working within or in support of the justice sector in CAR, conducted remotely in July 2020. The organization further reviewed over a hundred documents, among which close to 40 legal texts and court documents as well as conducted analysis of relevant video and radio recordings.

Our findings indicate that efforts to ensure justice for crimes under international law and other serious human rights violations and abuses committed in the Central African Republic (CAR) since 2002 are starting, but they remain weak. A few judicial proceedings are ongoing before ordinary criminal courts and the UN-backed hybrid court, the Special Criminal Court (SCC). Much more remains to be done in future months and years to bring those most responsible to account in fair trials and to bring justice to victims of all serious crimes perpetrated in the context of the armed conflicts.

The SCC was inaugurated two years ago, on 22 October 2018. From the start, the operationalization of this hybrid court was envisaged to be accomplished in a phased manner. Operationalization of court sections and hiring of staff essential for the conduct of investigations were first put in place and are now up and running. However, the operationalization has faced some serious challenges, including serious difficulties in recruiting international judges and staff and the delays in establishing the legal aid system of the Court. These challenges potentially jeopardize current ongoing investigations and future trials. Francophone States, in particular African States, must urgently step up to respond to the call for secondment of qualified judges and staff to the SCC. Further, the SCC and the commission in charge of appointing the list of lawyers authorized to appear before the Court must speed up their efforts to ensure the legal aid system is fully functional.

Investigations by the Special Prosecutor have started in 2019 and 10 cases are now before the Investigating judges at the SCC. At least 21 individuals were also arrested in the context of these investigations and are currently in pre-trial detention. Unfortunately, there is very little information available to the public with regards to these ongoing cases. It is the first time that an international or internationalized tribunal is keeping confidential identities of individuals detained. Amnesty International is particularly concerned that it is unable to verify that these individuals' rights are respected, including the right to visits from their families, to have a lawyer, to challenge their detention, to be detained in human conditions. The SCC should ensure much more

transparency with regards to proceedings at pre-trial stage, including through public hearings and public judicial decisions (redacted where necessary).

In parallel, criminal trials before ordinary courts of CAR have started since 2015, after years of absence. CAR's criminal procedure code provides that six criminal sessions at minimum shall be organized every year – each usually lasting for a few weeks, during which a batch of criminal cases ready for trial are examined and judged in court. But these sessions remain sporadic. Even if the 6 sessions were effectively organized each year, taking into account that the SCC cannot handle all cases, they would unlikely be sufficient to address the scale of serious human rights violations and abuses committed these past two decades. The capacity of the justice system and justice actors must thus be strengthened significantly to enable more impartial and independent investigations and trials to be conducted and to ensure that these proceedings are compliant with fair trial standards.

While some trials were indeed brought against members of the ex-Seleka or the anti-Balaka armed groups, most of these proceedings appear to deal with low ranking individuals and/or minor crimes or crimes against the State, rather than on the serious crimes civilians suffered in the context of the conflict. But there were at least two proceedings before ordinary criminal courts against former anti-Balaka commanders which did address crimes committed against civilians. The first one was the trial of General Andjilo in 2018, and the second one was the 'Bangassou trial' early 2020.

The 'Bangassou trial' led to the first conviction for crimes under international law in CAR. Five individuals considered anti-Balaka leaders were found guilty of war crimes and crimes against humanity in relation to the attack perpetrated against the town of Bangassou in 2017, in the South-East of the country, which led to 72 people being killed including 62 civilians and 10 UN peacekeepers and thousands forced to flee. The hearings were assiduously followed by many people via radio or television and many applauded this first step in the fight against impunity. One person said to Amnesty International: "We could feel justice was being done. Those were really powerful moments." However, concerns of fairness of the trial were also raised, including the lack of adequate preparation for defence lawyers, the lack of legal reasoning in the Prosecution's case and the absence of any protection for witnesses and victims heard in court.

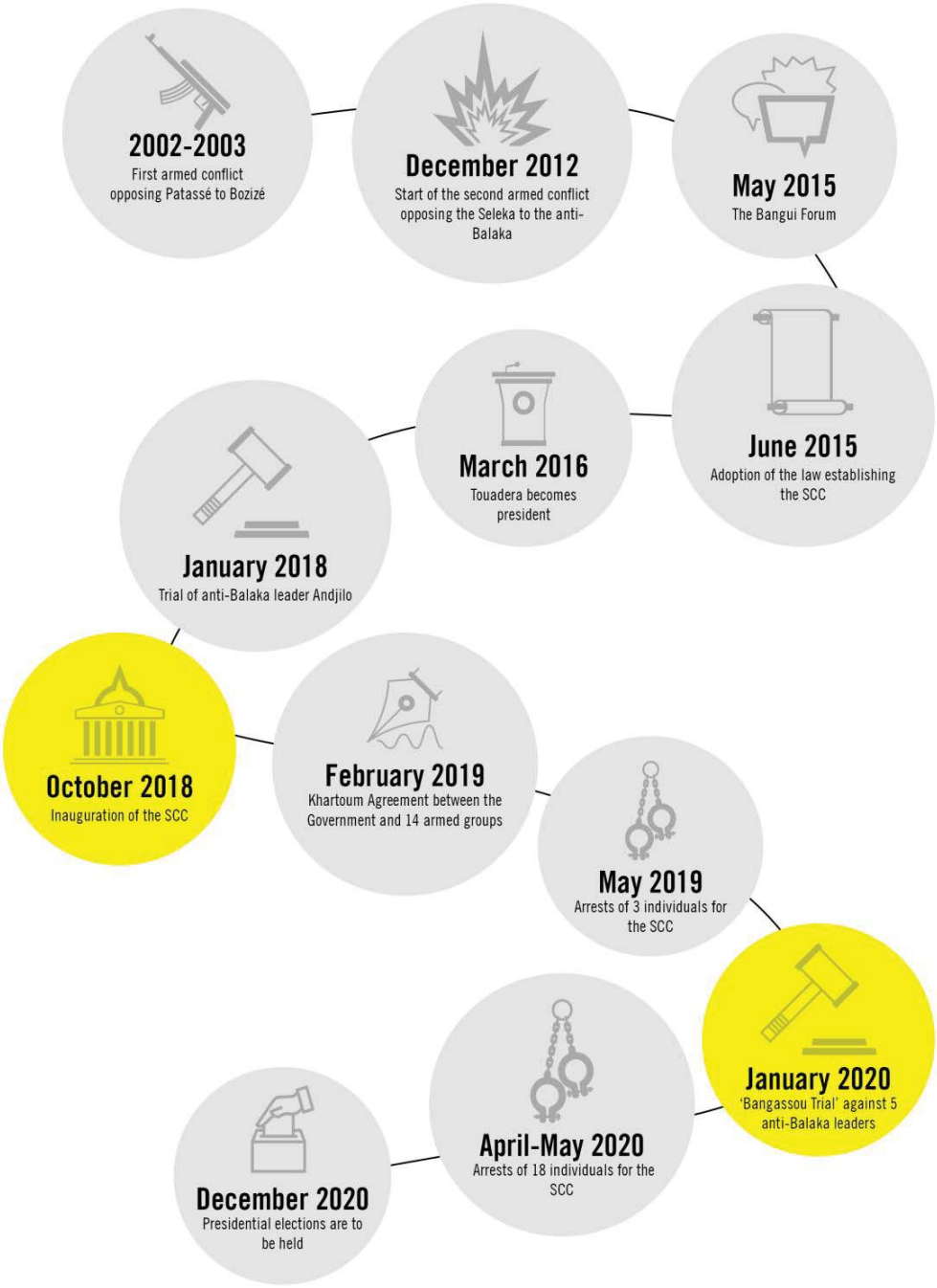
In additional to ordinary criminal courts, in July 2020 military judges were appointed for the first time since the adoption of the 2017 military justice code, opening the way to future proceedings before military courts. Amnesty International is extremely concerned about the jurisdiction of these future courts. We urge CAR authorities to amend its law to ensure that the jurisdiction of military courts is limited to purely military offenses committed by military personnel and explicitly excludes jurisdiction over crimes committed against civilians, in accordance with international standards.

International partners, especially various UN entities, play a crucial role in supporting financially and technically the justice systems in CAR. They are instrumental in providing the funds necessary for the functioning of the SCC and for the organization of criminal sessions before ordinary courts. The technical and operational support of the UN is also fundamental, for instance in the arrest of suspected perpetrators, particularly from conflict zones. At the same time, ordinary courts and civil society actors seem to receive far less support than the SCC from these international partners, which impacts the overall capacity to deliver justice and creates tensions. The UN, donors and partner States should thus consider expanding their efforts including financial support, both to the SCC and the ordinary justice system.

The administration of this external support to CAR's judicial mechanism must also be managed carefully. The UN development programme (UNDP) presently carries out the administrative and financial management of the SCC when this should ordinarily be the responsibility of the Registry of the Court. This ongoing practice, unless transitioned at the soonest, risks threatening the independence of the Court and the safety and efficiency of the conduct of the investigations. Similarly, the substantial involvement of the UN in investigations before ordinary courts presents risks both in terms of actual independence and public perception of the independence of the courts. The UN should ensure that its technical support is provided upon request of judicial authorities, who remain responsible for the strategy and the conduct of investigations and prosecutions of crimes committed in the country.

This report presents a number of recommendations to CAR authorities. Executive and legislative authorities should amend provisions of the law which are not compliant with international law, including abolishing the death penalty, creating a framework for witness and victims' protection and fully incorporating Rome Statute provisions. The Ministry of Justice should adopt a prosecutorial strategy which includes targeting those main responsible for past and current most serious crimes on all sides of the conflicts. All judicial authorities, including the SCC, must ensure that justice is done and seen to be done by improving transparency of the proceedings and ensuring compliance with international fair trial standards, including respect of the rights of those deprived of liberty.

KEY DATES


2002-2003
First armed conflict opposing Patassé to Bozizé
December 2012
Start of the second armed conflict opposing the Seleka to the anti-Balaka
May 2015
The Bangui Forum
June 2015
Adoption of the law establishing the SCC
March 2016
Touadera becomes president
January 2018
Trial of anti-Balaka leader Andjilo
October 2018
Inauguration of the SCC
February 2019
Khartoum Agreement between the Government and 14 armed groups
May 2019
Arrests of 3 individuals for the SCC
January 2020
'Bangassou Trial' against 5 anti-Balaka leaders
April-May 2020
Arrests of 18 individuals for the SCC
December 2020
Presidential elections are to be held

2. METHODOLOGY

This report aims to analyse efforts to end impunity for crimes under international law committed since 2002 in the Central African Republic (CAR), through the Special Criminal Court (SCC) and ordinary criminal courts.

This research specifically builds on Amnesty International's previous report published in 2017[1] which analysed the Central African judicial system and called for accountability for crimes under international law, and more broadly draws from years of research and advocacy by Amnesty International on serious human rights violations committed in CAR and its call for respect of the rights of victims and their families for justice and reparation.

Amnesty International conducted two missions to CAR in 2018 and 2019 to undertake research, meet and discuss progress on the fight against impunity with various actors. During the COVID-19 pandemic that affected the world in 2020, several countries' borders were closed. This health crisis posed many constraints to Amnesty International. The delegates were not able to travel to CAR for a follow-up research mission and thus conducted interviews for this research remotely.

Delegates interviewed a total of 23 individuals, including 4 women working within or around the justice sector. They included magistrates and prosecutors, lawyers, court staff, staff from various UN entities (MINUSCA, UNDP, UNODC), and members of civil society. Interviews were conducted in French via phone or video conferencing software. The information obtained during the interviews was analysed and cross-checked with other information obtained during visits to Bangui in November 2018 and July 2019. For security or privacy reasons, Amnesty International has withheld the identities of most interviewees.

Amnesty International also gathered relevant data from other secondary sources by reviewing over 100 documents including legal texts, court documents, reports from the UN agencies, NGOs and research centres, official statements and media articles. Video and radio interviews by relevant officials were also documented and are referred to for purposes of this report.

Amnesty International also reached out to the Ministry of Justice requesting an interview with relevant officials and requesting information in sending a letter[2] on 1 July 2020 via email due to COVID-19 restrictions. This letter went unanswered as did the follow-up request for written information sent on 5 August 2020[3]. On 2 October 2020, Amnesty International sent a final letter, including with the main findings of this research, inviting authorities to reply. On 16 October 2020, no reply had been received.

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[1] Amnesty International, *The long wait for justice, Accountability in Central African Republic,* (hereinafter 'the 2017 Accountability report'), 11 January 2017, (Index: AFR 19/5425/2017) available at https://www.amnesty.org/en/documents/afr19/5425/2017/en/
[2] TG AFR 19/2020.001
[3] TG AFR 19/2020.002

3. CONTEXT

3.1 LONG-LASTING ARMED CONFLICT

On 25 October 2002, rebel groups led by François Bozizé attempted to overthrow the then- President Ange Felix Patassé. The latter was supported by Jean-Pierre Bemba's Congo Liberation Movement (MLC) troops and by Martin Koumtamadji (alias Abdoulaye Miskine) who was the then head of the Presidential Security Unit (USP). The attempt was pushed back but an armed conflict then broke out characterized by grave human rights violations and abuses against civilians. This marked the beginning of a period of instability in CAR that continues to date.

Between 2002 and March 2003 when Bozizé eventually took power, thousands of people were killed, raped and internally displaced[4]. A recount of one testimony that Amnesty International documented at the time recalls the horrors faced by victims: "BD [protected name], 20, was fleeing with many other people towards PK22 when they met members of the MLC. The combatants shot at the group, wounding a village chief who carried a flag to signify that they were non-combatants. BD and many others, including her aunt's husband and other men, hid in a house. Four of the combatants broke down the door. […] They raped all the women and BD's 12-year-old sister."[5]

Once in power, Bozizé announced the suspension of the Constitution, the dissolution of the National Assembly and the establishment of a transitional period.[6] Ultimately, he was elected President of the Republic with 64% of the votes in May 2005.[7]

Following the elections several rebel groups emerged in the north of the country. The Union of Republican Forces (UFR) whose leader was a former soldier, Florian Ndjadder, the Army for the Restoration of the Republic and Democracy (APRD), led by Lieutenant Jean Jacques Larmassoum, also a former soldier, the Patriotic Movement for Restoration of the Central African Republic (MPRC) led by Steve Guéret and the Democratic Front of the Central African People (FDPC) led by Martin Koumtamadji (alias Abdoulaye Miskine),former supporter of the ousted President Patassé. The Union of Democratic Forces for the Unity (UFDR), a group led by Zacharia Damane, a former supporter of Mr. Bozizé, also took part in the resumption of armed clashes.

Some serious violations of human rights continued under Bozizé's rule, including unlawful killings[8] in the context of the violence in the north of the country and recruitment of child soldiers, both by non-state actors and President Bozizé's forces.[9]

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[4] Fédération Internationale des Ligues des Droits de l'Homme (FIDH), *Crimes de Guerre en République Centrafricaine : Quand les éléphants se battent, c'est l'herbe qui souffre*, no 355, 13 February 2003, available at www.fidh.org/IMG/pdf/cf355f.pdf ; Amnesty International, *Central African Republic, Five months of war against women,* 10 November 2004 (Index: AFR 190000004), available at www.amnesty.org/en/documents/AFR19/001/2004/en/

[5] Amnesty International, *Central African Republic, Five months of war against women,* 10 November 2004 (Index: AFR 190000004), page 13

[6] Décret n° 03/007 portant création du Conseil National de Transition Le Président de la République, 3 April 2003 ; L'Humanité, *Zoom - Centrafrique Quel " Gouvernement de transition "?*, 23 March 2003, available at www.humanite.fr/node/281720;

[7] Organisation internationale de la Francophonie, Rapport d'observation des élections Présidentielles et législatives,13 March et 8 May 2005

[8] FIDH, *République centrafricaine Fin de la transition politique sur fond d'impunité- Quelle réponse apportera la Cour pénale internationale ?* February 2005, available at www.fidh.org/IMG/pdf/rca410tf.pdf

[9] Rapport du projet mapping documentant les violations du droit international des droits de l'Homme et du droit international commises sur le territoire de la République Centrafricaine de janvier 2003 à décembre 2015 ; Rapport du Secrétaire général des Nations-Unies sur la situation au Tchad et en République Centrafricaine, 2006, available at www.un.org/fr/documents/view_doc.asp?symbol=s/2006/1019

In March 2011 Bozizé was re-elected claiming 64% of the votes, but the results were contested by some[10] and unrest continued in the country. In August 2012, the "Seleka", meaning an "alliance movement" in Sango, was created. This is an armed coalition made up mostly of Muslims from CAR and neighbouring countries and which brought together several armed groups including the UFDR, FDPC, the Union Republican Forces (UFR), and the Patriotic Convention for the Salvation of the Kodro (CPSK)- founded in June 2012[11] under one umbrella.

On 10 December 2012, an armed offensive launched by the Seleka marked the start of a new armed conflict in CAR, which is still ongoing today. In January 2013, the Seleka and the government signed a peace agreement[12] under the aegis of the Economic Community of Central African States (ECCAS) and led to the appointment of Mr. Michel Djotodia, the then leader of the Seleka, as Deputy Prime Minister and Minister of Defence.

But soon after, in March 2013, the Seleka overthrew Bozizé[13] and Djotodia became CAR's President.[14] This new coup ushered in another era of violence, commission of numerous crimes under international law and other serious human rights violations. Amnesty International documented mass killings, rape, extrajudicial executions, torture, burning of houses and villages, and enforced disappearances committed by the Seleka forces during Djotodia's rule. Some of these serious human rights violations constitute war crimes and crimes against humanity.[15]

In the months that followed the coup, the anti-Balaka, a collection of 'self-defence' armed groups made up largely of animists and Christians, emerged. The groups carried out widespread reprisal attacks against Muslims across CAR, in particular in Bangui and the western part of the country.[16] These serious human rights abuses included mass unlawful killings, abductions, mutilation, burning homes and places of worships and destruction and looting of homes, some of which also constitute war crimes and crimes against humanity.

By December 2013, the violence between Seleka (including some acting under the responsibility of the president) and anti-Balaka armed groups in Bangui killed nearly 1,000 civilians, prompting the resignation of President Djotodia under strong pressure from the international community.[17] But crimes by both sides continued, combatants following their respective leaders regardless of change of power. Some former members of the presidential brigade during Bozizé's rule joined the anti-Balaka groups especially following the December 2013 attack[18] and combatants under Djotodia's command while he was president remained members of Seleka's various factions after he resigned.

In response to the deteriorating security situation, the African Union Peace and Security Council approved the establishment and deployment of the International Support Mission to the Central African Republic (MISCA) on July 2013[19], an African Union led peacekeeping force. The UNSC endorsed on October 2013 the deployment of MISCA by resolution 2121[20]. The mission also received the support of the French military operation Sangaris.[21] On 15 September 2014, the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) replaced the MISCA through UNSC resolution 2134.[22] MINUSCA is still present in CAR.

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[10] LeMonde Afrique, *François Bozizé, vainqueur contesté de l'élection présidentielle en Centrafrique*, 2 February 2011, available at www.lemonde.fr/afrique/article/2011/02/02/francois-bozize-vainqueur-conteste-de-la-presidentielle-centrafricaine_1474243_3212.html

[11] Radio France Internationale, *Centrafrique : pour qui roule la Seleka?,* 31 December 2012, available at www.rfi.fr/fr/afrique/20121229-centrafrique-roule-seleka-bozize-faca-cpjp

[12] Accord politique de Libreville, le 11 January 2013, available at www.peaceagreements.org/viewdocument/1479

[13] Deutsche Welle, *Le président Bozizé renversé*, 20 March 2013, available at www.dw.com/fr/le-pr%C3%A9sident-boziz%C3%A9-renvers%C3%A9/a-16695799

[14] A national transitional council created by Decree No. 005 of 13 April 2013, appointed on the 16 April 2013 Michel Djotodia, leader of the Seleka, as President[14] of the Transition

[15] Amnesty International, *Central African Republic, Time for accountability*, pages 26-32, 10 July 2014 (index: AFR 19/006/2014) and Amnesty International, *Central African Republic: Human rights crisis spiraling out of control,* October 2013 (index AFR 19/003/2013).

[16] Amnesty International, *Central African Republic, Time for accountability*, pages 15-25, 10 July 2014 (index: AFR 19/006/2014)

[17] LeMonde, *Centrafrique : démission du président Michel Djotodia*, 10 January 2014 available at www.lemonde.fr/afrique/article/2014/01/10/centrafrique-tractations-sur-le-sort-du-presidentdjotodia_4345813_3212.html#:~:text=Sous%20la%20pression%20des%20dirigeants,ont%20annonc%C3%A9%20vendredi%20leur%20d%C3%A9mission.

[18] Amnesty International, *Central African Republic, Time for accountability*, page 16, 10 July 2014 (index: AFR 19/006/2014)

[19] Communiqué du Conseil de Paix et de sécurité de l'Union Africaine, 19 july 2013, available at www.peaceau.org/uploads/cps-com-385-rca-19-07-2013.pdf

[20] United Nations Security Council (UNSC), Resolution 2121 (2013) adopted on 10 October 2013

[21] Ministère des Armées, *Centrafrique : lancement de l'opération Sangaris*, 5 December 2013, available at www.defense.gouv.fr/operations/actualites2/centrafrique-lancement-de-l-operation-sangaris

[22] UNSC, Resolution 2134 (2014) adopted on 28 January 2014

After Djotodia resigned in January 2014, he was replaced by Alexandre-Ferdinand N'Guendet from 10 January 2014 to 20 January 2014, when Catherine Samba-Panza[23] was elected as head of the transitional government. A first ceasefire agreement amongst the belligerents was signed after the Brazzaville Forum in July 2014[24]. The Bangui National Reconciliation and Reconstruction Forum (the Bangui forum) was organised in May 2015 with a focus on reconciliation and the fight against impunity.[25] Finally, in December 2015, presidential elections were held and saw the election of Faustin-Archange Touadéra[26] as President of CAR.

However, despite the enthusiasm generated by the election of President Touadéra, the security situation remained tumultuous. There has been a proliferation of armed groups in the CAR since 2015, resulting from dissensions within the ex-Seleka and the anti-Balaka. These divisions are mainly made along ethnic lines and regional origins or based on economic interests.[27] This proliferation has led to strengthening of the grip of armed groups over large sections of the national territory, exercising state powers over these occupied areas and engaging in serious human rights abuses.

Moreover, the CAR government and various politicians in the country have complex and ambiguous links with these armed groups (see section 3.3 below). In 2017 and 2019, members or leaders of the ex-Seleka and anti-Balaka were appointed in the government. But the combatants in these armed groups were never incorporated into the Central African army and as such most armed groups and political authorities maintain relationships of mutual mistrust.[28]

In January 2019, another round of negotiations took place in Khartoum (Sudan) which brought together the government of the CAR and 14 leaders of various armed groups and led to the signing of another peace agreement in February 2019 in Bangui[29]. But again, violations and abuses did not stop thereafter. For example, on 21 May 2019, around 40 civilians were killed during three attacks on villages in Ouham Province, allegedly committed by members of the so called 3R armed group. This attack also caused the forced displacement of more than 12,000 people.[30]

As CAR moves towards another presidential election in December 2020, violent incidents involving armed groups signatories to the latest peace agreement remain recurrent and large portions of the territory are still under the control of armed groups.[31] According to UN representative in CAR "these clashes constitute serious threats to the protection of civilians and have also led to an increase in inter-communal tensions in places like Birao, Bria and Alindao."[32]

The first round of presidential elections is scheduled to take place on 27 December 2020. The prospect of elections has, according to the United Nations committee of experts, pushed armed groups to extend their control over territories.[33] In addition, the unabated cycle of impunity, including, as symbolized by the presence of former Presidents Bozizé and Djotodia in the country, individuals credibly suspected of responsibility for past serious human rights violations and abuses, furthers risk rekindling violence in the country.

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[23] FranceInfo; *Centrafrique : Catherine Samba-Panza, maire de Bangui, élue présidente de transition*, 20 January 2014, available at www.francetvinfo.fr/monde/afrique/centrafrique/centrafrique-catherine-samba-panza-maire-de-bangui-elue-presidente-de-transition_509561.html

[24] Accord de cessation des hostilités en République Centrafricaine, Brazzaville, 23 July 2014, available at www.justiceinfo.net/media/k2/attachments/RCA/Brazzaville-Accord-Cessation-Hostilites-2014.pdf

[25] See following section 3.2

[26] France 24: *Présidentielle en Centrafrique : victoire de Faustin-Archange Touadéra avec 62,71 % des voix,* 20 February 2016 available at www.france24.com/fr/20160220-presidentielle-centrafrique-victoire-faustin-archange-touadera-voix

[27] Note Institut Français de Relations Internationales, *Écosystème des groupes armés en Centrafrique*, April 2020, available at www.ifri.org/fr/publications/notes-de-lifri/ecosysteme-groupes-armes-centrafrique

[28] FIDH, *Remaniement ministériel en Centrafrique : une ouverture politique qui invite à la vigilance*, 15 September 2017, www.fidh.org/fr/regions/afrique/republique-centrafricaine/remaniement-ministeriel-en-centrafrique-une-ouverture-politique-qui; Le Monde Afrique : *En Centrafrique, des proches des milices font leur entrée au gouvernement*, September 2017, available at www.lemonde.fr/afrique/article/2017/09/15/en-centrafrique-des-proches-des-milices-font-leur-entree-au-gouvernement_5186333_3212.html; Human Rights Watch (HRW), *Central African Republic : Don't reward warlords,* 24 April 2019, available at https://www.hrw.org/news/2019/04/24/central-african-republic-dont-reward-warlords ; Note Institut Français de Relations Internationales, Écosystème des groupes armés en Centrafrique, pages 27-28, April 2020

[29] Accord pour la paix et la réconciliation en République Centrafricaine, February 2019, available at www.hdcentre.org/wp-content/uploads/2019/02/Accord-pour-la-paix-et-la-r%C3%A9conciliation-en-Centrafrique.pdf

[30] HRW, Central African Republic: Armed group kills 48 civilians, 18 July 2019, available at https://www.hrw.org/news/2019/07/18/central-african-republic-armed-group-kills-46-civilians

[31] Institut Français des relations internationales, *Ecosystème des groupes armés en Centrafrique*, April 2020.

[32] UN press release, *RCA : les groupes armés entravent l'amélioration de la sécurité, selon l'envoyé de l'ONU*, 21 February 2020.

[33] Rapport final du Groupe d'experts sur la République centrafricaine reconduit dans son mandat par la résolution 2507 (2020) available at www.undocs.org/fr/S/2020/662

CRIMES UNDER INTERNATIONAL LAW IN CAR

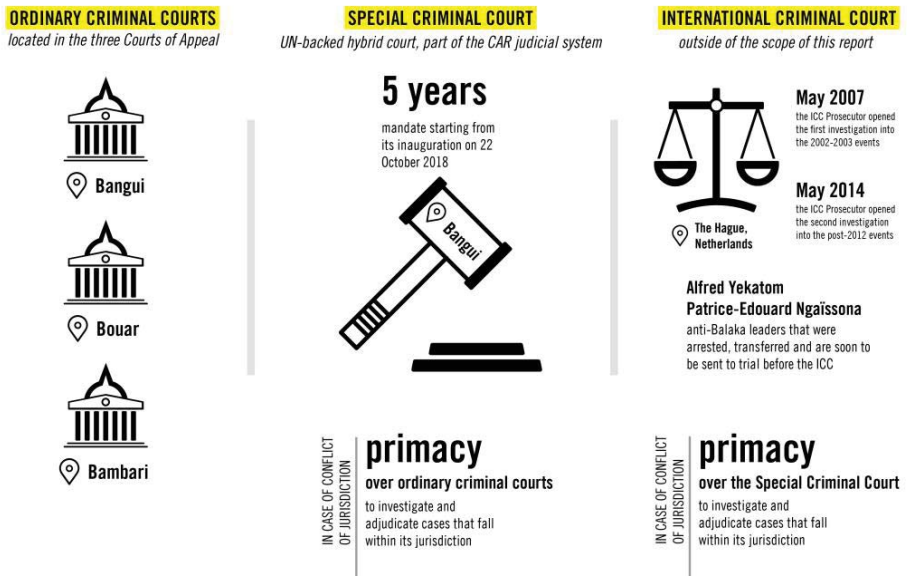
War crimes are serious violations of international humanitarian law, they are committed in the context of an international or a non-international armed conflict. Crimes against humanity are certain prohibited acts committed as part of a widespread or systematic attack directed against a civilian population, as part of a government or organizational policy. Crimes against humanity and war crimes are defined by CAR's domestic law, under articles 153 and 154 of the penal code, as well as under international law, including under articles 7 and 8 of the Rome Statute which CAR has ratified[34]. The definitions of these crimes under CAR law are however not fully aligned with definitions under international law, thus the penal code should be revised to ensure it conforms with CAR's commitments as a state party to the Rome Statute[35].

Amnesty International has documented war crimes and crimes against humanity committed in CAR since 2002, including deliberate attacks against civilians, rape, killings, extrajudicial executions, enforced disappearances, abductions, and pillage.[36] The Prosecutor of the ICC has also found that war crimes and/or crimes against humanity were committed throughout the country: first through the acts of murder, rape in 2002-2003, and second through the crimes of murder, rape, attacks against humanitarian missions, use of child soldiers, forced displacement and persecution by both the Seleka and the Anti-Balaka groups in the context of the conflict since 2012.[37]

Three 'levels' of tribunals have jurisdiction over crimes under international law committed on the territory of CAR since 2003:

- ordinary criminal courts in CAR (see Chapter V of the present report)
- the Special Criminal Court (SCC) (see Chapter IV)
- the ICC (Note that examination of the situations before the ICC is outside of the scope of this present report.)

TRIBUNALS THAT HAVE JURISDICTION OVER CRIMES UNDER INTERNATIONAL LAW COMMITTED ON THE TERRITORY OF CAR SINCE 2003



[34] CAR became a State party to the Rome Statute in 2001

[35] To know more about the discrepancies and how to address them, see Amnesty International, the 2017 Accountability report, box included in pages 42-43.

[36] Amnesty International, *Central African Republic, Five months of war against women,* 10 November 2004 (Index: AFR 190000004); Amnesty International, *Central African Republic, Time for accountability*, 10 July 2014 (index: AFR 19/006/2014); Amnesty International, *Impunity is fueling violence*, 11 December 2014 (Index: AFR 19/011/2014); Amnesty International, *Erased Identity: Muslims in ethnically cleansed areas of the Central African Republic*, 31 July 2015 (index: AFR 19/2165/2015); Amnesty International, *Central African Republic, The long wait for justice : Accountability in CAR*, 11 January 2017 (Index: AFR 19/5425/2017); Amnesty International, *Central African Republic, « Everything was in flames » The attack on a displaced persons camp in Alindao*, 14 December 2018 (Index: AFR 19/9573/2018)

[37] See pages dedicated to the CAR situations on the ICC website: www.icc-cpi.int/car (concerning the 2002-2003 situation) and www.icc-cpi.int/carII (concerning the post-2012 situation)

3.2 STRONG CALLS FOR JUSTICE

The Bangui forum represents a watershed moment in CAR where a united call for justice was echoed by Central African citizens. This forum was held from 4 to 11 May 2015 and brought together members of civil society, representatives of political parties, traditional leaders and members of armed groups. One of the central objectives of the Bangui forum was to build consensus around justice, rightfully described as invaluable element towards achieving sustainable peace and transition in CAR. Public consultations were initiated before the Bangui forum from which it emerged that while there is support for dialogue and reconciliation, the public calls for justice and reparation as a primary condition for transition and peace.[38.]

According to the report of the working group on justice and reconciliation of the Bangui forum, the population expects deterrent justice responses against political leaders, leaders of armed groups, and other people responsible for recruitment and use of child soldiers, destruction of State buildings and places of worship, intercommunal violence, widespread looting and especially *"blood crimes[39] and gender-based crimes affecting thousands of women and girls."*[40]

This forum further demonstrated the appetite and determination of Central Africans for justice. The forum came out with clear recommendations for authorities to adopt a comprehensive strategy to fight impunity and called for a formal ban on granting amnesties to perpetrators of the crime of genocide, war crimes and crimes against humanity[41].

These calls for justice by the civil society and the population in CAR have not faded. In 2018, the UN commissioned surveys on the perception of justice and security by Central Africans. It emerged that: "Justice is seen as a component of peacebuilding and more than half of participants believe that those responsible for crimes should be tried (57%) and imprisoned (55%). Rejecting any form of amnesty is the most common approach frequently proposed in response to four proposals with different levels of amnesty."[42]It concluded again that justice is seen as a key component of peacebuilding for many Central Africans. More than half of participants believed that those responsible for crimes should be tried (60%) and imprisoned (52%). Perhaps more interestingly, 83% of them believe that the most important step is prosecuting perpetrators while 16% say that the most important response is to receive compensation. For 45% of those questioned, justice must be done before the ordinary courts, 40% before the Special Criminal Court and 10% before the ICC, highlighting as well how the population has confidence in the Central African judicial system. In addition, 73% of respondents perceive themselves as victims.[43]

Interviewees also described to Amnesty International how the population followed assiduously hearings of the last criminal session held in Bangui and broadcasted live on radio and TV in December 2019 and January 2020. People gathered in the streets around radios to follow the trial hearings and discussed those hearings with passion, further demonstrating an important interest in justice in the country.[44] A human rights defender which assists victims before the courts told Amnesty International that victims complain about delays in justice processes, but confidence seems to reign and expectations are therefore high.[45]

"The population has confidence in the justice system in CAR and has high expectations. This was visible during the last criminal sessions which were broadcasted.[46]" a member of civil society told Amnesty International.

But justice is not only demanded by people in CAR, it is also a right of victims. States have the obligation to provide truth, justice and reparations to victims of crimes under international law and other serious human rights violations, which includes investigating and prosecuting alleged perpetrators of such crimes.[47]

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[38] Ministère de la Réconciliation et du Dialogue politique, *Rapport des consultations populaires à la base en République Centrafricaine*, March 2015, on file with Amnesty International
[39] This expression refers to killings.
[40] Rapport de synthèse du Groupe thématique justice et réconciliation-Forum de Bangui du 4 au 11 mai 2015.
[41]Rapport de synthèse du Groupe thématique justice et réconciliation-Forum de Bangui du 4 au 11 mai 2015.
[42] PNUD- Harvard Humanitarian Initiative - MINUSCA, *Sondages Paix, Justice et Sécurité en République Centrafricaine*, Rapport 4, Mai 2019, available at http://www.peacebuildingdata.org/sites/m/pdf/CAR_Poll-Report_04_fr.pdf . Over 6,000 individuals were surveyed.
[43] PNUD- Harvard Humanitarian Initiative - MINUSCA, *Sondages Paix, Justice et Sécurité en République Centrafricaine*, Rapport 2020 not published yet but powerpoint presentation of the findings on file with Amnesty International
[44] Interview with a UN Staff, 23 July 2020; Interview with UN staff, 22 July 2020; Interview with Prosecutor General, 30 July 2020; Interview with journalist, 26 July 2020
[45] Interview with a member of civil society, 6 July 2020
[46] Interview with a member of civil society, 6 July 2020
[47] As recognized under many international law instruments, including the Rome Statute and UN Basic principles on the right to a remedy and reparations for victims of gross violations of international human rights law and serious violations of international humanitarian law, UNGA resolution 60/147, December 2005

3.3 PEACE DEALS AND RISK OF IMPUNITY

"I ask those ordering crimes to stop their conspiracies and artifices, because justice will be relentless" Speech by President Faustin Archange Touadéra on 13 August 2016 on the 57th anniversary of the country's independence[48].

CAR had a long history of culture of impunity. For example former Presidents Patassé and Bozizé organized successive blanket forgiveness ceremonies in 2002 and 2003 respectively.[49] In 2008, the government passed an amnesty law for crimes committed between 2003 and 2008.[50] Article 1 of this law stipulates that "…amnesties are granted throughout the national territory for all offenses prosecuted before national courts and committed [on the territory from 15 March 2003 until the date of the promulgation of the law] by: elements of the Defense and Security Forces, civil and military authorities […], civilian and military elements who took part in the events […], officials and members of politico-military groups located in the national territory or in exile […] ."

Since 2015 political leaders made repeated promises of accountability. In 2016, during a donors' conference in Brussels, President Touadera recalled that reconciliation could not be accomplished at the cost of impunity.[51] The same year, before the Central African community living in France, he emphasized the link between justice and reconciliation.[52] In June 2019, at a symposium on the state of justice in CAR, Prime Minister Firmin Ngrebada made a strong statement about CAR people's aspirations for justice and the prosecution of alleged perpetrators, as included in the recommendations of the Bangui Forum and the Khartoum agreement.[53] In November 2019, Ngrebada also declared that delivering justice was a duty of the government.[54]

Despite these promises, impunity still prevails in CAR with respect to crimes under international law and other serious human rights violations and abuses committed since 2003. Some efforts have been made both before the Special Criminal Court (SCC) and the ordinary courts (see Chapters IV and V), but investigations and prosecutions are only starting. Most individuals suspected of committing, ordering, condoning or failing to prevent serious human rights violations and abuses in CAR, particularly former officials and those in command structures of the various armed forces and groups,have yet to be investigated and prosecuted, including those identified and named by UN bodies and various human rights organizations, including Amnesty International.[55]

"We said we were going to prosecute the perpetrators of crimes committed since 2003. And how many have we arrested? The two anti-balaka leaders who have been sent to the ICC so far are people arrested due to a combination of circumstances in Bangui. But all these Seleka who have committed abuses, they are here, and we are rolling out the [red] carpet for them! This is also one of the reasons people no longer have trust. Since we know that these rebel groups are protected from prosecution…"[56] a former CAR judge told Amnesty International.

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[48] Voice of America, *Faustin-Archange Touadéra: la justice sera "implacable" envers les groupes armés,* 13 August 2017, available at www.voaafrique.com/a/faustin-archange-touadera-la-justice-sera-implacable-envers-les-groupes-armes/3983927.html

[49] FIDH, *République centrafricaine, Oubliées, stigmatisées : la double peine des victimes de crimes internationaux*, Octobre 2006, available at www.fidh.org/IMG/pdf/RCA457-2006.pdf

[50] Loi No. 08.020 du 13 Octobre 2008 portant amnistie générale à l'endroit des personnalités, des militaires, des éléments et des responsables civils des groupes rebelles ;
See also : Fleury Fulgence Banale, LES AMNISTIES EN REPUBLIQUE CENTRAFRICAINE : UNE HISTOIRE DE LA BANALISATION DU MAL ET DE L'IMPUNITE, *Amnistie et droits des victimes en République Centrafricaine*, L'Harmattan, 2020, 978-2-343-18163-9. ffhal-02901166f, July 2020 ; FIDH, *Déjà-vu D(é)s accords pour la paix au détriment des victimes*, page 45, December 2008, available at www.refworld.org/pdfid/4951f4702.pdf, Amnesty International, *Central African Republic, Action needed to end decades of abuses*, October 2011 (Index : AFR 19/001/2011) available at www.amnesty.org/download/Documents/24000/afr190012011fr.pdf,

[51] LeMonde, *Les victimes de la crise en République centrafricaine ont soif de justice*, 11 May 2017 available at www.lemonde.fr/afrique/article/2017/05/11/les-victimes-de-la-crise-en-republique-centrafricaine-ont-soif-de-justice_5126320_3212.html

[52] Statement of the president Touadera before the diaspora community in France, September 2016 available at www.sangonet.com/afriqg/PAFF/Dic/actuC/ActuC23/declaration-FAT-pdt-de-la-RCA-devant-commte-centrafr-de-France.html

[53] MINUSCA press release, *L'indépendance de la justice au service de la paix et de la réconciliation en RCA*, 28 June 2019, available at www.minusca.unmissions.org/l%E2%80%99ind%C3%A9pendance-de-la-justice-au-service-de-la-paix-et-de-la-r%C3%A9conciliation-en-rca

[54] TV5 Monde, interview of Firmin Ngrebada, November 2019, available at www.information.tv5monde.com/video/en-centrafrique-rendre-justice-est-un-devoir-pour-le-gouvernement-estime-le-premier-ministre

[55] Except a few, including Yekatom and Ngaissona who have been transferred to the ICC and Andjilo who has been tried before ordinary courts, see chapter V. For the list of individuals identified as alleged perpetrators, see: Amnesty International, *Time for accountability*, 10 July 2014, (Index: AFR 19/006/2014); Amnesty International, the 2017 Accountability report

[56] Interview with CAR former judge, 22 July 2020

Recent peace agreements, in particular the Khartoum Agreement[57], have exacerbated concerns and doubts with regards to the government's commitment to fight impunity.

This Khartoum agreement is part of a long line of peace agreements entered between the government and armed groups in CAR. It was signed on 6 February 2019 between the Central African government and 14 armed groups following 18 months of negotiations led by the African Union. Much like the message that came out from Bangui Forum, the agreement emphasizes justice as a vector of peace and reconciliation in the country. In its articles 7, 8 and 9, the parties committed to reject all forms of impunity and to promote the rule of law in CAR. Nevertheless, it provided for and resulted in the appointment of leaders of armed groups in the government, some of whom have been suspected of involvement in human rights abuses and possible crimes under international law committed since 2002.

Although this new peace deal does not explicitly provide for amnesties, some people in CAR expressed fear that in practice it would contribute to protecting suspected perpetrators appointed into government positions from being prosecuted, therefore establishing a de facto immunity.[58]

"There is the feeling that the Khartoum agreement delays the prosecution of signatories allegedly responsible for the violence before national jurisdictions."[59] a prominent human rights defender in Bangui whose organization has been advocating for justice in CAR told Amnesty International.

"Justice has been subdued in the name of peace"[60] according to a renowned human rights journalist. This growing feeling of impunity reigning in CAR is accentuated by the continuing violence and related human rights abuses in the country, including by the very armed groups that are signatories of the 2019 peace deal. According to the report[61] of the Secretary General of the United Nations, between October 2019 and February 2020 alone, 256 serious human rights abuses were recorded, among which 35 cases of sexual or gender-based violence. These include 64 cases of abuses attributable to the FPRC, 45 to the UPC, 13 to the MPC, 67 to various anti-balaka groups and 12 to the "Retour, Reclamation and Rehabilitation" group (3R). In the same period, state agents and members of the armed forces were also responsible for 26 violations[62].

This pattern demonstrates that the Khartoum peace deal has failed to deter armed groups from committing further human rights abuses in the country. And, in turn, the continuation of violence shows that the country cannot realize sustainable peace and guarantee non-repetition of crimes without addressing the widespread impunity and respecting the right for victims to obtain truth and justice.

A senior UN staff member based in CAR and with close knowledge of the political dynamics on justice issues summarizes it: "In February 2019, because people thought that everyone would implement the agreement in good faith, many politicians wanted to put aside legal proceedings against perpetrators to make way for political dialogue and political action to resolve the crisis. (…) A lot of water flowed under the bridges and let us discover that all the stones that were under were not polished and that despite all the goodwill shown towards certain actors, [further crimes were committed by the same actors in 2019]. And from that moment, I [hope] the government understood that sparing individuals as we continued to do until the day after the peace agreement was dangerous "[63]

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[57] Peace agreement 'Accord pour la paix et la Réconciliation en Centrafrique', February 2019, available at www.hdcentre.org/wp-content/uploads/2019/02/Accord-pour-la-paix-et-la-r%C3%A9conciliation-en-Centrafrique.pdf

[58] Interview with a member of civil society, 6 July 2020; Interview with member of civil society, 6 July 2020; Interview with a member of civil society,12 July 2020; Interview with UN staff, 14 July 2020; Interview with a former judge 22 July 2020
See also HRW, *Priorité à la justice en République centrafricaine*, 7 February 2020, available at www.hrw.org/fr/news/2020/02/07/priorite-la-justice-en-republique-centrafricaine; Interview Igor Acko, Justiceinfo.net, *Centrafrique une paix à l'avantage du Gouvernement et non de la justice*, 11 February 2019, available at www.justiceinfo.net/fr/divers/40263-centrafrique-une-paix-a-l-avantage-du-gouvernement-et-non-de-la-justice.html

[59] Interview with a civil society member, 6 July 2020

[60] Interview with a civil society member, 6 July 2020

[61] UN, Rapport du Secrétaire général sur la République centrafricaine, 14 Febuary 2020, available at www.minusca.unmissions.org/sites/default/files/rapport_de_sg_sur_la_republique_centrafricaine_14_fevrier_2020_fr.pdf

[62] UN, Rapport du Secrétaire général sur la République centrafricaine, 14 Febuary 2020

[63] Interview with a UN staff, 14 July 2020

4. SPECIAL CRIMINAL COURT

4.1 ONGOING OPERATIONALISATION OF THE COURT

The June 2015 law No. 15-003 created the Special Criminal Court (SCC), a hybrid tribunal mandated to investigate and prosecute, for a renewable five-year period, crimes under international law and other serious human rights violations committed in CAR since January 2003.

The Court was officially inaugurated on 22 October 2018.[64] By December of the same year, the Court released its prosecutorial strategy,[65] confirming that the Special Prosecutor will focus its investigations on crimes under international law showing a certain degree of gravity.[66] But the prosecutorial strategy remains quite broad in the list of relevant criteria that the Office of the Prosecutor would employ for prioritization of cases[67] and specific details of the strategy are kept confidential.

THE SPECIAL CRIMINAL COURT (SCC)

Following strong calls by local and international civil society organizations, a hybrid court was created by CAR authorities with the support of the UN. The SCC is lodged within the CAR national court system but is a mixed judicial mechanism. It applies both international and CAR law and is designed to be composed of both Central African and 'international' (meaning, foreign) judges, prosecutors and staff.

Its mandate is to investigate and prosecute "grave human rights violations and serious violations of international humanitarian law, including genocide, crimes against humanity and war crimes committed in CAR since January 2003."[68] It is complementary[69] to the mandate of the ICC and the ordinary courts of CAR.

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[64] UN communiqué, *L'inauguration de la Cour pénale spéciale marque la fin de l'impunité*, available at news.un.org/fr/story/2018/10/1027272 ; RFI article, RCA : inauguration de la Cour pénale spéciale, available at www.rfi.fr/fr/afrique/20181023-rca-justice-lancement-cour-penale-speciale-bangui-cps

[65] SCC, Stratégie d'enquêtes, de poursuites et d'instruction, December 2018, available at cps-rca.cf/actualites/Strategie-d%E2%80%99enquetes-de-poursuites-et-d%E2%80%99instructions/9/

[66] Gravity is examined through a list of quantitative and qualitative criteria, see pages 13-15 of the Prosecutorial Strategy.

[67] List of criteria for prioritization are: feasibility of the investigation, including security wise, representativity of the incidents in the context of the conflict in CAR, opportunities for identifying and arresting the suspect, availability of evidence, other strategic elements (such as reasonable time for the investigation, development of future cases), public interest (including reputation of the SCC, symbolic value of the case, deterrence impact).

[68] Loi organique No. 15-003 portant création, organisation et fonctionnement de la Cour Pénale Spéciale (thereafter Loi Organique), 3 June 2015, article 3, available at www.cps-rca.cf/documentation.php?idcategorie=14

[69] In principle, ordinary criminal courts of States have primary responsibility to investigate and prosecute alleged perpetrators of crimes under international law. In the case of CAR, the ICC and the SCC also have competence with regards to crimes committed since 2002/2003. Given the number of alleged crimes under international law and other serious human rights violations committed in CAR during this period, all three jurisdictions must exercise their competence and cooperate with each other to ensure meaningful accountability and the right to all victims to access justice. It is expected that the main responsible would be sent to the SCC or the ICC. In the event of conflict of jurisdiction, the ICC has primacy over SCC and other CAR courts, and the SCC has primacy over other CAR courts. See also box in Chapter III, section 1.

The rules and procedure applicable before the SCC are contained in the June 2015 law establishing the Court[70] as well as the SCC rules of procedure and evidence adopted in July 2018[71]. They are deeply rooted in CAR civil law system. Proceedings are organized as follows:

Investigations are a two-stages process. First, the Special Prosecutor may, upon his own initiative or after receiving a complaint, open a preliminary examination (*enquête préliminaire*) into one or several events which may fall under the SCC's jurisdiction. The Prosecutor may also request the transfer of a case from another court in CAR. If there are sufficient reasons to believe that crimes under SCC jurisdiction have been committed, the Special Prosecutor submits a *réquisitoire introductif* (the dossier) to the *Chambre d'instruction* (investigating judges) to request the opening of a formal investigation (*information judiciaire*), with or without identifying suspects. [72]

Second, the *Chambre d'instruction* is in charge of conducting the investigation and eventually indicting suspects. The Prosecutor, the defence and civil parties have the right to participate in this investigation, for instance by requesting specific acts of investigation. At the end of the investigation, judges decide whether the case can be sent to trial (*ordonnance de cloture*).[73] During the pre-trial phase, appeals by parties or disagreements between the investigating judges are brought before the *Chambre d'accusation* (indictment chamber). The whole pre-trial phase of a case from the opening of a preliminary examination to the close of the investigation must be conducted in principle in a maximum period of two and a half years.[74]

The trial is a one or two-stages process: Once a case is ready for trial, it is brought before the *Chambre d'assises* (trial chamber), which will examine the evidence contained in the dossier and hear all parties – accusation, defence and civil parties- through written submissions and public hearings. Trial judges ultimately decide whether the accused are convicted or acquitted, and in case of conviction, their sentence. They may also order reparations for the civil parties. If there is no appeal, the judgment is final. [75]

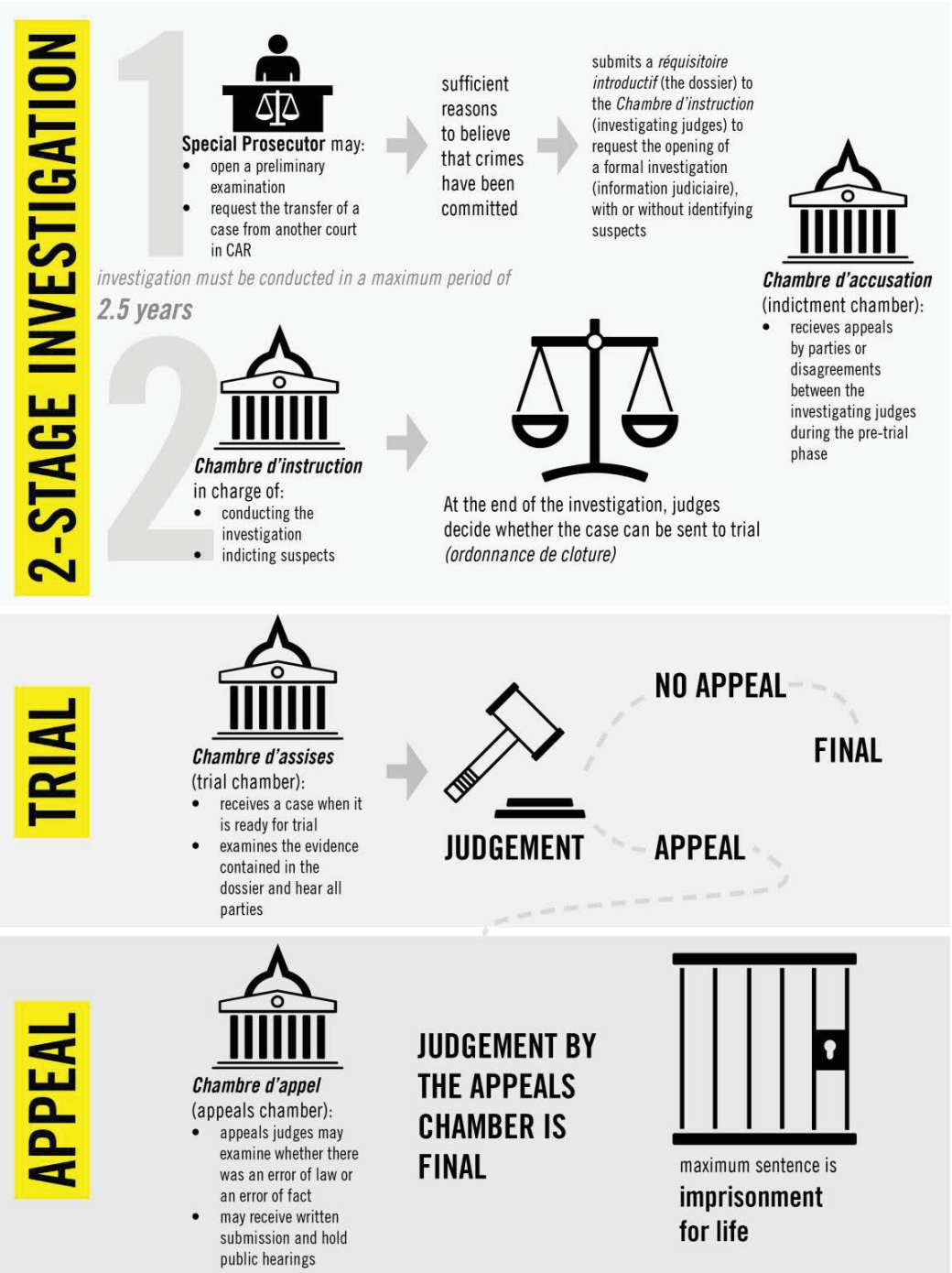
In case of appeal by one or several of the parties to the trial, the case then goes to the *Chambre d'appel* (appeals chamber). Appeals judges may examine whether there was an error of law which justifies revoking a decision of the trial chamber, or an error of fact which leads to a denial of justice. It may also receive written submission and hold public hearings[76]. A judgment by the appeals chamber is final. The maximum sentence is imprisonment for life[77].

From the start, the operationalisation of the SCC was envisaged to be accomplished gradually.[78] For instance, the offices of the Special Prosecutor, the *Chambre d'Instruction* and the *Chambre d'Accusation spéciale* (investigating chamber, indictment chamber) were to be set up before the other chambers (trial and appeals chambers). Chambers and other Court units necessary to the conduct of proceedings at the pre-trial stage would be up and running first, before those needed when trials begin.

However, while investigations started in 2019 and trials are expected to start by the end of 2020 or early in 2021 subject to public health situation in CAR,[79] the first phase of operationalisation is facing some serious challenges, impeding the proper functioning of the Court. One of these challenges is the recruitment of international judges.

[70] Loi organique No. 15-003 portant création, organisation et fonctionnement de la Cour Pénale Spéciale (Loi Organique), 3 June 2015, available at www.cps-rca.cf/documentation.php?idcategorie=14
[71] Loi No. 18-010 portant règlement de procédure et de preuve devant la Cour Pénale Spéciale de la république centrafricaine (SCC Rules), 2 July 2018, available at cps-rca.cf/documentation.php?idcategorie=15
[72] Loi organique, articles 34 to 38; SCC rules, Article 12, articles 34 to 40 and articles 62 to 70
[73] Loi organique, articles 39 to 44; SCC rules, articles 20 to 22 and articles 71 to 106
[74] Article 70 of the SCC rules specifies that a preliminary examination by the Special Prosecutor should be conducted within six months unless special authorization to extend this period is given by the *chambre d'accusation* (indictment chamber). Article 106 provides that an investigation should be conducted within a maximum of two years, if after 2 years it is still ongoing the *chambre d'accusation* may decide to extend the delay for another renewable six months and eventually that another set of judges be in charge.
[75] Loi organique, articles 47 and 48; SCC rules, articles 25 to 27 and articles 112 to 131
[76] Loi organique, articles 49 to 51; SCC rules, articles 28 to 30 and articles 132 to 139
[77] All possible sentences are listed in articles 157 and 158 of the SCC rules, also referring to articles 20 to 24 of the penal code.
[78] Loi organique, article 71
[79] Interview of SCC spokesperson by Radio Ndeke Luka, 27 April 2020, available at www.radiondekeluka.org/vos-emissions/magazine-justice/35464-la-cour-penale-speciale-poursuit-elle-ses-enquetes-en-cette-periode-du-covid-19.html

SPECIAL CRIMINAL COURT PROCEEDINGS



Special Criminal Court, July 2019. © Amnesty International

4.1.1 DIFFICULT RECRUITMENT OF INTERNATIONAL JUDGES AND STAFF

All national judges have been appointed to the various chambers of the SCC but the recruitment and appointment of almost all 'international judicial' staff is facing serious delays. Applications for the vacant positions of international judges need to be submitted by States who are also responsible for funding those positions. According to the model of cooperation agreement between the contributing State and the UN, the State of origin of the judge is expected to cover the salary of the judge while the UN covers security allowance and other benefits needed for the deployment in CAR.[80]

"We have difficulties [to receive good applications] due to the security and political situation in CAR, as well as our requirement to have French speakers having experience in the civil law system. We had very few applications." a UN staff working on support to the SCC told Amnesty International.[81]

At the time of the writing of this report, the mandate of judge Emmanuelle Ducos appointed at the *Chambre d'instruction* has lapsed but yet to be replaced, leaving the Chamber with only one international judge, Judge Adelaide Dembele from Burkina Faso, to deal with all ongoing proceedings along with her national counterparts.[82] Consequently, cases to be currently examined by the Chamber are suffering from delays.[83]

International judges also still need to be appointed for the indictment, trial and appeals chambers.[84] Recruitments processes were unsuccessful two times for the *Chambre d'accusation spéciale* (indictment

[80] See for instance the latest call for applications for international judges issued in June 2020, UN doc DPO/OROLSI/2020/02847, including its Annex III which is a model of cooperation agreement between the contributing State and the UNDP specifying financial matters.
[81] Interview with a staff SCC special prosecutor office's staff member, 8 July 2020; Interview with UN staff, 22 July 2020
[82] The *Chambre d'instruction* should include three *cabinets,* each composed of one national judge and one international judge. At the time of the drafting of this report, only two cabinets were created with one international judge covering both. SCC rules, article 20(A).
[83] Interview with SCC staff, 8 July 2020
[84] A call for applications was issued in June 2020, UN doc DPO/OROLSI/2020/02847

chamber).[85] In one instance, Benin had proposed a candidate, only to withdraw it later after the applicant was selected declaring that the government could not financially support the secondment.

"We have huge difficulties to find francophone applicants, competent, willing to move to Bangui, with experience in prosecution or judgment of international crimes, and that States would accept to deploy and to keep funding. It is our biggest challenge. But without judges, there is simply no Court"[86] , adds another UN member of staff.

Congolese Special Prosecutor Toussaint Mutazini (R) sits with five other magistrates of the Special Criminal Court (SCC) on June 30, 2017 at the National Assembly in Bangui, waiting to be sworn in. © SABER JENDOUBI/AFP via Getty Images

Similar challenges persist in other organs of the Court as well. The office of the Special Prosecutor is operating with a small team composed of one international special prosecutor, one national deputy special prosecutor, two assistant prosecutors and one secretariat. At least one recruitment process for an international position is still ongoing.[87]

At the registry, various administrative units are functional, including the unit in charge of communication and outreach, and the unit in charge of protection of witnesses and victims. Nonetheless, after the first chief of the unit of protection left or was let go[88] and the second one quit only after a year in the position, the Court has not yet succeeded to recruit a new head for this unit.[89]

On several occasions, individuals working at the SCC or in partner agencies supporting the SCC and interviewed by Amnesty International also stressed the urgency and importance of recruiting the international deputy Registrar[90]. He or she will be responsible for the supervision of finances of the Court and will support the national Registrar, among other things.[91] In 2019, the Court has selected an application submitted by

[85] The *Chambre d'accusation spéciale* should be composed of two international judges and one national judge. At the time of the drafting of this report, only one international judge had been appointed. SCC Rules, article 23(A)
[86] Interview with UN staff, 7 July 2020
[87] Interview with UN staff, 22 July 2020; the June 2020 call for applications also includes one position of international substitute to the special prosecutor
[88] According to a UN staff, he was not the right fit. Interview with UN staff, 22 July 2020. Amnesty International did look into the reason of his departure but what is certain is that he did not remain in the position.
[89] Interview with UN staff, 10 July 2020; Interview with UN staff, 22 July 2020
[90] Interviews with UN and SCC staff, July 2020
[91] SCC Rules, article 44

Senegal, but Senegalese authorities have not effectively followed up on that application yet, more than a year later.

4.1.2 LEGAL REPRESENTATION SYSTEM NOT IN PLACE

At the time of the writing of this report, the unit of support for defence and victims within the Registry, which will coordinate legal aid, has not been established and is not yet functional. Recruitment processes for both the head and the staff of that unit have not even started.

In addition, the *Corps spécial d'avocats* (SCC-admitted list of lawyers) is also not yet established. A commission composed of lawyers, MINUSCA, United Nations Office on Drugs and Crimes (UNODC) staff and representatives of civil society is working on the admission of lawyers into the corps special.[92] This commission was created by an administrative decision of December 2018 and rules supervising its work were adopted in November 2019.[93] It is ultimately responsible for appointing national and international lawyers qualified to represent parties in cases before the SCC, as well as the head of the *corps special d'avocats* from amongst the qualified national lawyers.[94] The commission first developed Rules of the *corps spécial* and adopted them in March 2020,[95] which paved the way for the actual selection of lawyers.

While internal examination of applications from national lawyers is completed, examination of applications of international lawyers and potential heads of the *corps spécial d'avocats* is still ongoing and therefore the whole list does not exist publicly yet.[96] Criteria for admission of lawyers include having at minimum 10 years of experience and knowledge of international criminal law, international humanitarian law and human rights.[97] Moreover, international lawyers must also demonstrate at least 5 years of experience in trials on crimes under international law.

Delays in constituting a pool of qualified lawyers has serious consequences in ongoing proceedings. Article 184 of the SCC Rules allows the President of the Court to appoint lawyers while the *corps spécial d'avocats* is not functional yet and where the defendant does not already have a lawyer. However, these lawyers have not been vetted and may not qualify to be admitted by the *corps spécial* later. In such instances, it is not entirely clear whether the Court will remove these lawyers appointed early on from the cases and appoint new lawyers, or whether there will be cohabitation of two systems of lawyers before the Court. But in any case, it creates problems to the detriment of defence rights to be represented by a qualified lawyer or to have reasonable time to prepare. Such problems could be easily avoided if the establishment of the corps *spécial* was expedited.

"While the *corps spécial d'avocats* is not in place and to respond to the urgency, I use the transitional provisions of the law establishing the Court allowing me to appoint lawyers registered on CAR bar association. The inconvenient is the risk I take in good faith in appointing lawyers who may not have the required experience to plea before the Court. I am acting in good faith but tomorrow there could be appointed lawyers who are not up to the task, which is why I wish things would accelerate a bit before the commission." the President of the SCC told Amnesty International.

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[92] Loi organique, Article 65

[93] Arrêté No. 035 portant organisation et fonctionnement de l'organe paritaire chargé de l'admission des candidats au Corps spécial d'avocats près la Cour Pénale Spéciale (Arrêté on the corps spécial), 10 décembre 2018, available at cps-rca.cf/uploads/Organe%20paritaire/Arrete%20no%2035%20-%20organisation%20et%20fonctionnement%20organe%20paritaire.pdf ; Règlement intérieur de l'organe paritaire chargé de sélectionner les avocats, candidats pour intégrer le corps spécial d'avocats, 11 November 2019, available at http://cps-rca.cf/uploads/Organe%20paritaire/RI%20Organe%20paritaire%20signe%20par%20President%20et%20Secretaire.pdf

[94] SCC Rules, Articles 55 to 59

[95] Règles d'organisation et de fonctionnement du corps spécial d'avocats près la Cour Pénale Spéciale de la République Centrafricaine, 2 March 2020, available at http://cps-rca.cf/uploads/Organe%20paritaire/Regles%20dorganisation%20et%20de%20fonctionnement%20CSA%202020.03.02%20validees%2C%20signees.pdf

[96] Interview with UN staff, 10 July 2020; Interview with lawyer president of the Commission, 23 July 2020. More than 130 applications were received in March 2020, including around 50 from CAR lawyers and 9 for head of the corps spécial.

[97] Arrêté on the corps spécial, articles 6 and 7

4.2 MYSTERIOUS PROCEEDINGS

4.2.1 LACK OF TRANSPARENCY ON ONGOING CASES

Investigations by the SCC started in 2019. The following year, while investigations continue, all field missions by the Office of the Special Prosecutor outside of Bangui were suspended due to the Covid-19 pandemic, although there were already difficulties to travel in some parts of the country due to the security situation before the pandemic hit.[98] The remote working of some of the international staff due to COVID-19 pandemic, including the Special Prosecutor, has also slowed down activities at the Court.

Nevertheless, at the time of the writing of this report, at least 122 complaints had been received by the Office of the Special Prosecutor, one case was at preliminary examination stage and 10 cases were at investigation stage before the *Chambre d'instruction*. [99] At the beginning of its work, the Court requested the transfer of three cases which were before investigating judges of ordinary tribunals.[100] Thereafter, investigations were mostly initiated under the supervision of the SCC or were transferred from ordinary tribunals to the SCC at a very early stages, mostly during the first days of investigations by the national Prosecutor and long before the cases were submitted to investigating judge.

But very little information is available regarding ongoing proceedings at the SCC. The SCC website does not include statistics such as numbers of investigations or cases. Except a few ad hoc communiqués on particular events shading some light on a few cases examined by the Court (see below in 4.2.2), there is almost no public information on these investigations or cases, including what stage they are at or from which geographical area, period of time or type of crimes they relate to. Not a single judicial decision was made public neither – redacted or not. Already a number of submissions by the Prosecutor and decisions by the investigating judges were confidentially issued.[101] At the very least these should be redacted and made available to public and other observers of the Court.

Numerous activities have been conducted by the SCC unit of outreach to inform the population in CAR about the existence of the SCC, its mandate and the opportunities to bring complaints to the Court.[102] Thus while there appears to be lots of information available about the Court itself, there is not enough information on the judicial activities of the SCC. People in CAR seem to have high expectations from the Court and there is a growing impatience to see progress.[103] "People are hungry for trials!"[104] a SCC judge told Amnesty International. Often, the Court is being asked: "when will the first trials open?"[105]. Some also insist on the need to investigate and prosecute the highest responsible and not (or not only) "small bandits".[106]

Providing more information to the public on developments relating to investigations and cases at the pre-trial stage would help address the growing impatience and disappointments with the perceived delays of trials.

4.2.2 UNKNOWN SUSPECTS IN PRE-TRIAL DETENTION

At least 21 individuals have been arrested and are currently detained in the context of the ongoing proceedings before the SCC.[107] Communiqués about these arrests provided some information on the events being examined in three out of the 11 ongoing cases at the SCC. Three individuals were arrested following the killings committed in Paoua in May 2019.[108] This year nine individuals were arrested on 19 May, with the

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[98] Interview with SCC staff, 8 July 2020
[99] Special Prosecutor's office presentation, August-September 2020, on file with Amnesty International
[100] The SCC has primacy jurisdiction over CAR ordinary tribunals, Loi organique, article 3.
Those 3 cases are currently among the 10 cases before the investigating judges.
[101] Interview with SCC staff, 8 July 2020; Interview with SCC staff, 16 July 2020; Interview with SCC staff, 17 July 2020
[102] These efforts include documentation in both French and Sango, theatre representations and in-person meetings around the country, radio programs, an explanative video released in February 2020 and so on. The video is available at:
www.youtube.com/watch?v=g_Zheu3qGIo
[103] Interview with journalist, 3 July 2020; Interview with member of civil society, 6 July 2020; Interview with SCC staff, 16 July 2020; Interview with SCC judge, 17 July 2020; Interview with Ministry of Justice staff, 21 July 2020; Interview with journalist, 26 July 2020
[104] Interview with SCC judge, 17 July 2020
[105] Interview with SCC staff, 16 July 2020, corroborated by the way media covers the SCC.
[106] Interview with journalist, 3 July 2020
[107] Interview with SCC special prosecutor office's staff member, 8 July 2020; Interview with SCC president, 17 July 2020, corroborated by other interviews with UN staff.
[108] As confirmed in February 2020 by the Special Prosecutor during an event, reported by Radio Ndeke Luka, available at:
www.radiondekeluka.org/actualites/justice/35166-bangui-la-cps-rassure-a-travers-un-film-documentaire.html
For more information on events in Paoua: HRW, *CAR: Armed Group kills 46 civilians*, 18 July 2019

support of MINUSCA, in connection to killings perpetrated in Ndele in 2019 and 2020.[109] And another nine individuals were arrested on 25 May in relation to attacks against the civilian population committed in Bambouti, Obo and Zemio in 2020. [110]

Tweet by the MINUSCA the day following the arrest of 9 individuals in Ndele on 19 April 2020

These arrests represent the first time that some people are arrested and detained under the orders of an international or internationalized tribunal without the public being informed of their identities. The President of the SCC affirms that all these detainees have a lawyer, whom he appointed himself.[111] However, it is unclear whether and which charges were brought against them by the *Chambre d'instruction* and what is the exact legal basis for their detention. Amnesty International was not able to confirm their identities nor whether all their rights are fully respected and whether their conditions of detention are compliant with international human rights standards.

Amnesty International believes the Court should consider making public the identities of individuals who have been indicted by the investigating judges, in accordance with the right of access to information under international law,[112] or at least providing reasons why the identities cannot be disclosed in a public decision. Even if the identities of the detained cannot be made public, international law provides that individuals with a 'legitimate interest' can be provided with such information[113] and that up-to-date registers of persons deprived of liberty as well and detention centres must be accessible to any judicial or other competent authority or institution.[114]

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[109] SCC communiqué confirming that the case was transferred to the SCC, 8 May 2020, available at www.cps-rca.cf/actualites/Communique-De-Presse-Du-Bureau-Du-Procureur-Special-Pres-La-Cour-Penale-Speciale/43/; tweet by the MINUSCA confirming the arrest of the 9 indviduals, available at twitter.com/UN_CAR/status/1263077435119210498

[110] SCC communiqué, 25 May 2020, available at cps-rca.cf/actualites/Arrestation-de-9-elements-de-l-UPS/53/
For more information about these two latest cases: RFI, La CPS se penche sur les crimes commis à Ndélé, 9 May 2020, available at www.rfi.fr/fr/afrique/20200509-rca-la-cps-penche-les-crimes-commis-%C3%A0-nd%C3%A9l%C3%A9; VOA, Un chef de guerre centrafricain arrêté après les tueries de Ndélé, 20 May 2020, available at www.voaafrique.com/a/centrafrique-un-chef-de-guerre-arr%C3%AAt%C3%A9-apr%C3%A8s-les-tueries-de-nd%C3%A9l%C3%A9/5427816.html; Radio Ndeke Luka, Neuf éléments de UPC dans les filets de la Cour Pénale Spéciale, 26 May 2020, available at www.radiondekeluka.org/actualites/securite/35617-centrafrique-neuf-elements-de-l-upc-dans-les-filets-de-la-cour-penale-speciale.html; LeMonde, En Centrafrique la Cour pénale spéciale passe à la vitesse supérieure, 26 May 2020, available at www.lemonde.fr/afrique/article/2020/05/26/en-centrafrique-la-cour-penale-speciale-passe-a-la-vitesse-superieure_6040801_3212.html?utm_medium=Social&utm_source=Twitter#Echobox=1590491993

[111] Interview with SCC president, 17 July 2020

[112] ICCPR, article 19(2); Human Rights Committee, General comment 34, paras 18-19

[113] International Convention for the Protection of All Persons from Enforced Disappearance (CED), article 18(1)

[114] CED, article 17(2)(e) and 17(3); ACHPR Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (thereafter 'ACHPR Guidelines on pre-trial detention'), guidelines 3(e), 9(f), 14(d) and 15 -19, available at www.achpr.org/legalinstruments/detail?id=12

Furthermore, article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) provides that 'In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and *public hearing* by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice' (emphasis added). Amnesty International considers that this provision applies to hearings at pre-trial stage, once a case has been submitted to the investigating judges.

Therefore, Amnesty International urges the SCC to make all hearings before the *Chambre d'instruction* or the *Chambre d'accusation* public by default, and when decision is made to conduct closed hearings, to provide justification demonstrating that closed hearings is a necessary and proportionate measure to a legitimate aim under international law such as preserving public order or the interests of justice, for instance the security of suspects, witnesses or court staff involved in the investigation. Such demonstration should be made available to the public through written decisions and parties should be allowed to challenge the decision.

Similarly, considering the gravity of crimes under the jurisdiction of the SCC and the right to information of the public, judicial decisions at pre-trial stage should be made public in principle, redacted where necessary for the protection of the safety of individuals or of the integrity of the ongoing investigation. Such practice would also be coherent with good practice established before other international or internationalized tribunals.[115]

Finally, in accordance with the SCC rules and international human rights law, CAR authorities and the SCC must also ensure that individuals held in pre-trial detention, presumed innocent until proved guilty:

- are informed about the reasons for their detention[116];
- have effective legal representation through a lawyer of their own choosing or, if they are indigent, are provided with free legal representation, and that they communicate freely with their lawyers[117];
- are brought promptly before a judge[118]: they must be brought before the *Chambre d'instruction* within 9 days of their arrival in detention (see text box below);
- may challenge at any time the lawfulness of their pre-trial detention, which can be ordered after the initial 9 days only if justified for one of the following reasons: collecting and preserving of evidence, preventing pressure on victims or witnesses; preventing illegal conspiracy between the suspect and his accomplices; protecting the suspect; guaranteeing that the suspect will not flee; stopping the commission of a crime or preventing its repetition; ending a persisting and exceptional trouble to the public order[119];
- have a right to remain silent and to be assisted by an interpreter and a lawyer during questioning by the prosecutor or the judges[120];
- may participate in the proceedings at pre-trial stage, including by requesting acts of investigation to the investigating judges through his or her lawyer[121];
- have adequate time and facilities to prepare a defence ahead of the trial[122];

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[115] Note that other international or internationalized tribunals have adopted such practices of transparency, including the ICC but also for instance the ECCC, another hybrid tribunal enshrined in a civil law system. Decisions at pre-trial stage are made available to the public on the courts' websites.

[116] SCC rules, Articles 4a and 85B; ICCPR, articles 9; ACHPR Principles and Guidelines on the right to a Fair Trial and Legal Assistance in Africa (thereafter 'ACHPR principles on fair trial'), Section M(2), available at www.achpr.org/legalinstruments/detail?id=38; ACHPR Guidelines on pre-trial detention, guideline 4; Human Rights Committee (HRC), General comment No.35

[117] SCC rules, articles 4c and 85C; ICCPR, article 14; ACHPR, article 7; ACHPR Guidelines on pre-trial detention, guidelines 4 and 8; HRC, General comment No. 32

[118] ICCPR, article 9; HRC, General comment No. 35; ACHPR principles on fair trial, section M (3)

[119] SCC rules, article 98A, B and D; 99. Article 99 in particular says that the suspect may request for provisional release at any moment and the investigating judges must rule on this request within 5 days. The suspect can also appeal to the *Chambre d'accusation* against the decision of the *Chambre d'instruction* or in the event that the *Chambre d'instruction* has failed to issue a decision in the time limits. See also ICCPR, article 9; ACHPR, article 6; CED, article 17; ACHPR guidelines on pre-trial detention, guidelines 10 to 14; HRC, General comment No 35

[120] SCC rules, articles 4b, d and e, 85D; 87. See also, ICCPR, article 14; ACHPR, article 7; ACHPR guidelines on pre-trial detention, guidelines 4 and 8; HRC, General comment No. 32

[121] SCC rules, article 86

[122] SCC rules, article 5b; ICCPR, article 14; ACHPR guidelines on pre-trial detention, guideline 14; ACHPR principles on fair trial, section N (3); HRC General comment No. 32

- are sent to trial within a reasonable time[123] or are released: they should be sent to trial in principle within one or two years (see text box below);
- have access to the outside world, including contact with and receive visits from their families or persons of their own choosing[124];
- are treated in human conditions in detention[125], free from torture and other ill-treatment, and with access to adequate medical care[126], sanitation, food and other basic needs; including that these conditions are evaluated by a judge every 4 months at least[127].

Amnesty is not in a position to determine which, if any, of these conditions are effectively met for the 21 individuals currently known to be held in pre-trial detention. While due consideration must be given to the security, physical and psychological wellbeing of the suspects, victims and witnesses, and to the necessities of conducting effective and safe investigations, Amnesty recommends that more efforts are made to improve transparency of the proceedings before the *Chambre d'instruction* and the *Chambre d'Accusation* in the interest of justice and to demonstrate that all defence rights are being respected and implemented.

TIME LIMITS OF PRE-TRIAL DETENTION IN CAR (BEFORE ORDINARY COURTS AND SCC)

Under CAR law, at the very early stage of an investigation (which may be referred to as preliminary examination), an individual may be arrested and placed under police custody by an officer of the law for 72 hours renewable once[128] in proceedings before ordinary tribunals, and renewable twice[129] in the context of proceedings before the SCC. He or she must be immediately informed of the reasons of the arrest and his or her right to have a lawyer. In addition, the person must be presented to the Prosecutor in charge as soon as possible. If the person has not been presented to the Prosecutor during these 72 hours (eventually renewed once or twice), he or she is released regardless.

When there are enough elements for a full investigation, the Prosecutor asks the Investigating judge to open a case (*information judiciaire)*. The investigating judge has then the power to ask for a suspect to be brought in, heard and arrested.[130] Before ordinary tribunals, the investigating judge may order a suspect to be put in pre-trial detention for a maximum period of one year, which can be extended by an additional 4 months under exceptional circumstances.[131] Before the SCC, the Investigating judges can also order that someone be kept in pre-trial detention for a maximum period of one year, however it is renewable once, and under exceptional circumstances and by order of the Indictment chamber, it can then be extended by an additional 6 months[132].

In principle, combining powers of Prosecutors and Investigating judges, this brings up maximum delays of pre-trial detention to 1 year, 4 months and 6 days in ordinary proceedings and 2 years, 6 months and 9 days before the SCC. Given the serious implications on the rights of the suspects, pre-trial detention time limits should be strictly applied by judicial authorities in CAR. They should also take into account the time already spent in a detention facility before the suspect is transferred to them, including detention under the authority of the MINUSCA or any other authority in CAR.

[123] SCC rules, article 5c; ICCPR, article 9; ACHPR, article 7; HRC, General Comment No. 35
[124] SCC rules, article 67E provides that the family of the person placed under custody must be informed as soon as possible. See also CED, article 17; Robben Island guidelines 20 and 31; ACHPR guidelines on pre-trial detention, guidelines 4 and 27
[125] See ACHPR, article 5; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), articles 10 and 11; CED, article 17; Robben island guidelines 41-42; ACHPR Principles on fair trial, Section M(8); ACHPR guidelines on pre-trial detention, guidelines 22 to 26
[126] SCC rules, article 67F
[127] SCC rules, article 98H says that the judge must hear the detainee about his or her conditions in detention, and eventually issue orders about these conditions.
[128] Article 40 of the criminal procedure code. In some circumstances where it is impossible to refer the suspect to a prosecutor in those delays due to the absence of Prosecutor in the area or to difficulties of communication, it can be extended to 8 days.
[129] SCC Rules, Article 67(G)
[130] Criminal Procedure code, Article 85
[131] Criminal Procedure code, article 97
[132] SCC Rules, Article 97(F) and (G)

5. ORDINARY TRIBUNALS

5.1 THE COME BACK OF CRIMINAL SESSIONS

5.1.1 IRREGULARITY OF CRIMINAL SESSIONS

CAR's criminal procedure code[133] provides that criminal sessions shall be organized each semester in each of the Courts of Appeal, therefore two sessions in Bangui, two sessions in Bouar (West zone) and two sessions in Bambari (East zone). Each Court of Appeal is supposed to suggest dates of criminal sessions at the end of a year or early in the new year and send this calendar to the Ministry of Justice which is in charge of convening each criminal session.

After years of interruption,[134] criminal sessions resumed in 2015. In 2018, two sessions were organized in Bangui[135] and one session in the Court of Appeal of Bouar moved to Berberati.[136] In 2019, again two sessions were held in Bangui[137] and one in Bouar.[138] In each of these sessions, five to 15 cases were examined and judgments delivered. In total only 20 criminal cases were concluded in 2019 throughout the country. Trials could not be held in Bambari due to the security situation in the East of the country.

"We are satisfied, it has been too long without criminal sessions… Some people charged with crimes are starting to be held accountable, this was not the case a few years ago. (…) That being said, most self-claimed leaders of armed groups would be in prison, if the justice system was functioning as it should. Criminal sessions should be encouraged," [139] a Central African judge told Amnesty International.

After the last session of 2019 which actually ended in February 2020, all criminal hearings were suspended due to COVID-19 pandemic. Consequently, at the time of the writing of this report, no criminal session had happened in 2020.

The return of criminal sessions these past years in CAR is a huge progress. Nevertheless, it needs further efforts to be in line with the regularity required under CAR law and to address the backlog of cases in the country. Although some sessions are being held in Bangui and Bouar, these do not reach the legally required six sessions per year nor are they adequate for the current needs.

In June 2020, the CAR Ministry of Justice passed a decision (*arrêté)* (re)establishing preparatory committees for the organization of criminal sessions[140] in the hope that these committees can ensure criminal sessions are well organized and cases sent to these sessions are ready to go to trial.

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[133] Criminal procedure code, article 220
[134] In 2015, at the courts of Bangui, Bouar and Bambari, criminal trial sessions had not been held respectively since 2010, 2009 and 2008. Amnesty International, the 2017 Accountability report, page 25
[135] From 16 July to 31 August and from 19 November to 20 December 2018
[136] From 17 September to 10 October 2018
[137] From 23 September to 23 October 2019 and from 18 December 2019 to 7 February 2020 (the second one being prolonged into the following year)
[138] From 29 July to 28 August 2019
[139] Interview with CAR judge, 17 July 2020
[140] Arrêté No.0033/MJDH/DIRCAB/DGSJ/DAPG.20 portant création d'un comité préparatoire des sessions criminelles au sein des cours d'appel, 17 June 2020.This legal text re-created preparatory committees in each appeals court which mandate is to "contribute to the good conduct of criminal sessions", including checking if the calendar of the session is realistic, ensuring cases to trial are ready for trial, facilitating dialogue between judicial authorities or other interested parties, among other things, as per article 2. The committee is composed

The judge president of the Bangui criminal court read court documents during the trial of five Anti-balaka militia leaders and over 20 of their men, tried for their various responsibilities in the 2017 events in Bangassou (see section 5.2.2 of this report). © FLORENT VERGNES / AFP) (Photo by FLORENT VERGNES/AFP via Getty Images

Furthermore, discussions are ongoing to reform the system of criminal sessions as currently established.[141] A system of non-permanent criminal courts can enable flexibility and maximising the use of available limited financial and staff resources including through enabling things, the sequencing of work for judicial staff, shared use of buildings and regrouped criminal hearings. But this can only work with a good case management system and practice and a relatively limited number of criminal matters being sent to trial as the number of available days for criminal hearings are strictly limited by the number and length of criminal sessions. In a situation where many crimes have been committed, such system can lead to a significant backlog of cases stalled at pre-trial stage. This in turn leads to individuals being detained beyond pre-trial detention time limits or result in a number of crimes not being investigated and tried due to an acute need to prioritize.

In CAR, given the number of crimes committed since 2002, the complexity[142] of cases related to crimes under international law, and given that the SCC cannot deal with all criminal cases, organizing only six criminal sessions lasting a few weeks each per year would likely remain insufficient.

Reform proposals are emerging towards creating a permanent criminal justice system instead of sporadic sessions. The justice sector policy for 2020-2024 (see box below) adopted by Ministry of Justice in December 2019 reads: "The modalities of organization of criminal sessions exacerbate the slowness of the criminal system, they are very costly per examined case, and they diminish the efficiency of the public service of justice while contributing to maintain individuals in dysfunctional prisons. (…) Numerous files are stuck at the Investigating judges' level because criminal sessions are not organized to examine them within a reasonable time. (…) Also, budgets for criminal sessions are arbitrarily decided by the Ministry of Finance and in practice they barely enable the organization of two annual sessions – out of the minimum of six legally

of the president of the appeals court, the Prosecutor general and a secretary of the Accusation, but it may also include all other person whose expertise is deemed useful.
Preparatory committees already existed in CAR in 2015-2016 with the involvement of the UN, but they were then abolished by CAR authorities. They were just re-introduced.

[141] Interview with Ministry of justice staff, 21 July 2020; also developed in the justice sector policy.

[142] The complexity of case impacts the number of days of hearings which is needed to examine and judge the case, and therefore on the number of cases which can be scheduled in one session.

required. In a post-conflict context where many crimes must be judged in a reasonable delay, it seems relevant to reflect on the possibility to have a permanent criminal justice mechanism."[143]

A permanent criminal justice mechanism could indeed contribute to enabling the State to fulfil its obligation to investigate and prosecute all crimes under international law and other serious human rights violations committed in the country these past years. It would require amending the Penal code, allocating extensive additional resources and mobilizing international support from partners. This could take some time, Amnesty International thus recommends that CAR authorities ensure more criminal cases go to trial each year in parallel to the possible establishment of CAR's permanent criminal justice system by organizing more criminal sessions per year.

5.1.2 CAPACITY ISSUES IN THE JUSTICE SECTOR

All persons interviewed by Amnesty International highlighted the multiple, complex and intertwined capacity challenges faced by the criminal justice sector in CAR and the various external obstacles related to the context in which it operates. These challenges and obstacles are well documented[144] and are recognized by the authorities themselves.[145] Capacity challenges include lack of personnel, infrastructure, materials, inadequate training of personnel and ineffective evaluation processes at all levels of the justice system. Out of the 24 tribunals required to be established by law, only 16 were operational at the time of writing this report.[146]

Picture of courtroom in Bangui appeals court, July 2019. © Amnesty International

[143] Politique sectorielle de la justice 2020-2024, 18 September 2019, pages 62 and 64, on file with Amnesty International.
[144] Amnesty International, the 2017 Accountability report, CAR authorities and American Bar Association Rule of Law Initiative (ABA-Roli), *Evaluation de base des cours d'appel et des obstacles liés à l'organisation des sessions criminelles*, 2019; Avocats sans frontières Belgique (ASF), *Coopérer et se coordonner pour renforcer l'accès à la justice entre acteurs centrafricains : défis et réalités*, 2019 ; International Legal Assistance Consortium Rapport d'évaluation de l'état de droit, République Centrafricaine 2017
[145] As highlighted in the 'état des lieux' included in the justice sector policy; Interview with General Prosecutor of Bangui, 30 July 2020 (highlighting lack of means and lack of training of personnel); Interview with CAR judge, 17 July 2020 (highlighting lack of budget, lack of training, low number of judges); Interview with Ministry of justice staff, 21 June 2020 (highlighting quantity and quality deficiencies of justice personnel, lack of material, lack of infrastructure, securities issues and so forth)
[146] Interview with Ministry of justice staff, 21 July 2020; Interview with UN staff, 7 July 2020

"Challenges are tremendous. The personnel is insufficient. The justice system is being emptied of its best elements. (…) In certain tribunals, judges continue to use a writing machine from Gutenberg's time. And outside of the capital, try to imagine, sometimes there is not even a building to host the tribunal, judges need to receive individuals under a veranda or a tree!"[147], a former judge explained.

In addition, the police and judicial authorities lack independence from the executive power as documented by many organizations and also acknowledged by CAR authorities.[148] The ongoing conflict and prevailing insecurity in much of the country have further exacerbated existing challenges. There is a stark difference between Bangui and the rest of the country, where tribunals, judges, lawyers are sometimes simply absent.

"Judges have difficulties getting everywhere on the whole territory, like in Bambari where the presence of the Ali Darass's militiamen[149] raises questions of security"[150], a member of an organization providing legal aid told Amnesty International.

REFORM OF THE JUSTICE SECTOR

A justice sector policy was developed in 2018-2019 by the Ministry of Justice, with strong financial and technical support of partners, with reform proposals to address the multiple challenges faced by the criminal justice sector and towards ensuring CAR's judicial system is independent, impartial and functioning.[151] This policy was adopted by the government in December 2019.[152]

The policy document highlights 5 areas of priorities for the period between 2020 and 2024:

- independence, accountability and morality of the judicial staff and justice system;[153]
- strengthening of the "justice offer" including internal management and communication with public;[154]
- strengthening of the demand for justice and the access for all to the justice system, including through legal aid and protection of victims and witnesses;[155]
- strengthening the criminal judicial system and of the prison system, including transitioning to a system of permanent criminal justice and improving security of prisons and conditions for detainees;[156]
- respect of human rights and implementation of transitional justice, including fighting against impunity for crimes under international law through ordinary tribunals and the SCC.[157]

An administrative decision *(arrêté)* was adopted in January 2020 to ensure the implementation of this policy.[158] Each area of work is to be led and monitored by a thematic group co-chaired by one representative of CAR authorities and one representative of partner agencies and composed of representatives of all key actors involved in the implementation of that area of work.[159]

Thematic groups had adopted their respective terms of reference and had started holding regular meetings, but activities of implementation had not really started at the time of the writing of this report. The

[147] Interview with CAR former judge, 21 July 2020
[148] See Chapter III on context. This is also recognized by CAR political and judicial authorities : justice sector policy, page 22, CAR authorities and American Bar Association Rule of Law Initiative (ABA-Roli), *Evaluation de base des cours d'appel et des obstacles liés à l'organisation des sessions criminelles*, page 14 (« l'immixtion répétitive de l'autorité politico-administrative dans le déroulement des enquêtes préliminaires, de l'avis unanime des enquêteurs, nuit particulièrement au processus répressif »)
[149] Head of Unit for Peace in the Central African Republic (UPC).
[150] Interview with a civil society member, 6 July 2020
[151] Interviews with MINUSCA and EU staff, July 2019, in Bangui; Interview with civil society member, 28 July 2020
[152] Politique sectorielle de la justice 2020-2024 (justice sector policy), 18 September 2019, on file with Amnesty International
[153] It includes improving the process of appointment of judges and disciplinary measures and fighting against corruption.
[154] It includes training of justice professionals, improving reception and communication, as well as administrative and financial management, of tribunals, improving organization and work of the Ministry of justice, rehabilitating the presence of justice institutions on the whole territory, improving access to legal texts by professionals.
[155] It includes creating a legal aid system, doing outreach aimed at women and children, strengthening protection of victims and witnesses, ensuring coordination between traditional mediation mechanisms and judicial processes.
[156] It includes improving the organization and coordination between judicial actors, changing to a system of permanent criminal justice instead of criminal sessions, improving regional and international judicial coordination, guaranteeing security within prisons and improving access to health, food and lawyers to detainees, creating a special prison for those prosecuted for crimes under international law, preventing and punishing sexual and gender based crimes through the adoption of new laws and the training of justice actors, improving the treatment of children by justice system.
[157] It includes outreach and consultation activities on the truth, justice, reconciliation and reparations commission (CVJRR in French) and human rights, creation and work of CVJRR, fighting against impunity for crimes under international law through ordinary tribunals and the SCC, ensuring coordination between these tribunals and the CVJRR.
[158] Arrêté No. 005/MJDH/DIRCAB/CMRJMR.20 portant création du dispositif institutionnel de coordination et de mise en œuvre de la politique sectorielle du ministère de la justice et des droits de l'Homme, 16 January 2020
[159] Justice sector policy 2020-2024, page 79

work has been slowed down during that first year, in particular due to difficulties to bring people together due to the COVID-19 pandemic.

"Despite the delay in the start of the activities, the six thematic groups are already operational and each of them meets at least twice a month" an official of the Ministry of justice said in an interview with Amnesty International.[160] Civil society groups in CAR are realistic about the delay. "We are at the very early stages of the implementation of the sector policy. Everything has been stalled due to COVID, and then there will be the elections… we won't go far in 2020"[161] a civil society and one of the thematic group members concluded.

5.2 FEW CASES OF JUSTICE FOR VICTIMS OF THE CONFLICT

5.2.1 OVERVIEW OF CASES DEALT BY ORDINARY TRIBUNALS

Precise information about the nature of cases examined during criminal sessions in the past three to five years is difficult to obtain, due in part to lack of written judgments being prepared in the days required by law or not being made accessible to the public.[162] Amnesty International sent requests for information to CAR authorities but did not receive full answers.[163] As such it is difficult to confirm the exact number of conflict-related criminal proceedings brought before ordinary courts these past few years, whether at investigative stage or trial, and on which incidents or under which charges.

According to the Public Prosecutor of Bangui, trials were conducted both against former anti-Balaka and against ex-Seleka in 2017 and 2018. In an interview with Amnesty International, he claimed: « each time we arrest an anti-Balaka, we judge them. Every time we arrest an ex-Seleka, we judge them. An offender is an offender. »[164] However, several individuals in CAR that Amnesty International interviewed, including those from civil society closely observing the criminal justice system, dispute this claim. Most believe that judicial proceedings have only been brought against members of anti-Balaka so far – a fact or a perception which is likely accentuated by lack of adequate public information on all cases dealt by ordinary tribunals, the transfer of only two former anti-Balaka leaders to the International Criminal Court (ICC) and the complete silence on which individuals are due to be prosecuted by the SCC.[165]

All known proceedings, except two, brought against both members of anti-Balaka or ex-Seleka since 2015, appear to deal with low ranking individuals and/or on minor crimes or crimes against the state rather than on the serious crimes people suffered in the context of the conflict (such as killings, rape and other acts of sexual violence, and other serious human rights violations).

There are only few reported cases of prosecution of members of the ex-Seleka, but it is unclear whether there have been trials related to crimes under international law or other serious human rights violations. Early in 2018, a dozen members of the ex-Seleka were tried and found guilty of "criminal conspiracy, illegal possession of weapons of war, offense against the State's internal security and rebellion."[166] Although

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[160] Interview with CAR official, 22 September 2020
[161] Interview with civil society member, 28 July 2020
[162] Amnesty International attempts to find judgments were often unsuccessful. See also CAR authorities and American Bar Association Rule of Law Initiative (ABA-Roli), *Evaluation de base des cours d'appel et des obstacles liés à l'organisation des sessions criminelles*, 2019, page 21 (confirming that too often criminal judgments are not provided in written form)
[163] Letter to the Ministry of justice, including requests to be provided with judgments, dated 1 July 2020 and 5 August 2020, respectively TG AFR 19/2020.001 and TG AFR 19/2020.002
[164] Interview with General Prosecutor of Bangui, 30 July 2020
[165] Interviews with Amnesty International, July 2019 in Bangui, July 2020 remotely.
See Chapter II of this report. This was also observed by Amnesty International during criminal session of 2016: "55 cases were considered, 30 of which were related to abuses committed during the conflict, mostly implicating anti-balaka members. However, these did not include charges for crimes under international law, but instead for criminal association, illegal possession of weapons and ammunition of war, armed robbery and intentional injury causing death.", Amnesty International, 2017 Accountability report, page 26.
[166] RFI, *Centrafrique: onze ex-Seleka condamnés aux travaux forcés à perpétuité,* 28 February 2018, available at www.rfi.fr/fr/afrique/20180228-centrafrique-onze-ex-seleka-condamnes-travaux-forces-perpetuite; ACAP, *Session criminelle : ouverture à Bangui du procès de 16 membres de l'ex-coalition rebelle Seleka*, 16 February 2018, available at www.acap.cf/Session-criminelle-Ouverture-a-Bangui-du-proces-de-16-membres-de-l-ex-coalition-rebelle-Seleka_a8353.html

Amnesty International could not verify what events this trial examined, the charges brought against the accused persons show that these individuals were not tried for crimes committed against civilians.

But there were two known conflict-related proceedings against former anti-Balaka commanders before ordinary courts which did address crimes committed against civilians and which drew a lot of public attention: the first one was the trial of anti-Balaka General Andjilo in 2018 and the second one was the trial in early 2020 related to killings perpetrated in Bangassou by the anti-Balaka.

With respect to the first case, Rodrigue Ngaibona alias General Andjilo, was found guilty of criminal conspiracy, assassination, illegal possession of weapons of war, aggravated theft and sequestration by the criminal court of Bangui on 22 January 2018.[167] Among other elements, judges established that Andjilo led a group of more than 300 armed young men identified as Anti-Balaka who committed several [non specified in the judgment] crimes in Bangui from December 2013 under his orders and after the ex-Seleka had left the capital, that Andjilo himself killed two men in October 2014, one of which was an officer of the law. He was sentenced to life imprisonment with hard labour. Andjilo could still be tried on other charges in future proceedings, related to other crimes committed by his men against the civilian population.

On the second case, two years later, in February 2020, the criminal court of Bangui issued its first conviction and sentence on charges of crimes under international law, in relation to an attack by the anti-Balaka group in Bangassou in 2017, a town in the South-East of the country. Five individuals identified as anti-Balaka leaders were found guilty of several charges of crimes against humanity and war crimes and were sentenced to life imprisonment with hard labour.[168] (see section below for more details on this case).

There is no indication publicly available that the Ministry of justice or judicial authorities have elaborated a prosecutorial strategy for CAR's ordinary tribunals, and whether and how it would deal with crimes committed against the civilian population since 2002, including sexual and gender-based crimes. The justice sector policy developed by the Ministry of Justice does not seem to provide the prosecution's strategy on how to deal with these crimes in a comprehensive manner.

Criminal justice sector experts in CAR that Amnesty interviewed point to an urgent need for such prosecutorial strategy: "[the justice sector policy] is not a strategy. It is too broad and covers everything. But we are in a situation where problems are huge and financial and human resources are extremely limited… The ministry of justice should work on a prosecutorial strategy. It starts by determining what are the types of crimes being committed in the country, what are the resources of the State, and then deciding on which crimes need to be prioritized and the existing resources invested in."[169]

5.2.2 THE 'BANGASSOU TRIAL': FIRST TRIAL ON CRIMES AGAINST HUMANITY IN CAR

On 15 January 2020, the 'Bangassou trial' started before the criminal court of Bangui,[170] the first of its kind. The case relates to crimes committed during the 13 May 2017 attack in Bangassou[171] that led to 72 people being killed, including civilians and ten UN peacekeepers, and thousands forced to flee the town.

Investigations in this case were initiated by MINUSCA, which also effected the arrest of suspects. The dossier was then transmitted to the Public Prosecutor, before being examined by Investigating judges and

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Similarly, another ex-Seleka was tried in September 2019 but it seems that almost all charges were ultimately dropped: RFI, *Centrafrique: un haut grade de l'ex-Seleka condamné à six ans de prison ferme*, 23 September 2019, available at www.rfi.fr/fr/afrique/20190923-rca-abdoulaye-alkali-said-justice-condamnation-seleka-six-ans-prison-ferme ; Justiceinfo.net, *A Bangui, la Cour criminelle double la CPI et la CPS,* 26 September 2019, available at : www.justiceinfo.net/fr/tribunaux/tribunaux-nationaux/42466-bangui-cour-criminelle-double-cpi-et-cps.html

[167] Criminal Court of Bangui, Judgment, *Arrêt criminel No. 003 du 22 janvier 2018, Affaire Ministère Public et autres contre Ngaibona Rodrigue alias Général Andjilo,* 22 January 2018, on file with Amnesty International.
See also TV documentary by Africanews, 24 January 2018, available at www.youtube.com/watch?v=4fLV6NYdfI8 ; and by France24, 23 January 2018, available at: www.france24.com/fr/video/20180123-centrafrique-le-leader-anti-balaka-andilo-condamne-travaux-forces; as well as article by RFI, *RCA: travaux forcés à perpétuité pour le "Général Andjilo", 23 January 2018, available at:* www.rfi.fr/fr/afrique/20180123-rca-centrafrique-proces-general-andilo-anti-balakas-condamnation; Justiceinfo.net, *Centrafrique: un premier chef de guerre condamné par la justice nationale,* 23 January 2018, available at www.justiceinfo.net/fr/tribunaux/tribunaux-nationaux/36191-centrafrique-un-premier-chef-de-guerre-condamne-par-la-justice-nationale.html

[168] At the time of the drafting of this report, the written judgment in this case does not exist yet. But part of the oral decision by the judges can be heard in the Radio Ndele Luka program available at www.radiondekeluka.org/vos-emissions/magazine-justice/35105-le-bilan-de-la-deuxieme-session-criminelle-de-2019-a-bangui.html

[169] Interview with UN staff, 10 July 2020

[170] TV5 Monde video, available at information.tv5monde.com/video/en-centrafrique-ouverture-du-proces-des-crimes-de-bangassou

[171] HRW, Central African Republic: Civilians targeted as violence surges, 27 October 2017, available at www.hrw.org/news/2017/10/27/central-african-republic-civilians-targeted-violence-surges

ultimately sent to trial. The support by the UN and other actors, including human rights organizations, was substantive at all stages – from providing evidence to funding the criminal session entirely.[172]

"If it had not been for their [MINUSCA] presence in Bangassou, we would not have judged that case. We are dealing with an armed conflict, and our State does not have any operational capacity," the Public Prosecutor explained.

Agreeing that the MINUSCA's role was instrumental, a UN member of staff said, "the UN system had to pressure them [so that Central African authorities organized the last criminal session]. Judges and prosecutors lack interest in the process, they say they are tired. [But, after the trial was completed], judges, prosecutors and the Ministry of justice were happy to take credit for this success."[173]

The trial lasted for close to three weeks, such duration is exceptional in CAR, at least since 2015. The Prosecution, the Defence and civil parties were all represented by lawyers and heard by the court. Witnesses testified too. Argument was made in French and Sango depending on the person speaking. The trial hearings were public and broadcasted live in their entirety via radio and television with impressive audience success. "The public opinion was moved"[174] , a Central African lawyer told Amnesty International. Others told Amnesty how the hearing evoked a certain sense of relief among the population.[175]

Defendants respond during the 'Bangassou trial' at the Bangui criminal court in Bangui on January 15, 2020. (Photo by FLORENT VERGNES / AFP) (Photo by FLORENT VERGNES/AFP via Getty Images)

One former judge interviewed by Amnesty International recalls the Bangassou trial as such: "As a former judge, I followed the hearings on the radio. I recognize there were shortcomings in the procedure as well as in the conduct of the debates. Judges were not very experienced and some defence lawyers were really young too. They did what was in their power. This trial would have been much more significant had the participants to the hearing have good knowledge of international criminal law and good trial hearing practice.

[172] Interview with civil society member, 6 July 2020; Interview with Prosecutor general of Bangui, 30 July 2020; JusticeInfo.net, *Central African Republic: national court gets tough on Bangassou crimes*, 10 February 2020, available at www.justiceinfo.net/en/tribunals/national-tribunals/43747-central-african-republic-national-court-gets-tough-on-bangassou-crimes.html (highlighting that evidence was provided by the MINUSCA and by human rights organizations)
[173] Interview with UN staff, 8 July 2020
[174] Interview with UN staff, 22 July 2020
[175] Interview with Prosecutor General, 30 July 2020; Interview with journalist, 26 July 2020

But the population was satisfied. Why? Because warlords who used to be very powerful, who terrorized them, became small people again. Victims directly spoke to the accused during hearings and these warlords lowered their eyes! We could feel justice was being done. Those were really powerful moments, appreciated by the population."[176]

This trial led to the first conviction for war crimes and crimes against humanity in CAR. The five main Anti-Balaka leaders in Bangassou, named Kevin Bere Bere, Romaric Mandago, Crepin Wakanam alias Pino Pino, Patrick Gbiako and Yembeline Mbenguia Alpha were all found guilty of crimes against humanity, war crimes, attack against persons internationally protected, criminal conspiracy, assassination and illegal possession of weapons of war.[177] They were sentenced to life with hard labour[178] and to pay compensation to the victims.[179] Over 20 others in the same case were sentenced from 10 to 15 years in prison or acquitted. Amnesty International recognizes this as an important milestone in CAR's pursuit of justice.

CONCERNS OVER FAIRNESS OF TRIALS

A number of people interviewed echoed concerns over fairness of criminal proceedings in general and described the criminal sessions as disorganized.[180] A list of systemic deficiencies at the investigative and trial stages of proceedings were identified as main contributing factors for the insufficient quality of criminal trials in a 2019 evaluation of the criminal sessions.[181] This document includes recommendations to improve the work of all actors of the criminal justice system, from police officers, secretaries, registrars, prosecutors to investigating judges, pre-trial judges, trial judges, court presidents and lawyers. These include suggestions of specific training of justice personnel to reminders of specific actions each actor should ensure, from drafting of police official reports to all respecting time limits required by CAR law, including restrictions on pre-trial detention (see box in previous chapter).

With regard to the Bangassou trial, a majority of observers interviewed by Amnesty International raised problems with regards to the fairness of the proceedings, often attributing these to the lack of experience of the actors involved. The following claims have been made:

- Some defendants were not represented at pre-trial stage, impeding the defendant's right to participate during the investigation (*information judiciaire)*; and some defence lawyers may have been appointed and/or provided with the dossier of the case at the first day of hearing or not long before, therefore they were not given reasonable time to prepare their defence at trial;[182]
- Civil party lawyers as well as defence lawyers did not adequately defend the rights of their clients, including procedural rights during hearings;[183]
- Judges did not supervise the hearings adequately, in particular the Prosecution was given much more room to speak during hearings than the Defence in violation of the principle of equality of

[176] Interview with former judge, 21 July 2020

[177] At the time of the drafting of this report, the written judgment in this case does not exist yet. But part of the oral decision by the judges can be heard in the Radio Ndele Luka program available at www.radiondekeluka.org/vos-emissions/magazine-justice/35105-le-bilan-de-la-deuxieme-session-criminelle-de-2019-a-bangui.html
For more information, see also FIDH, *La justice centrafricaine condamne lourdement les responsables du massacre de Bangassou,* 7 February 2020, available at www.fidh.org/fr/regions/afrique/republique-centrafricaine/la-justice-centrafricaine-condamne-lourdement-les-responsables-du;
And media articles: JusticeInfo.net, *Central African Republic: national court gets tough on Bangassou crimes*, 10 February 2020, available at www.justiceinfo.net/en/tribunals/national-tribunals/43747-central-african-republic-national-court-gets-tough-on-bangassou-crimes.html (including extracts of the pleas by all parties to the trial); Libération, *Centrafrique: les massacreurs de Bangassou condamnés à la perpétuité*, 7 February 2020, available at www.liberation.fr/planete/2020/02/07/centrafrique-les-massacreurs-de-bangassou-condamnes-a-la-perpetuite_1777639?xtor=rss-450&utm_medium=Social&utm_source=Twitter&utm_campaign=dlvr.it; RFI, *Crimes à Bangassou en Centrafrique: un procès révélateur d'une profonde crise*, 7 February 2020, available at www.rfi.fr/fr/afrique/20200207-crimes-%C3%A0-bangassou-rca-perp%C3%A9tuit%C3%A9-travaux-forc%C3%A9s-anti-balaka

[178] Hard labour seems to translate in practice in CAR in simple imprisonment. Whether a sentence is prison or hard labour, CAR authorities must ensure these sentences remain humane.

[179] Compensation from 2,5 million to 200 million to each civil party. They are unlikely to be paid since most accused are indigent, leaving victims with no recourse to obtain in practice reparations they are entitled to.

[180] Interview with civil society member, 6 July 2020; Interview with UN staff, 8 July 2020; Interview with UN staff, 14 July 2020; Interview with former judge, 21 July 2020; Interview with another former judge, 22 July 2020; Interview with UN staff, 23 July 2020; Interview with lawyer, 23 July 2020; Interview with civil society member, 28 July 2020; Interview with lawyer, 31 July 2020 and others.

[181] CAR authorities and American Bar Association Rule of Law Initiative (ABA-Roli), *Evaluation de base des cours d'appel et des obstacles liés à l'organisation des sessions criminelles*, 2019, pages 14 to 24 for the list of identified challenges per actor and pages 24 to 26 for the list of recommendations addressed to these same actors.

[182]Interview with civil party lawyer in the case, 14 July 2020; Interview with UN staff, 14 July 2020; Interview with UN staff, 14 July 2020; Interview with lawyer, 23 July 2020; Interview with lawyer, 31 July 2020. Similarly, Amnesty International documented several other trials where the lawyer met for the first time with his client on the first day of a criminal trial.

[183] Interview with UN staff, 14 July 2020; Interview with lawyer, 23 July 2020; Interview with lawyer, 28 July 2020

arms;[184]

- The Prosecution relied more on emotions than on evidence or legal arguments, suggesting that the investigation had been botched and the dossier was weak;[185]
- There was a complete absence, in law and in practice, of any protection for victims and witnesses,[186] including the lack of security or confidentiality measures during their appearance at court, their names even being mentioned on the radio;
- The written judgment not being made available for more than seven months,[187] delaying the parties' right to appeal.

Amnesty International was not able to verify all these claims and make a proper assessment of the overall fairness of these proceedings with regards to standards set out in international human rights law, including in particular as outlined under article 14 of the ICCPR[188] and article 7 of the African Charter on Human and Peoples' Rights (ACHPR).[189]

Appellate courts should examine these claims when and if the case goes to appeal. Even though this trial is a first step towards justice for victims of the conflict, efforts must be strengthened to ensure minimum standards of fair trials are guaranteed in proceedings before ordinary courts in CAR, in accordance with the State's domestic law and its international obligations.

5.3 UNCERTAIN ROLE OF MILITARY TRIBUNALS

On 24 March 2017, a new military justice code was adopted by the National Assembly and promulgated by the President.[190] On 9 July 2020, judges for the military courts were appointed for the first time by the President.[191] At the time of the writing of this report, the military justice system was due to be operational.

Article 21 of the military justice code[192] establishes that military courts would have jurisdiction over all military offenses as well as all criminal offenses included in the Penal code when committed by military officers *or assimilated* during the course of their work. Article 26 specifies who are considered as "assimilated", which includes police officers, those called to service in the army and others as well as "any civilian who has taken the arms or who has participated in an armed organization against the Republic."[193]

From these provisions alone, the scope of the jurisdiction of military courts may be extremely expansive. They could be competent over all criminal offenses committed by any soldier or any member of an armed group, including crimes perpetrated against civilians, and including crimes under international law.

Amnesty International has tried to clarify how possible conflicts of jurisdiction between these military courts and other tribunals in CAR would be resolved. All persons interviewed[194] were unanimous in explaining that the jurisdiction of the SCC has primary jurisdiction over all other courts in the country, including military

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[184] Interview with lawyer, 23 July 2020; Interview with former judge, 21 July 2020; Interview with former judge, 22 July 2020; Interview with UN staff, 23 July 2020

[185] Interview with UN staff, 14 July 2020; Interview with lawyer, 23 July 2020; Interview with member of civil society, 28 July 2020; Interview with former judge, 23 July 2020

[186] Interview with lawyer observer, 23 July 2020; Interview with civil party lawyer in the case, 14 July 2020; Interview with UN staff, 14 July 2020; Interview with former judge, 22 July 2020;
The SCC is the only tribunal in CAR which provides protection for witnesses or victims. Amnesty International has been calling for the creation of witness protection before all CAR criminal courts for several years, see Amnesty International, 2017 report, pages 30-31.

[187] Confirmed a lawyer for civil parties in the case who says that the unavailability of written judgments is common practice.

[188] Ratified in 1981

[189] Ratified in 1986

[190] Loi No. 17.012 du 24 Mars 2017 portant code de justice militaire centrafricain (military justice code), 24 March 2017, available at ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=46E93838DB5EA948C12582E300530080&action=openDocument&xp_countrySelected=CF&xp_topicSelected=GVAL-992BU6&from=state
See also MINUSCA video documentary, available at www.youtube.com/watch?time_continue=107&v=UGv8rIxpwUQ&feature=emb_logo

[191] Décret No. 20.239 portant nomination aux diverses fonctions dans les juridictions militaires, 9 July 2020, on file with Amnesty International. It appoints all staff necessary for the Bangui military court and the Bouar military court.

[192] Military justice code, article 21: "En temps de paix, les juridictions militaires sont compétentes pour connaître :
- Des infractions purement militaires au sens du présent Code ;
- des infractions de droit commun commises par les militaires ou assimilés dans ou à l'occasion de l'exercice de leurs fonctions dans la caserne, dans le service ou dans tout autre établissement militaire. (…) »

[193] Military justice code, article 26 « … tout civil qui a pris les armes ou qui a participé à une organisation armée contre la République »

[194] It included lawyers, judges, UN staff.

ones. Indeed, the law creating the SCC is clear in that "in case of conflict of competence with another national jurisdiction, the SCC has primacy to investigate, prosecute and judge all crimes under its competence."[195]

However, the answer is unclear when it comes to conflict between military courts and other ordinary courts. Legal experts in CAR that Amnesty interviewed had diverse views or had not looked into the issue.

Military courts should not be competent to try civilians. ACHPR's principles and guidelines on the right to a fair trial unequivocally recognize the right of civilians not to be tried by military courts: "The only purpose of military courts shall be to determine offences of a purely military nature committed by military personnel. While exercising this function, military courts are required to respect fair trial standards enunciated in the African Charter and in these guidelines. Military courts should not in any circumstances whatsoever have jurisdiction over civilians. Similarly, special tribunals should not try offences which fall within the jurisdiction of regular courts."[196] As state party to the African Charter on Human and People's Rights, CAR assumes obligations to comply with these regional standards.

With regards to material jurisdiction, there is also a growing consensus under international law that military courts should not be competent to examine cases of crimes against civilians, even less so when those are crimes under international law such as crimes against humanity or war crimes. A number of human rights bodies have called for military personnel charged with ordinary criminal offences to be tried before a civilian court rather than a military court[197]. Moreover, principle 29 of the UN Updated Impunity principles reads: "The jurisdiction of military tribunals must be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalized criminal court."[198]

Amnesty International recommends that the military justice code be amended to ensure that the jurisdiction of military courts in CAR is limited to purely military offenses committed by military personnel and explicitly excludes jurisdiction over crimes against civilians, in particular crimes under international law. Such crimes should be tried before ordinary courts, the SCC or the ICC, in fair trials with no recourse to the death penalty.

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[195] Loi organique, article 3

[196] ACHPR, Principles and guidelines on the right to a fair trial and legal assistance in Africa, 2003, section L;
Confirmed by ACHPR jurisprudence, see for instance Centre for Free Speech vs Nigeria (communication 206/97), 13th annual report (1999), paras 12-14. Also contained in the UN Draft Principles Governing the Administration of Justice through Military Tribunals, UN Doc. E/CN.4/2006/58, 2006, principle 5.
The fair trial principles are not a binding instrument over CAR authorities, however the ACHPR adopted these guidelines within its mandate to interpret the African Charter on Human and Peoples' Rights, which CAR has ratified. The same UN draft principles on military tribunals are also a soft law instrument.

[197] See for examples: HRC, Concluding observations: Democratic Republic of Congo, UN Doc CCPR/C/COD/CO/3 (2006), para. 21; CAT Concluding Observations: Guatemala, UN Doc.CAT/C/GTM/CO/4 (2006) para 14; ACHPR, Wetsh'okonda Koso and others vs Democratic Republic of the Congo (Communication 281/2003), 26th annual report (2008), paras 85-87

[198] UN Economic and Social Council, Updated set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, 2005, principle 29, available at www.un.org/Docs/asp/ws.asp?m=E/CN.4/2005/102/Add.1

6. ROLE OF PARTNERS

6.1 SCC: HEAVY INVOLVEMENT OF THE UN

6.1.1 FUNDING THE COURT

The budget of the Court is estimated around 10 to 15 million USD - although 2019 and 2020 were less costly since the Court has not been fully operational.[199]

The funding of the SCC relies mostly on voluntary contributions by other States and intergovernmental organizations.[200] In terms of contributions, the UN is the major contributor, along with the European Union (EU), the Netherlands and the United States. Burkina Faso, Canada, Democratic Republic of Congo (DRC), France and Togo have contributed through secondment of international staff. A few other states have made pledges. But there are concerns with the lack of sustainable funding for the Court.

"The funding is the constant problem of the SCC. We have the feeling that partners are getting tired that the SCC still does not have any case on trial, given that the Court started a little while back." [201] a UN staff member told Amnesty International.

The SCC is a hybrid Court, it was created by the UN and CAR government together. UN member States should step up to make further contributions to the SCC to ensure that the Court is able to conduct its mandate of investigating and prosecuting crimes under its jurisdiction. Wherever possible, substantive or pluri-annual contributions should be considered to enable sustained and continued work by the Court during its 5-year initial mandate.

6.1.2 ADMINISTRATION OF THE COURT

The budget of the court is administered by the United Nations Development Programme (UNDP) which has assumed a direct project implementation responsibility, raising concerns of autonomy.[202] "The SCC is managed by a project hosted by the UNDP. The Court has no autonomy as such", explains the President of the SCC.[203]

The UN was first mobilized for the establishment of the SCC after it was created by law in June 2015. Its role was crucial in recruiting the personnel, constructing the Court's buildings, ensuring security of the location and the people and so forth. The first phase of operationalisation of the Court was conducted through a joint project led by the UNDP and the MINUSCA running from 2016 to 2019.[204]

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[199] Interview with UN staff, 7 July 2020; Interview with UN staff, 22 July 2020, corroborated by UNDP-MINUSCA document entitled *Mise à jour sur l'opérationalisation de la Cour Pénale Spéciale,* 2019, on file with Amnesty International.
[200] Article 53 of the law creating the SCC reads: « The budget of the SCC is supported by the international community, including through voluntary contributions, including through MINUSCA's participation or any other operation mandated by the Security Council or the UN system, in consultation with the government, in the limit of available financial resources."
[201] Interview with UN staff, 22 July 2020
[202] Confirmed unanimously by all UN staff and SCC staff interviewed.
[203] Interview with SCC judge president, 17 July 2020
[204] RCA-MINUSCA-PNUD, *Projet conjoint d'appui à la Cour Pénale Spéciale de la République centrafricaine,* non dated, on file with Amnesty International; Interview with UN staff, 22 July 2020

In the process, the UNDP became responsible for managing the budget and finances of the SCC. A member of an international organization working in CAR for years explains: "[Partners] were not sure the Central African government would have the capacity in terms of administration, finances, logistics. [They] were not confident they could manage the SCC in a manner partners would trust, partners from whom we were hoping to obtain financial contributions. That is how the administrative and financial management [of the Court] was given to the UNDP."[205]

No other international or hybrid court in the world has been or is administrated by the UNDP. The SCC, in that regard, constitutes a singularity on its own. In practice, the administration of the Court by another institution has several consequences on the day-to-day activities of the Court. International staff receive their salaries through the UNDP although they are accountable to the SCC and formally report to their managers at the SCC on work-related matters. Finances are processed through UNDP procedures, which are not always adapted to the realities or necessities of judicial activities.[206] And, perhaps most importantly, management of the finances of the office of the Special Prosecutor threatens its independence and the confidentiality of its investigations.

For instance, for any field trip, the office of the Special Prosecutor has to submit a budget to the UNDP for approval, including per diem and expenses. The office only has a small cash amount at its disposal for investigations in Bangui. The purpose and details of field missions are thus known to UNDP staff, who are external persons to the Court, in contradiction with efforts to preserve the confidentiality of the investigations.[207] The UNDP could also, in theory, obstruct certain investigations from being conducted through administrative processes although there is no indication that this has happened so far.

"It is problematic because those investigations are secret. We are afraid that details of our investigations are known to the public, also the process for approval by the UNDP takes time. We are not autonomous yetwe depend on the UNDP in every act of investigation we do."[208]

Another SCC staff member testified of one incident where information was leaked, resulting in people on the location of a field investigation were warned of the planned trip of SCC investigators beforehand.[209] Amnesty International could not verify this specific incident but notes the risk of confidential information leaking as more people outside of the Office of the Special Prosecutor are informed about a planned field activity.

The financial and administrative management by the UNDP therefore poses risks to the independence of the Court and it is not sustainable in the context of an expected growth of activities by the Court. This is also acknowledged by experts interviewed, including a UN staff in CAR who told Amnesty that "the Court should take more responsibilities [from UNDP], if we want to talk about an independent Court." .[210]

An expert consultant was mandated by the UN itself in 2018 to analyse and provide recommendations with regards to the functioning of the Registry of the SCC. His observations raise the same concerns as Amnesty International's on the independence of the SCC: "[some] functions of the Registry are conducted by UN personnel recruited through the MINUSCA-UNDP joint project. This leads to several problems. […] [It] contributes to further confuse the role and responsibilities, already largely misunderstood, of the Registrar as manager and the image of the Registry as a centralized and unified body of the Court. It also does not encourage the Registrar (and generally, the Court) to take charge of his responsibilities. […] Furthermore, the Registrar of the SCC is responsible for the functioning of the Registry in its entirety and should define its vision and its priorities. […] The personnel recruited by UN partners is not and cannot be responsible of various functions of the Registry unless the Registrar is responsible for their acts. The current situation in which certain members of UN personnel are perceived as members of the SCC is misleading and legally dubious. […] As of today, […] the Registrar is not in capacity to guarantee the operational independence of the Court."[211]

Some frustrations also exist in the way the budget for security of personnel is managed, with discrepancies of treatment between national and international staff. Within the office of the Special Prosecutor, this discontent has been expressed and investigators have even threatened to go on strike. According to some of them

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[205] Interview with member of international organization, 22 July 2020

[206] Several interviewees explained that procedures by UNDP were initially too rigorous and strict, and some efforts had been made over time to be more flexible with regard to certain types of expenses. For instance, expenses conducted for the protection of witnesses and victims needed to be done often urgently and anonymously for security reasons, which was at first very difficult through UNDP, but they put in place special procedures for those since.

[207] Interview with UN staff, 14 July 2020; Interview with another UN staff, 14 July 2020; Interview with SCC special prosecutor office's staff member, 8 July 2020

[208] Interview with SCC special prosecutor office's staff member, 8 July 2020

[209] Interview with SCC staff, date kept confidential for security reasons

[210] Interview with UN staff, 14 July 2020

[211] Rapport d'évaluation des besoins et des services déjà en place au Greffe de la Cour pénale spéciale centrafricaine, par Martin Petrov, 2018, paras 45-46 and 51, on file with Amnesty International.

interviewed by Amnesty, national staff cannot afford to live in 'green zones' (safe zones). "We all share the same risks, but we are not treated the same," one personnel of the office concluded,[212] adding that the problem has been referred to both CAR authorities and the UNDP, but on which the Registry has no say at the moment.[213]

However, to date, there is no body within the SCC capable of, or in charge of, managing the finances. The appointment of the deputy registrar (see chapter IV) is viewed by many that Amnesty International interviewed as an important step required to help transition the SCC to a more autonomous and effective Court.[214] But this will not be enough by itself, there needs to be a real transfer of competences and responsibilities from the UNDP to the Court, with the establishment of a fully operational Registry within the Court led by the Registrar and its Deputy as well as the heads of each unit composing the Registry.

This also corresponds to internal recommendations made by the expert consultant hired by the UN, who stressed the need to recruit, as soon as possible, all heads of Registry units and to develop the Court's expertise and autonomy "in view of gradually reducing the international [management] support and ultimately remove it"[215]. The expert suggested several possible ways forward with regards to the management of finances.[216]

Officially, the UN is working on this transition. The new joint project of the MINUSCA and the UNDP for 2020 to 2024[217] is described as the phase of 'support to the functioning' of the SCC and is intended to give more autonomy to the Court. As one UN staff member explained: "the UNDP is taking a withdrawal attitude. The first phase was 'establish, establish, establish'. The second phase is 'retreat, retreat, retreat'". [218]

But in practice, several UN staff interviewed[219] doubt that all steps are genuinely taken in that direction or they are unsure if it should be done. Some are afraid that donors of the Court would not accept financial administration within the SCC or that the Court will not build the capacity internally to manage the administration of the Court by the end of its initial 5-years mandate. Amnesty International urges the UN to ensure that these perceived challenges should not delay or result in the lack of action to ensure the Court becomes administratively independent.

The UN should take all measures in its power to ensure that the Registry of the SCC is fully operational and capable to manage the administrative and financial management of the Court as soon as possible, in accordance with its own internal recommendations and in view of strengthening the independence of this hybrid court.

6.2 MIXED SUPPORT TO ORDINARY TRIBUNALS

The financial and technical support given by the 'international community' to the ordinary criminal courts, and more generally the national justice system, is substantive and necessary.[220] CAR hosts many different international organizations working as partners on justice-related reform issues, from UN entities, to donor countries, to non-governmental organizations. This multiplicity of actors, while positive, requires high levels of coordination to be harmonious and effective.

"If it was only for the State, the judicial apparatus would not be what it is now. MINUSCA provides substantial support and tries to raise the standards. But it remains inadequate. (…) The State is satisfied with the minimum, but in my opinion, it could do much better," [221] the lawyer chair of the Commission for the SCC *corps spécial* told Amnesty.

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[212] Interview with SCC staff, 8 July 2020
[213] The expert mandated by the UN also recommended to ensure all SCC personnel is under the same regime, including nationals and internationals as much as possible. See Rapport d'évaluation des besoins et des services déjà en place au Greffe de la Cour pénale spéciale centrafricaine, par Martin Petrov, 2018, Recommandation 10, on file with Amnesty International.
[214] Interview with MINUSCA staff, 7 July 2020; Interview with SCC special prosecutor office's staff member, 8 July 2020
[215] Rapport d'évaluation des besoins et des services déjà en place au Greffe de la Cour pénale spéciale centrafricaine, par Martin Petrov, 2018, paras 155-156, on file with Amnesty International. See also recommendations 1, 8, 13 and 16 of the same document.
[216] Rapport d'évaluation des besoins et des services déjà en place au Greffe de la Cour pénale spéciale centrafricaine par Martin Petrov, 2018, paras 148-149, on file with Amnesty International
[217] PNUD, Projet conjoint d'appui au fonctionnement de la Cour Pénale Spéciale (PAF-CPS), 1 January 2020-31 December 2023, on file with Amnesty International
[218] Interview with UN staff, 22 July 2020
[219] Interview with UN staff, 7 July 2020; Interview with UN staff, 14 July 2020; Interview with other UN staff, 14 July 2020; Interview with UN staff, 22 July 2020
[220] Interview with civil society member, 6 July 2020; Interview with UN staff, 14 July 2020; Interview with UN staff, 10 July 2020; Interview with Ministry of Justice staff, 21 July 2020; Interview with UN staff, 22 July 2020; Interview with UN staff, 23 July 2020; Interview with lawyer, 23 July 2020
[221] Interview with lawyer, 23 July 2020

From 2014, the UN started supporting the "restoration" of justice institutions including providing infrastructure, equipment or training to police and other security forces, detention facilities and judicial institutions and other capacity-building activities.[222]

Since the adoption of the justice sector policy in December 2019 (see box in previous chapter), the EU is also substantially supporting the implementation of the policy through direct financial support to the Ministry of Justice.[223] Other actors play a role too in supporting or implementing justice-related activities, including human rights organizations working with or representing victims of crimes[224].

UN entities have also directly sponsored the organization of criminal sessions. Most would not have happened otherwise because the Ministry of Justice does not have sufficient financial means to organize the number of sessions required under the criminal procedure code.[225]

However, while both the technical and the financial support of partners are crucial, the technical support provided by the UN sometimes raises questions with regards to due process and independence of CAR judicial authorities. For instance, the United Nations Police (UNPOL) or the MINUSCA play predominant role in certain investigations of criminal cases, exercising its power under 'urgent temporary measures'[226] in order to conduct preliminary examinations, including to arrest individuals, detain, interrogate them, draft police reports, and to transfer the individuals to CAR authorities in Bangui.[227]

In a context where the UN also has armed forces present in the country and is sometimes seen by the population as one actor in the armed conflict, this presents risks both in terms of actual independence and public perception of the independence of the courts. A question may arise for instance to what extent the UN is leading on selection of cases are to be investigated, prosecuted and heard before CAR judicial bodies – ordinary criminal courts, and to a certain degree, the SCC.

"UN entities are not [just] providing technical assistance, it is rather substituting itself for CAR authorities. The Central African Republic is under the guardianship of the UN," one senior UN member of staff working on justice-related issues told Amnesty International, expressing his concern on the way the UN mostly operates in direct implementation in lieu of CAR authorities rather than in support of existing CAR authorities and institutions.[228]

The support provided by the MINUSCA to judicial authorities, including through arresting individuals located outside of Bangui, is absolutely needed and crucial. But the UN should ensure that this support is provided upon request of CAR authorities, who remain responsible for the overall prosecutorial strategy and the conduct of investigations and prosecutions of crimes committed in the country since 2002.

On the other hand, the financial and technical support provided to the ordinary tribunals is often considered as insufficient, and disparities of support between the SCC and other courts create some frustrations. [229] One former judge told Amnesty International: "All support should not be directed at the SCC. (…) When two children are doing the same thing but are not treated the same, obviously this creates discontent." [230]

A UN staff added, "They [staff from ordinary tribunals] see the beautiful buildings of the SCC illuminated even during the night and judges in their bulletproof cars… They don't have any of that. We can understand their frustration. They also judge the same type of cases. But the difference of means is blatant." [231] Amnesty International calls on partners to strengthen their support to the ordinary courts while taking all precautions to respect independence of CAR judiciary and strict adherence to CAR law and international human rights standards.

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[222] Interview with UN staff, 23 July 2020
[223] Interview with EU staff, 15 July 2020 ; EU, *Annexe de la décision de la Commission modifiant la décision de la Commission C (2018) 7745 du 19.11.2018 relative au financement de la mesure individuelle en faveur de la République centrafricaine (RCA), Document d'action concernant le « programme d'appui à la réforme du secteur de la sécurité et à la gouvernance en République centrafricaine »,* on file with Amnesty International
[224] These include, but are not limited to, Avocats sans frontières (ASF-Belgique), American Bar Association ABA-Roli, Association des Femmes juristes de Centrafrique (AFJC), Observatoire centrafricain des droits de l'Homme (OCDH), Ligue centrafricaine des droits de l'Homme (LCDH), Commission épiscopale Justice et Paix, Coordination des organisations musulmanes de Centrafrique (COMUC)
[225] Justice sector policy, page 64; Interview with UN staff, 8 July 2020; Interview with UN staff, 23 July 2020; Interview with lawyer, 23 July 2020
[226] Urgent Temporary Measures are powers mandated by UN Security Council Resolution 2149, para 40, to assist national authorities in establishing law and order and protecting civilians, available at unscr.com/en/resolutions/2149 (The resolution specifies that such UTM may be adopted 'at the formal request' of CAR authorities)
See also Amnesty International, 2017 report, page 20.
[227] Example of the Bangassou trial, see section in previous chapter. Also corroborated by other examples and testimonies: Interview with former judge, 21 July 2020; Interview with member of civil society, 28 July 2020; Interview with Bangui court staff, 30 July 2020
[228] Interview with UN staff, 10 July 2020
[229] Interview with former judge, 21 July 2020; Interview with UN staff, 23 July 2020; Interview with lawyer, 23 July 2020
[230] Interview with former judge, 21 July 2020
[231] Interview with UN staff, 23 July 2020

7. CONCLUSION AND RECOMMENDATIONS

Many individuals, judicial bodies and other organizations are undeniably working hard to ensure that the horrendous crimes committed in CAR since 2002 do not remain unpunished. CAR authorities have also repeatedly affirmed their commitment to fight impunity. At the domestic level, encouraging judicial efforts and outcomes are emerging. The SCC was not existent a few years ago, it is now functional and actively conducting investigations. Ordinary courts also began investigating and trying alleged perpetrators of crimes under international law.

But there is still much to be done, better, and faster. Most individuals who are alleged to be most responsible for crimes committed since 2012 on both sides, ex-Seleka and anti-Balaka, still live freely in the country and some continue to commit violations. Victims' rights to obtain truth, justice and reparations in a reasonable time should not be sacrificed in the name of political calculations, often proven to be counterproductive too. Hence the fight against impunity should remain a top priority.

In parallel, judicial proceedings should also scrupulously respect minimum guarantees of fair trial, including defence rights. The SCC in particular should make sure it is a model in that regard, as it is supposed to inspire and support the capacity-building of other CAR courts in the long term. Justice against the little and without due process will not be justice.

7.1 TO CAR AUTHORITIES

TO EXECUTIVE AND LEGISLATIVE AUTHORITIES

- Ensure all alleged perpetrators of crimes under international law and other serious violations or abuses committed since 2002, from all sides of the conflict, are investigated, prosecuted and judged in fair trials with no recourse to the death penalty.
- Suspend any individual subject to such investigation or prosecution from its official capacity in the army, in the government or in any other state body.
- Ensure the Ministry of Justice has sufficient means to carry out its mission, including budget for a minimum of 6 criminal sessions per year as required under CAR criminal procedure code; and consider increasing the budget and the number of criminal sessions and/or transitioning to a system of permanent criminal court.
- Amend the military justice code, in particular article 21, to ensure that the jurisdiction of military courts is limited to purely military offenses committed by military personnel and explicitly excludes jurisdiction over crimes committed against civilians, in particular crimes under international law.
- Develop legislation which enshrines the obligation of national courts to ensure the safety, physical and psychological well-being and privacy of victims and witnesses without discrimination.
- Abolish the death penalty for all crimes.

- Make all necessary revision to national criminal legislation to ensure that it conforms with international standards, and in particular, revise the definitions of war crimes, crimes against humanity and genocide in the Penal code.
- Ratify the Protocol to the ACHPR on the establishment of an African Court on Human and Peoples' Rights and make the special declaration allowing individuals and NGOs to directly submit cases to the Court.

TO THE MINISTRY OF JUSTICE AND JUDICIAL AUTHORITIES

- Ensure all alleged perpetrators of crimes under international law and other serious human rights violations or abuses committed since 2002, from all sides of the conflict, are investigated, prosecuted and judged in fair trials with no recourse to the death penalty.
- Draft and adopt a prosecutorial strategy for ordinary criminal courts, which would include addressing crimes under international law committed since 2002, including sexual and gender-based crimes.
- Organize a minimum of six criminal sessions per year as required under CAR criminal procedure code, in Bangui, Bouar and Bambari or moved to another location when the security situation does not make it possible, and until a permanent criminal justice system is eventually put in place.
- Improve the capacity and quality of the criminal justice system and fair trial guarantees through the effective implementation of the new justice sector policy, including but not limited to:
    - Ensuring the effective creation of the legal aid system as established under the law No. 20.005 of 14 January 2020 providing organization of legal aid in CAR;
    - Creating in law and in practice a system of protection for the safety, physical and psychological well-being and privacy of victims and witnesses participating in criminal investigations or trials;
    - Respecting time limits provided for by CAR criminal procedure code to ensure both defence rights to a fair trial, including when provisionally detained by CAR authorities or the UN, and victims' right to justice in a reasonable time;
    - Ensuring that investigations are conducted in an effective, thorough, impartial and independent manner, and that cases are sent to trial or dismissed within a reasonable time;
    - Ensuring that all parties have effective legal representation and adequate facilities and time to participate in criminal pre-trial proceedings and to prepare ahead of trial hearings;
    - Stop conducting trials *in abstentia*;
    - Making all criminal judgments available in written form to the parties and to the public;
    - Deploying magistrates and other judicial personnel in all regions where the security situation allows it;
    - Providing adequate means and training to all judges, prosecutors and other judicial personnel, including on fair trial guarantees as protected under CAR law and international human rights law.

7.2 TO THE SPECIAL CRIMINAL COURT

- Ensure that investigations and prosecutions by the SCC focus on crimes under international law showing a certain degree of gravity, including against those most responsible for these crimes, as per the *Loi organique* and the Court's own prosecutorial strategy.
- Improve the transparency of the judicial activities of the Court, including but not limited to:
    - Providing statistics on the website as well as regularly to the public in CAR via outreach activities: number of cases, number of complaints received, number of suspects charged, number of suspects detained, number of victims constituted civil parties and so forth;
    - Providing minimum information on each case on the website as well as regularly to the public in CAR, including stage of the proceedings in a given case;

    - Giving access to judicial decisions, in full or in redacted versions.

- Speed up, in coordination with the *organe paritaire*, the establishment of an effective legal aid system for defendants and civil parties.
- Improve access to information related to individuals indicted by the Court and their eventual pre-trial detention, including by:
    - Making public the identities of individuals who have been indicted, or at least providing reasons why the identities cannot be disclosed in a public decision;
    - Making public identities of their lawyers unless confidentiality is strictly necessary to protect their safety, and in that case issuing a public decision explaining such necessity;
    - Holding pre-trial hearings before the *Chambre d'instruction* and the *Chambre d'accusation* in public, and if held in closed hearing, providing reasons demonstrating that such measure was necessary and proportionate to a legitimate aim such as preserving national security, public order or the interests of justice;
    - Making public judicial decisions issued at pre-trial stage in a redacted form where necessary;
    - Allowing and guaranteeing access to the registers of persons deprived of their liberty and regular visits of the detention centres by competent domestic authorities and institutions and UN relevant entities.
- In accordance with SCC rules and international human rights law, ensure that defence rights and the right to a fair trial are respected, in particular that detainees are informed of the reasons for their detention; time limits for pre-trial detention are strictly interpreted and respected and suspects are tried within a reasonable time or released; detainees have effective legal representation and opportunities to challenge their detention and participate in pre-trial proceedings; and that all individuals are held in human conditions and have access to the outside world, including visits from their families.
- In accordance with SCC rules and international human rights law, ensure that civil parties' rights are respected, in particular that victims have the opportunity to submit complaints to the court wherever they are located on CAR territory; that they have access to effective legal aid and they are provided with opportunities to participate in pre-trial proceedings.

7.3 TO THE UN AND OTHER PARTNERS

- Urge CAR authorities to ensure that all alleged perpetrators of crimes under international law and other serious violations or abuses committed since 2002, from all sides of the conflict, are investigated, prosecuted and judged in fair trials before the SCC or ordinary courts.
- Consider making (further) voluntary contributions to the SCC to ensure that the Court has the means to fulfil its initial 5-year mandate.
- States, in particular African and other Francophone states, should urgently respond to the call for secondment of qualified judges, prosecutors and other international staff to the SCC.
- Ensure that all necessary measures are taken to enable the transition towards an administrative and financially autonomous SCC in order to strengthen the independence of the Court.
- Increase the financial and technical support to ordinary criminal courts, including through support to the implementation of the justice sector policy as well as direct support to the organization of criminal sessions while ensuring independence of CAR judiciary and compliance with its prosecutorial strategy when adopted.
- Increase the financial support to other actors of the justice sector such as lawyers, NGOs and victims' associations including through the support to the legal aid scheme.

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“ON TRIAL, THESE WARLORDS LOWERED THEIR EYES”

THE CENTRAL AFRICAN REPUBLIC’S CHALLENGING PURSUIT OF JUSTICE

Central African Republic has suffered waves of violence and armed conflicts since 2002, with numerous crimes under international law and other serious violations and abuses being committed with impunity. Thousands of civilians were killed, raped, abducted, mutilated, wounded, displaced or had their homes burned.

Efforts to ensure justice to victims of these horrendous crimes are insufficient. Ordinary courts and the UN-backed hybrid court, the Special Criminal Court, have started investigations and prosecutions. The ‘Bangassou trial’ before the Bangui criminal court was the first trial dealing with war crimes and crimes against humanity.

However, much more remains to be done by CAR authorities, with the support of their partners, to ensure all those most responsible are brought to account in fair trials without recourse to the death penalty.

INDEX: AFR 19/3185/2020
OCTOBER 2020
LANGUAGE: ENGLISH

amnesty.org

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