THE LONG WAIT FOR JUSTICE

ACCOUNTABILITY IN CENTRAL AFRICAN REPUBLIC

AMNESTY INTERNATIONAL

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Cover photo: *An empty courtroom of the Court of Appeal of Bangui. June 2016.*
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GLOSSARY

WORD	DESCRIPTION
CAR	Central African Republic
CLPC	Coordination nationale des libérateurs du peuple centrafricain
DDRR	Disarmament, demobilization, reintegration and repatriation of armed groups
EAC	Extraordinary African Chambers
FACA	Former CAR armed forces under President Bozizé (Forces Armées Centrafricaines)
FPRC	Front populaire pour la renaissance de la Centrafrique
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
IDP	Internally Displaced Persons
MINUSCA	United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic
MISCA	International Support Mission to the Central African Republic
MPC	Mouvement patriotique pour la Centrafrique
SCC	Special Criminal Court
SCSL	Special Court for Sierra Leone
SRSG	Secretary-General's Special Representative
UNDP	United Nations Development Programme
UNWOMEN	The United Nations Entity for Gender Equality and the Empowerment of Women
UTMs	Urgent Temporary Measures

EXECUTIVE SUMMARY

Impunity in Central African Republic (CAR) not only denies justice to thousands of victims of human rights violations and abuses, it also continues to fuel instability and conflict. This is why CAR's political leaders, including newly elected President Faustin-Archange Touadera, and the international community have repeatedly promised measures to ensure accountability for crimes committed during years of conflict.

It is also why, according to report of the consultations done across the country in advance of the Bangui Forum in May 2015, "the population supports the principle of dialogue and reconciliation, but places justice and reparation for the damages inflicted as a necessary condition" to achieve this.

There have been some steps taken to move towards accountability. A Special Criminal Court (SCC) is being established, the International Criminal Court (ICC) opened investigations, and the UN placed 10 individuals under sanctions, including for committing acts that constitute serious human rights abuses or violations. The UN peacekeeping force, MINUSCA, has worked with national security forces to arrest 384 people suspected of crimes related to the conflict that occurred between September 2014 and October 2016. These include a small number of prominent individuals reasonably suspected of having committed crimes under international law such as Anti-balaka commander Rodrigue Ngaïbona, also known as Andilo, and ex-Seleka commander Mahmat Abdelkader, also known as Baba Laddé.

However, impunity remains the norm and in the vast majority of cases the authorities have failed to ensure effective investigations of those reasonably suspected of having committed crimes under international law. There is no comprehensive list of suspected perpetrators, but in July 2014, Amnesty International published the names of 21 individuals from all sides of the conflict that the organization believed should be investigated for crimes under international law, including war crimes and crimes against humanity. Only one of them has been arrested and Amnesty International is not aware of effective investigations into the others. Similarly, none of the 10 individuals on the UN sanctions list appear to have been subjected to effective investigations or arrest. This is also the case for the vast majority of well-known Anti-balaka and ex-Seleka leaders reasonably suspected to have committed crimes under international law and other serious human rights violations and abuses.

Among the high-profile suspects who remain at large, and apparently free of investigation, are Patrice-Edouard Ngaissona, self-declared coordinator of the Anti-balaka; Eugène Barret Ngaïkosset, an Anti-balaka commander known as 'the Butcher of Paoua'; Thierry Lébéné, also known as Colonel Douze Puissance; former presidents Francois Bozize and Michel Djotodia; and ex-Seleka leaders Abdoulaye Hissene and Haroun Gaye. Amnesty International and the UN have published evidence indicating that these individuals may be criminally responsible for crimes under international law, and have called for investigations. Some have even found themselves in positions of power or influence such as Anti-balaka commanders Alfred Yekatom, also known as Rambo, who serves as a member of the National Assembly Defence and Security Commission dealing with disarmament, demobilization, reintegration and repatriation of armed groups (DDRR) process.

Such persistent impunity is one factor fuelling continued instability and insecurity, as well as further human rights violations. In October 2016, for example, fighters from two ex-Seleka factions (*Mouvement patriotique pour la Centrafrique* – MPC, and *Front populaire pour la renaissance de la Centrafrique* - FPRC) attacked a camp for internally displaced people in Kaga-Bandoro, killing at least 37 civilians, wounding a further 60 and forcing more than 20,000 people to flee their homes. Both groups have been involved in committing previous human rights violations, without having been held accountable for them. Similarly, the UN has documented how Haroun Gaye, an ex-Seleka leader in the PK5 district of Bangui, was involved in planning attacks on international forces during a major outbreak of violence in September 2015, and then was involved in attacks on polling stations during the elections in December 2015 and the kidnapping of policemen in June 2016.

MINUSCA and the national authorities face significant challenges in ensuring the effective investigation, prosecution and punishment of suspects in such a vast country with multiple armed groups and the near-absence of state institutions outside of Bangui. Weaknesses in the capacity of MINUSCA make investigating, prosecuting, and managing the potential fallout difficult, while some lack of coordination between the national authorities and UN force has led to confusion over objectives and actions, most critically in the case of the failed arrest attempt of Haroun Gaye and Abdoulaye Hissene in August 2016.

In the face of such large-scale crimes under international law and other serious human rights violations and abuses, CAR's domestic justice system has been unable to cope and needs significant and sustained investment to be rebuilt. Already weak before the outbreak of renewed conflict in 2013, it was weakened further and now requires major rebuilding to support the rule of law and hold perpetrators of crimes accountable.

The scale of the challenge could be seen during the recent holding of criminal trial sessions in June 2015 and August and September 2016. While representing a step forward – criminal trials had not been held in CAR since 2010 – the hearings exposed serious weaknesses in the preparation of cases, the collection of evidence and the protection of victims and witnesses.

Rebuilding CAR's domestic justice system means, in part, rebuilding its physical infrastructure and making courts operational, especially outside of Bangui. Many were looted or destroyed. In the High Court of Boda, for example, the trial sessions for civil and administrative matters are taking place in a room of the City Hall, while in Carnot the High Court is holding its sessions in the former headquarters of the Postal office. While rebuilding the courts, mobile court hearings will provide a valuable alternative in many provinces.

With just 163 magistrates, and 113 lawyers in service in CAR, measures also need to be taken to increase the number and training of legal personnel and to improve diversity as only small numbers of Muslims or women are represented in the legal profession, which also remains centered on Bangui. Financial pressures also restrict access to justice as poor remuneration for legal aid – less than US$10 per case – means few lawyers are willing to take on such roles.

Insecurity also acts as a barrier to the effective functioning of the justice system. Efforts made by the CAR authorities and partners such as MINUSCA, UNDP and UNWOMEN to redeploy judges to areas outside of Bangui have been hampered by the continued threat of armed groups. For instance, the High Court of the northern city of Batangafo remains occupied by MINUSCA, with security concerns preventing the redeployment of the judiciary. In the jurisdiction of Kaga-bandoro, ex-Seleka forces are occupying the building of the High Court.

The need for protection also applies to witnesses and victims, and the lack of any witness protection legislation or mechanism is one of the key reasons why few victims and witnesses testified in either the June 2015 or August-September 2016 criminal trial sessions. One civil society member told Amnesty International that victims are afraid to speak out because "one can take you from your home and kill you".

The prison system needs urgent and serious rehabilitation in order to detain suspected perpetrators securely in conditions that meet international standards. Only eight of CAR's 35 prisons are functional, and prison breaks have been common, including the escape of 689 detainees from Ngaragba Prison in Bangui in September 2015. Prisons lack effective registers, are overcrowded, have insufficient sanitation, and do not separate juveniles from adults or convicted prisoners from those in pre-trial detention.

More broadly, the justice system suffers from chronic underinvestment, with one official in the Ministry of Justice describing it as 'the Cinderella sector' of CAR's administration. Between 2011 and 2016, the Ministry of Justice received on average less than 2% of the national budget, although there has been a slight increase since

2015. The CAR National Recovery and Peacebuilding Plan 2017-2021, presented to donors at an international conference in Brussels in November 2016, requested US$105 million over five years to strengthen the domestic justice system and operationalize the SCC.

Two other avenues are being pursued by the CAR government and international community to ensure accountability for crimes under international law in the shorter term – the SCC, and the ICC.

The SCC, established by law in June 2015, will bring together national and international judges and staff to investigate and prosecute "grave human rights violations and serious violations of international humanitarian law, committed in CAR since January 2003".

The SCC's mandate and composition should ensure greater independence and impartiality than national courts, as well as greater guarantees that prosecutions and trials be conducted in accordance with international fair trial rights. As such it should also help to build confidence – essential in a divided country – in the justice system's ability to deal with sensitive and serious cases. CAR authorities have taken steps toward the establishment of the court, with the support of MINUSCA. However, more than a year after the promulgation of the law, much remains to be done before the court is operational and effective.

The transparent and merit-based selection of high-quality national and international judges, in addition to other key staff, will be essential for the court's success, as will efforts to ensure a degree of diversity in recruitment, and to provide appropriate training in both international and national law. Calls for nominations from states for certain positions such as international judges and other staff are now open, while the recruitment process for certain national positions has recently begun.

Sustained funding for the SCC is also critical, and while US$5 million of the US$7 million required for the first 14 months of the court have been provided, donors should be encouraged to make predictable, multi-year funding pledges for the full five years of planned activity to avoid insecurity regarding the continuity of the court, as well as the situation where cases would have to be transferred to domestic courts due to resource constraints alone.

Competent civil society organizations should be supported to improve documentation of human rights abuses and crimes under international law, especially given the time that may have passed for some of the crimes committed. A coherent, transparent prosecutorial strategy will also be needed, investigating and prosecuting suspected perpetrators on all sides of the conflict, and looking deep enough into the chain-of-command responsibility.

The SCC will try cases of crimes against humanity, war crimes and other serious violations and abuses of international human rights law. It will be absolutely crucial that the accused persons are treated fairly, complying with fair trial protections under national and international law from prosecution to final judgement. This should include the presumption of innocence, equality of arms and access to effective and highly qualified counsel. Considering the gravity of allegations and the seriousness of the charges, the court must ensure the provision of effective legal aid. CAR's authorities should also review and amend national legislation to ensure that definitions of crimes under international law align with international standards, while an independent victims and witnesses unit should be established within the Registry of the SCC to provide effective protection to those engaging in court processes.

The conviction of Jean-Pierre Bemba in March 2016 of crimes against humanity and war crimes provides some precedent for the ICC's engagement in CAR, and the ICC has been undertaking further investigations in CAR since September 2014 focusing on potential crimes committed since 2012. The ICC will likely focus on a small number of high-level perpetrators, and it is essential that the ICC investigates and prosecutes crimes committed by all parties to the conflict on the basis of the same objective criteria. In a country as divided as CAR it would also be prudent to issue arrest warrants for all sides at the same time.

For the ICC, the SCC, and the domestic justice system there is also undoubtedly a need to invest in outreach and communication with communities across the country, to build understanding and confidence in these mechanisms. From interviews with victims and witnesses, it is clear that there is a broader lack of knowledge about how to make use of the existing justice system, as well as a lack of trust in its independence and effectiveness, and a lack of understanding of the roles and activities of the SCC and ICC.

Much will be determined by actions taken by the CAR authorities and the international community over the coming year. The words of President Touadera at a landmark donor conference on CAR in November 2016 that

"reconciliation cannot be achieved at the cost of impunity" must never be forgotten, while the pledges made by donors – totalling more than US$2 billion – during that same conference must be delivered. If not, impunity will continue to fuel violence in CAR, and victims will be denied the justice they deserve.

METHODOLOGY

This report aims to analyse the current state of efforts to combat impunity in CAR, including through national, hybrid and international mechanisms. It is primarily based on research carried out in June and October 2016 by Amnesty International in Bangui, in addition to research conductedby the organization on an ongoing basis since early 2014.

Amnesty International delegates carried out 30 interviews with people involved in the domestic justice sector in CAR, including magistrates and prosecutors, members and advisors to the Minister of Justice, the president of the CAR Bar Association, and lawyers. Delegates visited the Ngaragba and Camp de Roux Prisons in Bangui and met with their respective managers as well as detainees. Amnesty International also met with parliamentarians, national and international humanitarian workers, journalists, human rights defenders, diplomats, UN and MINUSCA staff, including the Secretary-General's Special Representative (SRSG). Meetings were requested with the Ministers of Justice, Defence and Security, however none of them were able to meet with Amnesty International's delegates.

Amnesty International also interviewed 40 victims of human rights abuses and crimes under international law. For security and privacy reasons, Amnesty International has maintained the confidentiality of a significant proportion of interviewees, notably victims and magistrates, and has used pseudonymous or generic references.

Information obtained through the interviews was analysed and corroborated with information and data from other sources, including court documents and a range of reports on the justice sector and other political, social and humanitarian issues in CAR.

BACKGROUND

CAR has not only a long history of military coups and conflicts, but also an entrenched culture of impunity – including amnesties for people accused of having committed serious human rights violations –that perpetuates the cycle of violence.[1]

The current instability and insecurity in CAR stems from March 2013, when Seleka, an armed coalition made up mostly of Muslims from CAR and neighbouring countries, ousted the government of François Bozizé in a coup and committed serious human rights violations and crimes under international law. In the months that followed, the Anti-balaka, a collection of 'self-defence' militia made up largely of animists and Christians, carried out large-scale reprisal attacks against Muslims across CAR, reaching new levels in December 2013, when violence between Seleka and Anti-balaka forces in Bangui killed nearly 1,000 civilians, prompting an international outcry and the resignation of Seleka President Michel Djotodia,

More than 5,000 people have been killed in the intensification of violence since 2013, which also caused an unprecedented humanitarian crisis. Up to 466,000 people, mostly from Muslim communities, remain refugees and 385,000 people are displaced internally.[2]

The international community responded by authorizing an African Union peacekeeping force, the International Support Mission to the Central African Republic (MISCA), supported by French military forces, Sangaris, in December 2013. A European Union force, EUFOR, was deployed in April 2014, when the UN Security Council established the UN Multidimensional Integrated Stabilization Mission in CAR (MINUSCA), which took over responsibility from MISCA in September 2014.

The deployment of international peacekeeping forces from the African Union, France, the European Union and the United Nations helped stop the most extreme violence, undoubtedly saved many lives, and facilitated the hosting of a largely peaceful referendum and election, respectively, in December 2015 and February 2016.

However, high levels of insecurity and instability remain, civilians are under threat of physical violence, and the security situation has sharply deteriorated since September 2016. Armed groups have launched numerous attacks killing dozens of civilians in Bangui and across CAR, including internally displaced persons (IDPs) under UN protection. On 12 October 2016, for example, at least 37 civilians were killed following an attack by ex-Seleka fighters in a camp for displaced people in Kaga-bandoro, and up to 20,000 were forced to seek shelter at the MINUSCA and UN bases.[3] In late November 2016, fighting between two ex-Seleka factions in Bria, Haute-Kotto, resulted in at least 14 civilians killed and over 70 wounded[4], with reports of targeted executions of ethnic Fulani civilians.[5] Violence between nomadic pastoralists and farmers in the transhumance area also continued.

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[1] Amnesty International, *Central African Republic: Action Needed to Address Decades of Abuse* (Index: AFR 19/001/2011), 20 October 2011, available at www.amnesty.org/en/documents/afr19/001/2011/en/

[2] OCHA, Humanitarian Bulletin, October 2016, available at http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA_CAR_Humanitarian_Bulletin_EN_October_2016.pdf

[3] HRW, *Deadly Raid on Displaced People*, 1 November 2016, available at www.hrw.org/news/2016/11/01/central-african-republic-deadly-raid-displaced-people

[4] HRW, *Central African Republic: Civilians Killed During Clashes*, 5 December 2016, available at www.hrw.org/news/2016/12/05/central-african-republic-civilians-killed-during-clashes

[5] UN, *Central African Republic: UN envoy calls for protecting civilians as scores killed in ethnic violence*, 25 November 2016, www.un.org/apps/news/story.asp?NewsID=55653#.WFU_31OLRow

In mid-June 2016, clashes between Anti-balaka groups and Fulani herders, in Ngaoundaye, Ouham-Pende prefecture, caused several casualties and forced up to 20,000 people to flee.[6] Attacks by the Lord's Resistance Army (LRA) have also increased in the south-east province since at least one year ago.[7] Large numbers of light weapons also remain in civilian hands, often turning simple quarrels into deadly incidents.[8]

The presence of armed groups and militias fighting for control over territory, power and access to natural resources, as well as shifting alliances within and between these groups, keeps CAR in a state of insecurity. With MINUSCA still facing challenges in fully upholding its mandate to protect civilians[9], the withdrawal of French forces, and the continued presence of armed groups and militias, there are fears that new violence will erupt, threatening the stability of CAR and the security of its people.

[6] UNICEF, *Central African Republic Humanitarian Situation Report*, July 2016 http://reliefweb.int/report/central-african-republic/central-african-republic-humanitarian-situation-report-1-july-31

[7] Statement by the head of the UN Regional Office for Central Africa, Abdoulaye Bathily when briefing the UN Security Council on the challenges faced by the whole region, in light of the continuing Boko Haram terror threat, and political upheaval, 15 June 2016, available at www.unmultimedia.org/radio/english/2016/06/lords-resistance-army-attacks-in-car-have-notably-increased/#.V6yERPmLTrc

[8] Conflict Armament Research, *Groupes armés non étatiques en République centrafricaine*, January 2015, available at www.conflictarm.com/wpcontent/uploads/2015/01/GROUPES_ARMEES_NONETATIQUES_REPUBLIQUE_CENTRAFRICAINE2.pdf

[9] Amnesty International, *Mandated to protect, equipped to succeed? Strengthening Peacekeeping in Central African Republic* (Index: AFR 19/3263/2016), 8 February 2016, available at www.amnesty.org/en/documents/afr19/3263/2016/en/ (hereinafter: Amnesty, *Mandated to protect, equipped to succeed?)* ; HRW, *Getting away with murder in Central African Republic*, 17 November 2016, available at www.hrw.org/news/2016/11/17/getting-away-murder-central-african-republic ; HRW, *Central African Republic: Civilians Killed During Clashes*, 5 December 2016, available at www.hrw.org/news/2016/12/05/central-african-republic-civilians-killed-during-clashes

1. IMPUNITY IN CAR

1.1 THE PROMISE OF ACCOUNTABILITY

> **'More than ever, I want to tell my fellow countrymen that reconciliation cannot be achieved at the cost of impunity.'**
>
> Faustin Archange Touadera[10], CAR President, Brussels, November 2016

Impunity not only denies justice to victims of human rights violations, it alsofuels instability and conflict. Accountability in CAR has been an explicit objective of the national authorities and international community. It is also a consistent demand from communities across the country, since the beginning of the most recent conflict.

Support for measures to ensure accountability for human rights violations committed during the conflict has widespread support in the country and has been reflected in the grassroots consultations carried out with communities across the CAR prior to the Bangui Forum on National Reconciliation, which was held in May 2015. The report of these consultations unambiguously concluded that "the population supports the principle of dialogue and reconciliation, but places justice and reparation for the damages inflicted as a necessary condition to achieve this."[11]

Demands for accountability were shared by other stakeholders at the Bangui Forum, including the transitional government, the main armed groups, civil society and religious groups. Participants in the forum rejected any claims for immunity and amnesties for those allegedly responsible for crimes under international law. They also pledged to support transitional justice mechanisms, such as a national truth and reconciliation commission, local peace and reconciliation committees and the Special Criminal Court.[12]

President Touadera, elected in March 2016, has made strong statements supporting the principle of accountability, and has highlighted its importance on several occasions since his inauguration. On 9 July 2016, in a speech to the nation to mark his 100 days in power, he vowed to bring to trial those who had committed

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[10] Speech by CAR President Faustin Archange Touadera at CSOs-side event to CAR Donors' Conference in Brussels, 16 November 2016.

[11] *Rapport général des consultations à la base en République Centrafricaine* (document de travail élaboré par l'équipe de rapporteurs), 15 March 2015, Bangui, p. 13, para.1.1.

[12] Amnesty International, *Rejection of any claim to immunity is a positive step towards justice*, 13 May 2015, available at www.amnesty.org/en/latest/news/2015/05/car-rejection-of-any-claim-to-immunity-is-a-positive-step-towards-justice/ and UN news center, *Security Council welcomes Central African Republic national forum, urges implementation of peace pact,* 16 May 2015, available at www.un.org/apps/news/story.asp?NewsID=50878#.V6yFw_mLTrc

grave crimes.[13] He also reiterated this commitment towards accountability at the UN General Assembly in September 2016, stressing that CAR "has turned its back on past dark days … and is determined to break the cycle of violence … to legitimately aspire to peace, security, justice".[14] At the CAR donors' conference held in Brussels on 17 November 2016, Touadera repeated that "reconciliation cannot be achieved at the cost of impunity".[15]

The international community, too, has repeatedly stressed the need to end impunity in CAR and to bring to justice perpetrators of crimes. The UN Security Council established an international commission of inquiry to investigate reports of human rights violations and abuses committed in CAR by all parties to the conflict since 1 January 2013.[16] The UN Human Rights Council appointed an Independent Expert on the human rights situation in CAR.[17] In addition, MINUSCA's mandate includes providing support to international and national justice and the rule of law by building the capacities of the national judiciary and human rights bodies.[18]

Some steps have been taken towards delivering on these commitments, even if they remain limited in scope and scale. For instance, MINUSCA has worked with national authorities to arrest some of those suspected of committing crimes during the conflict (see box in section 1.4), two criminal trial sessions[19] have been undertaken in Bangui since June 2015 (see Chapter 2), progress has been made to establish the Special Criminal Court (SCC), and the International Criminal Court (ICC) has opened investigations into crimes committed in CAR since 2012 (see Chapter 3). In January 2016, the UN Security Council also renewed for one year a series of sanctions against individuals and groups implicated in the conflict, while efforts by the national authorities to negotiate with and disband armed groups are underway with the support of MINUSCA.[20]

1.2 IMPUNITY REMAINS RIFE

> **'The most important militia leaders remain free. They live side by side with their victims. They take the same taxis, shop in the same shops, live in the same neighbourhood. None have been arrested or prosecuted, and such a climate of impunity only reassures the perpetrators of crimes.'[21]**
>
> A member of civil society in Bangui

[13] RJDH, *L'intégralité du discours des cent jours du président Faustin Archange Touadera*, 11 July 2016, available at http://rjdh.org/centrafrique-lintegralite-discours-cent-jours-president-faustin-archange-touadera/
[14] Speech of His Excellency, Professeur Faustin Archange Touadera President of the Republic, Head of State on the occasion of the 71st Ordinary UNGA, 23 September 2016, www.un.org/africarenewal/sites/www.un.org.africarenewal/files/Faustin%20Archange%20Touadera%20Statement%20%28French%29.pdf
[15] See Footnote No. 10.
[16] UN Security Council Resolution 2127 (2013), mandates Mission in Central African Republic to Protect Civilians, Restore State Authority 5 December 2013, available at www.un.org/press/en/2013/sc11200.doc.htm
[17] UN General Assembly, A/HRC/RES/24/34, Human Rights Council, 9 October 2013, available at http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/Download.aspx?SymbolNo=A%2fHRC%2fRES%2f24%2f34&Lang=en,
[18] UN Security Council, S/RES/2149 (2014), 10 April 2014, available at www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2149(2014)
[19] Criminal cases dealt with by the Bangui Court of Appeal (see Chapter 2).
[20] UN news center, *Central African Republic: Security Council renews sanctions, stresses urgent need to end impunity*, 27 January 2016, available at www.un.org/apps/news/story.asp?NewsID=53102#.WACyN_mLTrc
[21] Amnesty International Interview with a member of a local CSO, October 2016, Bangui.

Despite commitments made and measures taken, the vast majority of individuals reasonably suspected to have orchestrated or committed serious human rights violations and crimes under international law remain free and no steps seem to have been taken towards effective investigation or prosecution of these suspects.

For example, in July 2014, Amnesty International published a report entitled "*Time for Accountability*", naming 21 individuals from all parties to the conflict that the organization believed should be investigated for crimes under international law, including war crimes and crimes against humanity.[22] More than two years on, only one of them (Babba Laddé) has been arrested and is yet to be prosecuted for any crime. Similarly, nine out of 10 individuals on the UN sanctions list since 2013[23] appear to remain free of any effective investigation, despite serious allegations of their responsibility in crimes under international law and human rights abuses, and some continue to move freely in violation of the sanctions regime.

The leadership of the main armed groups suspected of abuses also remains largely intact and apparently free of investigations. For instance, in October 2014, the UN panel of experts provided a list of 36 individuals who had identified themselves as members of the political and military leadership of the Anti-balaka group called *Coordination nationale des libérateurs du peuple centrafricain* (CLPC). [24] According to the UN, some of them are reasonably suspected of having committed crimes under international law and other serious human rights violations and abuses. However, only a few of them have been investigated, arrested and prosecuted. On the ex-Seleka side, the leaders of the four main factions currently active in CAR all continue to operate freely.[25]

These and other armed leaders facing allegations of crimes continue to roam CAR unhindered, and exercise control over their men and, at times, territory. Some of them purport to administer state functions, including justice, alongside traditional authorities. They also exploit natural resources such as diamonds, and in the most extreme cases, commit new crimes. Some enjoy exile under the protection of other African states.

In some cases, impunity has manifested itself not only in a failure to investigate or arrest key individuals, but also in their obtaining important positions of influence that they could use either to commit other crimes under international law and other violations of international human rights law or to prevent investigations about themselves and their affiliates.

SUSPECTED PERPETRATORS WHO REMAIN FREE OF INVESTIGATION OR ARREST

Examples of those reasonably suspected of having committed crimes under international law, but who have not been effectively investigated:

Patrice-Edouard Ngaissona, a self-proclaimed Anti-balaka coordinator, has remained free despite an arrest warrant issued against him in 2013 by the Djotodia government for his alleged involvement in serious crimes committed in CAR.[26] In 2014, the transitional authorities further made public allegations against him, including his personal criminal responsibility for "crimes against humanity and

[22] Amnesty International, *Time for Accountability* (Index: AFR 19/006/2014), available at www.amnesty.org/en/documents/afr19/006/2014/en/ (hereinafter: Amnesty, *Time for Accountability*).
[23] One individual, Levy Yakité, is reported to have died. The UN Security Council Committee established pursuant to resolutions 2127 (2013) and 2262 (2016) concerning CAR oversees the sanctions measures (travel ban and assets freeze) imposed by the UN Security Council on individuals and entities. Reasons for listing vary and include "planning, directing, or committing acts that violate international human rights law or international humanitarian law, as applicable, or that constitute human rights abuses or violations, in the CAR", available at www.un.org/sc/suborg/en/sanctions/2127#listing criteria
[24] The Panel is comprised of five experts whose mandate - established by para. 59 of resolution 2127 (2013) for an initial period of 13 months, and extended pursuant to para. 22 of resolution 2262 (2016) until 28 February 2017 - consists of assisting the Sanctions Committee, including through providing it with information relevant to the potential designation of individuals. The Sanctions Committee, also established pursuant to resolution 2127 (2013), is a subsidiary organ of the UN Security Council and consists of all the Members of the Council. Available at www.un.org/sc/suborg/en/sanctions/2127.
[25] Noureddine Adam (*Front populaire pour la renaissance de la Centrafrique*), Ali Darrassa (*Union pour la paix en Centrafrique*), Al Khatim (*Mouvement patriotique pour la Centrafrique*) and Joseph Zoundeko (*Rassemblement patriotique pour le renouveau de la Centrafrique*).
[26] Amnesty, *Time for Accountability*, p.13.

incitation to genocide."[27] On 17 April 2014, he was questioned by the office of the Bangui prosecutor and released with an agreement that he would appear when requested by the Gendarmerie, the investigative judge or the office of the prosecutor.[28] Amnesty International is not aware of any further action taken by the transitional authorities and the current administration to investigate his personal and/or command responsibility for crimes under international law committed in CAR and he has never since been summoned to appear.

On 6 October 2016, following a general assembly of the Anti-balaka militias held in Bangui, Ngaissona told the media, in his capacity of Anti-balaka coordinator that "the Anti-balaka will keep their weapons until the disarmament, demobilisation, reintegration and repatriation programme is effective."[29] As of December 2016, he continued to be free of investigation, and be in regular contact with the national authorities and members of the international community[30] as the coordinator of the Anti-balaka forces.

Alfred Yekatom, alias Colonel Rambo, a high-profile Anti-balaka commander, has been identified by both Amnesty International and the UN as someone who should be investigated for serious abuses and crimes under international law.[31] For example, in 2014 Amnesty International spoke to over 20 residents of Mbaiki who independently identified Rambo as being responsible for coordinating Anti-balaka groups in the town and who witnessed killings of civilians that Rambo either committed himself or ordered between December 2013 and May 2014.[32] Rambo is under UN sanctions for "engaging in or providing support for acts that undermine the peace, stability or security of the CAR" and is reported by the UN as being suspected of having committed crimes under international law, including killing of civilians.[33]

In December 2015, Rambo was elected to CAR's National Assembly and serves as a member of the Defence and Security Commission which, among other things, examines bills and issues relating to DDRR.[34]

Eugène Barret Ngaïkosset, alias The Butcher of Paoua, a former army captain associated with the Anti-balaka, escaped on 17 May 2015 from detention at the *Section de Recherche et d'Investigation* where he had been brought by the police following his extradition from Brazzaville and arrest at the Bangui airport.[35] Under UN sanctions since December 2015, Ngaikosset is alleged by the UN to have committed numerous crimes, including sexual violence, targeting of civilians, attacks on religious minorities, attacks on schools and hospitals, and abduction.[36]As of December 2016, Ngaikosset is still at large and Amnesty International is not aware of any attempt to recapture him.

Thierry Lébéné, alias Colonel Douze Puissance, is an Anti-balaka commander whose alleged role in a series of attacks against civilians in many parts of CAR has been documented by various organizations including Amnesty International. In one egregious incident of 14 October 2014 documented by Amnesty International, witnesses and victims confirmed that a group of Anti-balaka fighters under his command, armed with Kalashnikovs, grenades and machetes killed three civilians, badly injured at least 20 more, and burned down 28 houses and a church[37]. Despite such allegations, no investigations

[27] Amnesty, *Time for Accountability*, p.13.
[28] Amnesty, *Time for Accountability*, p.19.
[29] RJDH, *Les Anti-balaka menacent de quitter le processus DDRR-CVR et projettent de reprendre les armes,* 6 October 2016, available at http://rjdh.org/centrafrique-anti-balaka-menacent-de-quitter-processus-ddrr-cvr-projettent-de-reprendre-armes/
[30] Amnesty International, Interviews with senior UN and MINUSCA staff, October 2016, Bangui.
[31] Amnesty, *Time for Accountability,* p.22.
[32] Amnesty, *Time for Accountability*, p.22.
[33] UN SC Committee established pursuant to Res 2127 (2013), Narrative summaries of reasons for listing, 20 August 2015, available at www.un.org/sc/suborg/en/sanctions/2127/materials/summaries/individual/alfred-yekatom
[34] Sangonet, *Assemblée nationale centrafricaine 2016: huit commissions parlementaires mises place*, 17 May 2016, available at www.sangonet.com/afriqg/PAFF/Dic/actuC/ActuC23/assembllee-nat-8-commissions-parlem-mai2016.html
[35] UN, *Security Council Committee Concerning Central African Republic Lists Two Individuals Subject to Measures Imposed by Resolution 2196 (2015)*, 17 December 2015, available at www.un.org/press/en/2015/sc12169.doc.htm ; RFI, *l'ex-capitaine Eugène Ngaïkosset s'échappe lors d'une audition,* 19 May 2015, available at www.rfi.fr/afrique/20150518-rca-ex-capitaine-eugene-ngaikosset-s-echappe-lors-une-audition
[36] UN subsidiary organs, Resolution 2127 (2013) List, 19 December 2016, available at https://scsanctions.un.org/fop/fop?xml=htdocs/resources/xml/en/consolidated.xml&xslt=htdocs/resources/xsl/en/car.xsl
[37] Amnesty International, *Failure to effectively investigate war crimes fuels further atrocities and fear* , 11 December 2014,

appear to have been carried out on Colonel Douze Puissance's alleged individual and command responsibility for such crimes and he remains at large.

Francois Bozize and Michel Djotodja, former presidents of CAR, also remain at large. In March 2014, CAR Transitional President Catherine Samba-Panza confirmed that an arrest warrant was issued against François Bozizé for murder, torture and inciting genocide and hate.[38] Djotodja was included in an executive order signed by United States President Barack Obama on 15 May 2014 imposing sanctions on him and four other CAR nationals.[39] They both live in exile, protected by influential allies. Bozize, who is also under UN sanctions[40], is believed to currently live in Uganda, having spent time in Kenya and Cameroon, while Djotodia lives with his family in Cotonou, Benin.

Haroun Gaye and Abdoulaye Hissene, prominent ex-Seleka leaders, remain at large following failed attempts to arrest and detain them. Allegations of crimes under international law and human rights abuses committed by the pair have been documented by Amnesty International and the UN. MINUSCA first attempted to arrest Gaye on 2 August 2015, in a failed operation in the PK5 section of Bangui. Following this operation, Gaye escaped, a 16-year-old boy and his father were killed, and a 12 year-old girl was raped by the UN peacekeeping force. A peacekeeper was also killed and eight others were wounded.[41] Hissène was arrested on 15 March 2016 at Bangui airport by national gendarmes and brought to *Section de recherche et d'investigation* (SRI), Bangui's investigative police department. But he was freed hours later by a group of heavily armed men[42] who attacked and broke into the SRI building. In August, Gaye and Hissene again escaped capture when MINUSCA intercepted their convoy as it travelled from Bangui to Kaga-bandoro. In October, they travelled freely to Bria to attend a general assembly of ex-Seleka factions.[43]

1.3 CONTINUED IMPUNITY IS FUELING INSTABILITY AND CONFLICT

The lack of accountability for serious crimes under international law and human rights abuses fuels the conflict and leads to further crimes committed against civilians. Most recently, this can be seen in the increased attacks against civilians since September 2016, a period in which dozens of civilians were killed by members of armed groups and militias in several areas across CAR, including Kaga-bandoro and Bria.

ATTACKS ON CIVILIANS IN KAGA-BANDORO, SEPTEMBER AND OCTOBER 2016

On 12 October 2016, a group of ex-Seleka fighters, including members of both the *Mouvement patriotique pour la Centrafrique* (MPC) and *Front populaire pour la renaissance de la Centrafrique* (FPRC) factions, as well as a group of individuals suspected to be affiliated with them, attacked a camp for internally displaced people, known as *Évêché*

available at www.amnesty.org/en/latest/news/2014/12/car-failure-effectively-investigate-war-crimes-fuels-further-atrocities-and-fear/

[38] Reliefweb, *Son of C. Africa's ex-leader arrested*, 5 August 2016n available at http://reliefweb.int/report/central-african-republic/son-cafricas-ex-leader-arrested ; See also: *Jeune Afrique* no. 2777, 30 March to 5 April 2014, p. 35.

[39] The White House Office of the Press Secretary, *Executive Order -- Blocking Property of Certain Persons Contributing to the Conflict in the Central African Republic*, 13 May 2014, available at www.whitehouse.gov/the-press-office/2014/05/13/executive-order-blocking-property-certain-persons-contributing-conflict-

[40] UN subsidiary organs, Resolution 2127 (2013) List, 19 December 2016, available at https://scsanctions.un.org/fop/fop?xml=htdocs/resources/xml/en/consolidated.xml&xslt=htdocs/resources/xsl/en/car.xsl

[41] Amnesty International, *UN troops implicated in rape of girl and indiscriminate killings must be investigated*, 11 August 2015, available at www.amnesty.org/en/latest/news/2015/08/car-un-troops-implicated-in-rape-of-girl-and-indiscriminate-killings-must-be-investigated/

[42] RFI, *Abdoulaye Hissène s'évade de prison avec l'aide de ses hommes*, 17 March 2016, available at www.rfi.fr/afrique/20160316-rca-abdoulaye-hissene-evade-prison-aide-hommes

[43] Interview by Amnesty International with senior MINUSCA staff, members of international INGOs and ex-Seleka leader, October 2016, Bangui.

in Kaga-bandoro, killing at least 37 civilians and wounding a further 60.[44] Large parts of the camp were set on fire, and several NGOs' premises were looted. Up to 20,000 people were forced to seek refuge in a makeshift camp near the MINUSCA base in the city. Several targeted killings of civilians perpetrated by both ex-Seleka and Anti-balaka were also reported by the UN in Kaga-bandoro following the raid in the displacement camp.[45]

This followed another attack by ex-Seleka groups from Kaga-bandoro on 16 September 2016 in the nearby village of Ndometé where, following clashes with Anti-balaka forces that regrouped there, at least six civilians were killed and 3,200 forced to flee their homes.[46]

Almost exactly a year earlier, another period of relative calm ended when 75 people were killed and 42,000 displaced during a major outbreak of violence in Bangui between 26 September and 1 October 2015. Individuals, including **Haroun Gaye,** suspected of orchestrating that violence and committing crimes against civilians remain at large and are suspected of continuing to commit crimes and human rights abuses.

THE CONTINUED ROLE OF HAROUN GAYE

Haroun Gaye is a businessman turned armed leader who has served as 'rapporteur' of the ex-Seleka faction *Front populaire pour la renaissance de la Centrafrique*-coordination structure since November 2014.[47] When Amnesty International met with him in November 2015, he was reported to control approximately 100 armed men in the PK5 neighbourhood of Bangui.[48] He has been implicated in numerous violent incidents in PK5 area since 2013 and the UN has reported that he has committed human rights abuses against civilians.[49] As documented by both the UN panel of experts and Amnesty International, Gaye played a prominent role in coordinating attacks against peacekeepers during the violent events in Bangui in September 2015.[50]

Just months after that outbreak of violence, armed men loyal to Gaye and Abdoulaye Hissene, another prominent ex-Seleka leader, attacked civilians at a PK5 polling station during the constitutional referendum on 13 December 2015.[51] They were eventually repelled by MINUSCA but the clashes left five killed and another 20 injured.[52]

On 19 June 2016, after a period of relative calm which followed Pope Francis' visit to Bangui and national elections, armed men affiliated to Gaye kidnapped six policemen in the PK5 neighbourhood. Gaye publicly demanded the release of 26 Muslim men who had been arrested by the national security forces on 18 June 2016, in return for the liberation of the policemen.[53]

Days after the attack at the polling station, hundreds of protesters, mostly from PK5, also marched in Bangui,

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[44] HRW, *Central African Republic: Deadly Raid on Displaced People*, 1 November 2016, available at www.hrw.org/news/2016/11/01/central-african-republic-deadly-raid-displaced-people

[45] MINUSCA Human Rights Division, *Special Report on Kaga-bandoro incidents*, 12-17 October 2016, 31 October 2016, https://minusca.unmissions.org/sites/default/files/minusca_report_kaga_bandoro_en.pdf ; see also HRW, *Central African Republic: Deadly Raid on Displaced People*, 1 November 2016, available at www.hrw.org/news/2016/11/01/central-african-republic-deadly-raid-displaced-people

[46] Reuters, *Death toll from Friday's Central African Republic clashes was six - UN*, 19 September 2016, available at http://af.reuters.com/article/topNews/idAFKCN11P11L

[47] UN Security Council, S/2015/936, 21 December 2015, available at www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_936.pdf (hereinafter: UN Security Council, S/2015/936).

[48] Amnesty International Interview with MINUSCA staff, October and November 2015, Bangui.

[49] UN Security Council, S/2015/936.

[50] UN Security Council, S/2015/936. The findings of the UN panel of experts were confirmed by Amnesty International through interviews with victims and eyewitnesses of the violence in Bangui between November and December 2015. See also Amnesty, *Mandated to protect, equipped to succeed?*

[51] UN Security Council Subsidiary organs, 17 December 2015, available at www.un.org/sc/suborg/en/sanctions/2127/materials/summaries/individual/haroun-gaye ; Reuters, *Central African protesters demand arrest of militia leaders*, 17 December 2015, available at www.reuters.com/article/ozatp-uk-centralafrica-violence-idAFKBN0U00QU20151217

[52] Reliefweb, *A day late, violence-hit Bangui district votes in C. Africa referendum*, 14 December 2016, available at http://reliefweb.int/report/central-african-republic/death-toll-rises-five-unrest-mars-car-vote

[53] UN Security Council, S/2016/694, 11 August 2016, available at www.un.org/ga/search/view_doc.asp?symbol=S/2016/694, (hereinafter: UN Security Council, S/2016/694) ; see also: RFI, *RCA: les policiers retenus dans le quartier PK5 ont été libérés*, 24 June 2016, available at www.rfi.fr/afrique/20160624-rca-policiers-otages-centrafrique-pk5-bangui-liberes-groupe-autodefense

demanding that MINUSCA arrest the ex-Seleka leaders who violently opposed the elections[54].

1.4 CHALLENGES IN EXECUTING ARRESTS

One of the main law enforcement challenges facing MINUSCA and the national authorities remains the ability, and sometimes the willingness, to conduct lawful arrests of high-level people suspected of having committed crimes and human rights violations. Challenges include the size of the country, the multitude of armed groups and the near-absence of state authorities outside Bangui. High expectations from the authorities and the population cannot always be met, and can lead to frustrations.

MINUSCA has worked with national authorities and security forces to arrest 384 individuals between September 2014 and October 2015.[55] Although these include a handful of high-profile individuals with senior positions in various armed groups, the vast majority of those who have been arrested are lower level.

Others such as Haroun Gaye, Abdoulaye Hissene, Alfred Yékatom, and Eugène Ngaïkosset have been issued with summons by CAR judicial authorities to appear for questioning, but have not been subject to formal arrest warrants.[56.]

ARRESTS CONDUCTED BY MINUSCA

Between September 2014 and October 2016, MINUSCA arrested 384 people[57] under its Urgent Temporary Measures (UTMs) – powers mandated by UN Security Council Resolution 2149 to assist national authorities in establishing law and order and protecting civilians.[58] Those arrested by MINUSCA include a small number of leaders of armed groups and militias, and individuals reasonably suspected of responsibility for crimes under international law and other serious human rights violations and abuses. Many of those arrested under the UTMs were transferred with the assistance of MINUSCA to more secure prison facilities in Bangui, while MINUSCA assisted national authorities to conduct investigations into some of their cases.[59] Examples of those arrested include:

Anti-balaka

- **Rodrigue Ngaïbona, aka Andilo**, an Anti-balaka leader who was arrested in January 2015 in Bouca, and charged with "murder, rebellion, illegal possession of weapons of war, criminal association, rape, and looting".[60] The UN panel of experts reported that he commanded Anti-balaka groups suspected of criminal responsibility for several attacks against civilians in several areas of CAR, including Bouca, Batangafo and Bangui.[61] Although the legal limit for pre-trial detention was reached in May 2016, Andilo is yet to be prosecuted and tried. Despite expectations and indications of his case being finalised for prosecution including by

[54] Centrafrique Presse, *Marche à Bangui contre les "ennemis de la paix"*, 16 December 2015, available at http://centrafrique-presse.over-blog.com/2015/12/marche-a-bangui-contre-les-ennemis-de-la-paix.html
[55] Amnesty International Interview with senior MINUSCA staff, October 2016.
[56] UN Security Council, S/2016/694.
[57] Amnesty International Interview with senior MINUSCA staff, October 2016.
[58] Such powers include the ability to arrest, detain and hand over individuals or groups inciting, planning, committing or having committed criminal acts related to the conflict, as well as advise on investigations and judicial procedures. See UNSC Resolution 2149, para. 40, 10 April 2014, available at www.un.org/press/en/2014/sc11349.doc.htm
[59] Amnesty International Interview with senior MINUSCA staff, October 2016.
[60] France24, *Un puissant chef Anti-balaka arrêté en Centrafrique par les troupes de l'ONU*, 19 January 2015, available at www.france24.com/fr/20150118-chef-anti-balaka-arrestation-centrafrique-troupes-onu-minusca-bangui-justice-general-andjilo
[61] UN Security Council, S/2014/762, 29 October 2014, available at www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_762.pdf

MINUSCA[62], he was not tried during the last criminal trial session of the Bangui Court of Appeal held in September 2016.

- **Samy Urbain aka Bawa**, a former FACA, then member of the Anti-balaka forces that were active in the 8th district of the capital Bangui, was arrested in March 2016 and is currently in detention awaiting trial.[63]

Ex-Seleka

- **Mahmat Abdelkader, aka Baba Laddé**[64], is a Chadian rebel leader who claimed in 2014 to be in command of 700 men within the Seleka forces in CAR and whom Amnesty International believes should be investigated for numerous crimes and serious human rights abuses, including the recruitment and use of child soldiers and the burning of entire villages in northern CAR.[65] Under an arrest warrant issued by the CAR authorities since May 2014, Baba Laddé was arrested in December 2014 near the city of Kabo (Ouham district, close to the border with Chad) and subsequently charged with "criminal association". Extradited to Chad in January 2015, he is currently in detention awaiting trial.[66]

- **Ahmed Tidjani** is a prominent ex-Seleka leader and deputy of Haroun Gaye. Tidjani controlled an extremist group of fighters active in PK5 and the UN reported that he is suspected of criminal responsibility for numerous attacks against the civilian population and the international forces.[67] He was arrested in August 2016 and has been charged with "criminal association" and "undermining internal state security".[68] He is currently in detention at Camp de Roux in Bangui awaiting trial.

Of the 384 arrested by MINUSCA under UTMs since 2014, at least 130 escaped from Ngaraba prison in Bangui in September 2015.[69] The remaining 254 are in detention with various charges, only a few have been tried, and at least seven acquitted (see Chapter 2).

One clear problem is the capacity of MINUSCA[70] and national security forces to both arrest high-profile individuals and manage the potential unrest that could follow. As a MINUSCA senior official told Amnesty International: "With the number of men we have on the ground, we simply cannot afford any major strife. We won't have the capacity to react to it."[71]

Concerns over potential civilian casualties resulting from arrest operations may also be driving MINUSCA's careful approach in executing arrests, especially following the dramatic outcomes of the failed arrest attempt of PK5 Muslim leader Haroun Gaye in August 2015, as described earlier. According to several MINUSCA staff interviewed by Amnesty International, this incident left MINUSCA with a "real trauma it still struggles to overcome".[72]

One senior MINUSCA staff member told Amnesty International in October 2016, in relation to one particular armed leader:

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[62] Amnesty International Interview with MINUSCA staff, October 2016, Bangui.
[63] Bawa was captured in March 2016. See: RFI, *Centrafrique: un chef anti-balaka du nord de Bangui arrêté*, 16 March 2016, available at www.rfi.fr/afrique/20160316-centrafrique-chef-anti-balaka-bawa-nord-bangui-arrete
[64] Voice of America, *Baba Laddé arrêté en Centrafrique*, 10 December 2014, available at www.voaafrique.com/a/l-ancien-chef-rebelle-tchadien-baba-ladde-arrete-en-centrafrique/2553738.html ;Centralafricanrepublicnews, *Baba Ladde extradé vers Ndjamena*, 3 January 2015, available at https://centralafricanrepublicnews.wordpress.com/2015/01/03/centrafrique-info-weekendbaba-ladde-extrade-vers-ndjamena/
[65] Amnesty, *Time for Accountability*, p.31.
[66] Afrik.com, *Affaire Baba Laddé : "Le dossier est vide", selon son avocat*, 30 June 2015, available at http://www.afrik.com/affaire-baba-ladde-le-dossier-est-vide-selon-son-avocat#seH9QSOUVGCzhzlQ.99
[67] Amnesty International Interviews with MINUSCA staff, October 2016, Bangui. See also: UN Security Council, S/2016/694.
[68] Amnesty International Interview with Prison Manager, Camp de Roux, October 2016, Bangui.
[69] Amnesty International, Interviews with MINUSCA staff, October and November 2016, Bangui.
[70] Currently, MINUSCA has 12,870 total uniformed personnel, including 10,750 military and 2,080 police. MINUSCA Facts and Figures, 26 July 2016, available at www.un.org/en/peacekeeping/missions/minusca/facts.shtml
[71] Amnesty International Interview with senior MINUSCA staff, October 2016, Bangui.
[72] Amnesty International Interview with senior MINUSCA staff, October 2016, Bangui.

"We know where he is. We know where his men operate and who they are. But we just cannot go and catch them there. They are living in the middle of… a densely populated neighbourhood. They use the local population, including their families, as human shields. Any operation in this context will be highly risky and potentially leading to civilian casualties."

Critical weaknesses in the peacekeeping mission were highlighted in Amnesty International's report in February 2016, *Mandated to Protect, Equipped to Succeed? Strengthening Peacekeeping in Central African Republic.* The report highlighted the challenges of trying to cover a country as vast as CAR with so many active armed groups with a force that lacked equipment, training, local intelligence, and adequate personnel.

In certain areas, for example, MINUSCA is clearly overpowered by armed groups. This is the case in Bria, a city in the Haute-Kotto district, where it is estimated that 1,500 heavily armed ex-Seleka are present compared to 750 MINUSCA forces, which include only a dozen policemen.[73] In Bria, as in other localities where UTMs apply (where national authorities are not present nor operational), MINUSCA has mainly military personnel deployed and almost no police personnel who are the most suitable to carry out arrest and detention.

Measures to strengthen the force throughout 2016 included the deployment of new contingents and equipment, but many of the same challenges remain and the departure of the French Sangaris forces may also limit capacity.

There is also a problem of coordination between MINUSCA and national authorities. For example, according to a 2016 UN report, 47 arrest warrants issued in 2014, including for Nourredine Adam, were not transmitted to MINUSCA.[74] More broadly, although there appear to be strong relations between the leadership of MINUSCA and President Touadera, they do not always appear to extend to all parts of government, leading to confusion around objectives and actions, including regarding arrests. The failed attempt to arrest Haroun Gaye and Abdoulaye Hissene in August 2015 is one example.

THE FAILED ARREST ATTEMPT OF PK5 EX-SELEKA LEADERS

Haroun Gaye and Abdoulaye Hissene escaped arrest attempts in August 2015 and March 2016, respectively, as mentioned above. They escaped arrest again together on 13 August 2016. They were travelling in a convoy of more than seven vehicles with over 50 of their heavily armed men, when they were stopped by MINUSCA forces early in the morning near Galafonfo, approximately 27 km south of Sibut.[75] After a MINUSCA combat helicopter was sent in to support the ground troops conducting the operation, the majority of the fighters in the convoy fled into the bush, while 11 were arrested, including the prominent leader Ahmed Tidjani.[76] Among the fugitives were Gaye and Hissene.

The escape of Gaye and Hissene was caused in part by a lack of coordination and communication between national authorities and MINUSCA, with the latter being unaware that the convoy was moving out from Bangui.[77] According to Tidjani, Gaye and Hissene had brokered a deal with national authorities to bring their men out of PK5 to Kaga-bandoro in order to join the DDR programme, but had not informed MINUSCA.

"Our departure from Bangui was prepared. Everyone within the government knew about it. The President knew, the Minister of public security knew, as well as the Prime Minister. It was an agreement between us and the government about DDR. The government knew and even provided money to pay for the fuel of our vehicles. MINUSCA was not informed. It was a deal between Central Africans. We wanted to settle it by ourselves. So, we gathered all our young men after having been ensured that nothing could go wrong. But when you reach out to peace, and you get ambushed … this is not good."[78]

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[73] Oxfam, *Centrafrique: Des zones non protégées, les souffrances de la population civile dans la Haute-Kotto*, October 2016, available at www.oxfam.org/sites/www.oxfam.org/files/bp-unprotected-zones-car-281016-fr.pdf

[74] UN Security Council, S/2016/694.

[75] UN news center, *After standoff, UN force detains 10 armed men, recovers weapons cache*, 15 August 2016, available at www.un.org/apps/news/story.asp?NewsID=54685#.V77U1fmLTrc (hereinafter: UN news center, *After standoff, UN force detains 10 armed men*).

[76] UN news center, *After standoff, UN force detains 10 armed men*.

[77] Amnesty International Interview with ex-Seleka leader, Camp de Roux, Bangui, October 2016.

[78] Amnesty International Interview with ex-Seleka leader, Camp de Roux, Bangui, October 2016.

A representative of the national authorities confirmed that the CAR leadership knew about the convoy leaving Bangui, but denied not having informed MINUSCA.[79]

Following this incident, which showed the need for improved communication and coordination between MINUSCA and national authorities on security matters, President Touadera established a committee with representatives from both MINUSCA and national security forces to address the gaps.[80]

[79] Amnesty International Interview with a local authority, Bangui, October 2016.
[80] Amnesty International Interview with senior MINUSCA staff, Bangui, October 2016.

2. REBUILDING CAR'S DOMESTIC JUSTICE SYSTEM

Prior to the outbreak of conflict in 2013, CAR's justice and correctional system was already weak and fragile due in part to persistent insecurity, lack of state control over many parts of the country, corruption, and inadequate human and material resources.[81] The impact of the conflict, which included a widespread breakdown in law and order and the looting and destruction of government buildings and records, weakened the system even further. Following the events of 2013, the country's 28 ordinary courts and Courts of Appeal[82] and magistrates' courts effectively ceased to function.[83]

Three years later, the justice system needs to be rebuilt almost entirely – a major and urgent challenge for the CAR authorities and international community that is necessary to put an end to the impunity that has fuelled injustice and instability in CAR for decades. While the international community has already engaged in several long-term projects to support the justice system, including one project funded by United Nations Development Programme (UNDP), MINUSCA and UNWOMEN, as well as an extensive European Union initiative[84], these efforts need to continue and expand.

Key challenges – outlined in this chapter – include: mistrust of the justice system by the population; lack of infrastructure as several destroyed court and other state buildings remain non-operational; shortages of trained lawyers, magistrates, and other judicial personnel; continued insecurity which limits the re-establishment of the rule of law throughout the country; a dysfunctional corrections system; and the lack of priority and funding given to the justice sector by successive governments. Many of these challenges were already identified in the so called *Etats Generaux de la Justice*, a summit on justice held in 2007[85], and remain today.

[81] Amnesty, *Time for Accountability*, p.10.
[82] Ordinary courts in CAR fall under the jurisdictions of 3 courts of Appeal; the Court of Appeal of Bangui in the Centre region, the Court of Appeal of Bambari in the East and that of Bouar in the West.
[83] UNSC, *Special Report of the Secretary-General on the strategic review of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic*, June 2016, available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2016_565.pdf
[84] The EU supports CAR in the fight against impunity and its efforts to reconstruct the judiciary and the criminal justice system, through the RESEJEP project (rehabilitation of the justice and police sectors). Launched in 2009, the project provides financial support (15 million Euro) to the CAR Ministry of Justice. See: Council of the European Union, 20 September 2016, http://www.euneighbours.eu/files/publications/EU%20Annual%20Report%20HRs.pdf,
[85] Ministry of Justice, *Etats Generaux de la Justice Report*, October 2007.

CAR'S COURT SYSTEM/STRUCTURE

The judicial system in CAR is based on the principle of dual jurisdictions[86], namely the judicial (civil and criminal) and the administrative. The judiciary consists of Highest Courts[87] (Constitutional Court, Court of Cassation, The State Council and the Court of Auditors) and Ordinary courts (Courts of Appeal High Courts, Labour Court, Juvenile Court, Commercial Courts and Administrative Courts and Magistrate Courts).[88] There are also special jurisdictions including the military.

The highest court is the Constitutional Court, which determines whether laws passed by the National Assembly conform to the Constitution. Its nine judges are appointed respectively by the president, the president of the National Assembly, the president of the Economic and Social Council and by fellow judges.[89]

There are three Courts of Appealacross CAR hearing criminal cases, in Bangui, in Bambari and in Bouar. While the Courts of Appeal are expected to sit twice a year, they are not doing so currently as detailed in the sub-chapters below.[90] Twenty-four High Courts (*Tribunaux de Grande Instance*) across CAR hear civil and commercial cases and, as of December 2016, 17 of them functioned.

Given the limited number of formal courts functioning outside Bangui, traditional arbitration also plays a key role.

2.1 KEY SYSTEMIC WEAKNESSES EXPOSED BY CRIMINAL TRIAL SESSIONS

The scale of CAR's justice system challenge can be demonstrated by recent efforts made to hold two criminal trial sessions by the Court of Appeal of Bangui in 2015 and 2016. Such sessions are supposed to be held twice a year by each Court of Appeal and are the only sessions which can hear cases involving serious criminal offenses.[91] While the fact that these sessions were held represented a step forward, given that criminal trial sessions had not been held in CAR since 2010[92], they nevertheless exposed major weaknesses including the absence of a framework for protective measures for victims and witnesses.

Prior to the most recent conflict, criminal trial sessions were rarely organized due to lack of financial resources and poor management by the relevant authorities.[93] A criminal trial session was last organized in Bangui in 2010, and in the Jurisdictions of Bouar in 2009[94] and Bambari in 2008.[95]

The two criminal trial sessions in 2015 and 2016 were supported by international partners, in particular UNDP, MINUSCA and UNWOMEN, all of whom since July 2014 have been running a joint project to support the re-establishment of the justice sector in CAR under the Global Focal Point arrangement[96] on Justice, Police and

[86] Article 98 of the 23 March 2016 CAR Constitution.
[87] The High Court of Justice and the *Tribunal des Conflits* form part of the Highest Courts but are non-permanent. Articles 98 and 105 of the 23 March 2016 Constitution.
[88] Article 83 and chapters 7 and 8 of the 23 March 2016 CAR Constitution.
[89] Article 101 of the 23 March 2016 CAR Constitution.
[90] See sub-chapter 2.1 on the key systemic weaknesses exposed by criminal trial sessions in 2015 and 2016.
[91] Articles 219 and 220 of CAR's Criminal Procedure Code provides for criminal trial sessions to be organised by the Court of Appeal twice a year with the dates of each being determined by an Order from the Ministry of Justice following deliberations by the General Assembly of the Court of Appeal.
[92] At the Courts of Appeal in Bambari and Boar, criminal trial sessions have not been held respectively since 2008 and 2009.
[93] Ministry of Justice, *Plan d'urgence du Ministère de la Justice, chargé de la réforme judiciaire et des droits de l'homme*, November 2015. P.10. Also Amnesty International Interview with judges and MINJUSTICE staff, on 6 and 10 October 2016.
[94] Amnesty International Interview with MINJUSTICE staff, 10 October 2016, Bangui.
[95] Amnesty International Interview with a judge, 6 October 2016, Bangui.
[96] The project aims at fighting against serious human rights violations and strengthening communities' protection. The project focuses on two areas: institutional support to strengthen the capacity of the judiciary to design strategies to respond to the crisis; and community support to strengthen the safety and security of communities, particularly vulnerable groups.

Corrections.[97] Following a recent assessment by UNDP and the Inspector of Judicial Services, a criminal trial session was due to be held by the Court of Appeal in Bouar by December 2016 with approximately 50 cases to be heard.[98] At the time of finalising this report, the criminal trial session in Bouar had not yet taken place.

During the first of these criminal trial sessions, in June 2015, the Court of Appeal of Bangui handled 63 cases, involving 132 people over 25 days, handing down 58 judgements.

A second criminal trial session took place in Bangui from 26 August to 26 September 2016. The session was originally scheduled for June 2015 but was postponed due to various challenges, including a strike by pro-bono lawyers over the low rates of fees for representing the accused.[99]

During the latest session in Bangui, 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. Out of these cases, 25 judgements were handed down, in which perpetrators were acquitted[100]or convicted of minor charges and released after being credited for time served. In 27 cases, trials took place and judgments were issued in absentia due to the escape of the accused. However, most accused who were present were represented by *pro bono* counsel.[101]

The poor preparation of case files was highlighted by judicial staff as one major weakness. One judge interviewed by Amnesty International regretted the lack of collaboration between MINUSCA, Sangaris, and the Judicial Police, resulting in case files lacking sufficient evidence to lead to convictions. The conditions of arrests were not mentioned in some files. Others were missing evidence and police records.[102]

Furthermore, in the absence of any legal protective framework, very few victims and witnesses came to testify, because they fear retaliation. In cases relating to abuses committed during the conflict, few victims and witnesses came before the court to testify, and one victim was represented by his counsel. Although many filed submissions during the preliminary investigations, theydid not testify in court. With the exception of a case of rape against a minor where the hearing took place behind closed doors, there were no special measures for the protection of victims and witnesses during the criminal session.[103]

While appeals to the Court of Cassation (*pourvoi en cassation*) are possible, at the time of writing, it was too early to know whether any appeal had been filed.

THE CASES OF RODRIGUE NGAÏBONA (ALIAS ANDILO) AND YANOUE AUBIN (ALIAS CHOCOLAT)

The case of Rodrigue Ngaïbona, aka Andilo, a high-level Anti-balaka leader, was not heard during the September 2016 criminal trial session despite his case file being ready for trial. The Court's registry took over a week to prepare the evidence in the case, with no explanation for the delay. Arrested in January 2015, the legal limit for his pre-trial detention expired in May 2016.[104]

The trial of Anti-balaka commander Yanoué Aubin, aka Chocolat, was held during the 2016 session, and he was sentenced to two years imprisonment for forgery and possessing forged documents in relation to the use of a fake passport, which he himself admitted to hold. Considered to have already served this sentence in pre-trial detention, he was then released.

[97] Amnesty International Interview with UNDP, 08 June 2016, Bangui.
[98] Amnesty International Interview with MINJUSTICE and UNDP staff, June 2016, Bangui.
[99] Provision was made for a fee rate of 5000 francs CFA (approximately US$ 8) per case file for a lawyer.
[100] Decisions of acquittal alone were rendered in 13 cases.
[101] Amnesty International trial observation during the criminal trial session from 26 August to 26 September 2016.
[102] Amnesty International Interviews with judges and lawyers, June and October 2016.
[103] Amnesty International trial observation during the criminal trial session from 26 August to 26 September 2016.
[104] Amnesty International Interviews with MINUSCA staff, June and October 2016.

Originally arrested by French forces in July 2014, Aubin had been charged with various offences including conspiracy, illegal possession of weapons and ammunition of war, and possession and consumption of marijuana.

However, Amnesty International is particularly concerned that despite being named in several UN reports as being reasonably suspected for serious human rights abuses and crimes under international law[105], Aubin was not charged with any offences related to any of these allegations, a failure to comply with obligations to ensure remedy for human rights violations.

2.2 KNOWLEDGE AND TRUST IN THE JUSTICE SYSTEM

Victims and witnesses interviewed by Amnesty International, along with members of civil society, expressed a strong desire to see perpetrators be held to account. At the same time, however, many victims lacked the information and assistance to file complaints, or were reluctant to do so, feeling that they would not lead anywhere because of both the perceived inefficiency and the partiality of the justice system.

Victims interviewed reported a widespread lack of knowledge about how to lodge a complaint, as well as limited assistance from NGOs and lawyers. For example, one man whose houses, located in the area known as Kokolo III in the 3rd district of Bangui, had been looted, destroyed and set on fire in October 2015 by members of PK5 self-defence groups told Amnesty:

"I did not know that I had to file a complaint at the High Court. [I thought it was enough that] I had contacted the district leader and set up a file that I submitted to the Episcopal Commission."[106]

Public trust in courts has been undermined by a reputation of being politicized, corrupt, and lacking independence. For example, one victim - a 29-year-old woman from the Boy Rabe neighbourhood of Bangui whose two-month-old baby died after a rocket was fired at their home by ex-Seleka members on 18 August 2013 - explained to Amnesty International that she did not file a complaint because "justice in our country does not do anything to help us" and she did not think it would result in those responsible being brought to justice.[107]

These serious deficiencies have been repeatedly highlighted in reports by international bodies such as the United Nations, as well as scholars and human rights organizations[108], while the majority of officials, lawyers, and victims interviewed complained about corruption. While one victim complained that "the easiest way to win a case or even to get out of jail is to pay"[109], others said they had no money to give, or did not want to fuel the practice.

The few people who have filed complaints still decry the slow pace of the justice system and significant case backlogs. One victim, whose younger brother was killed allegedly by men under the command of the ex-Seleka colonel named Bishara[110] on 5 December 2013, told Amnesty International:

"I have not seen the evolution of justice so far. It has been three years and there are delays till

[105] UN Security Council S/PV.7329, 9 December 2014, available at www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7329.pdf ; MINUSCA Human Rights Division, 15 September 2014 - 31 May 2015, available at http://reliefweb.int/sites/reliefweb.int/files/resources/MINUSCA_9Dec2015.pdf

[106] Amnesty International Interview with a victim, 13 October 2016, Bangui. The *Commission Episcopale* is an NGO that runs a *centre d'écoute* in Bangui where they receive testimonies of victims of the conflicts. However, it does not itself provide legal support or assistance or file complaints.

[107] Amnesty International Interview with a victim, 13 October 2016, Bangui.

[108] CAR government, MINUSCA, UNDP, *Projet conjoint d'Appui à la Cour Pénale Spéciale de la République centrafricaine,* 2016. (hereinfater : CAR government et al, *Projet conjoint*).

[109] Amnesty International Interview with a victim, October 2016, Bangui.

[110] Ex-Seleka Colonel Bishara was named in the report Amnesty, *Time for Accountability*, p.27.

today. Considering they know the criminals, they have the evidence, it is not acceptable that they are still free and not arrested. We have already filed a complaint. We are waiting for justice."[111]

Levels of mistrust may be particularly acute among the Muslim population. A representative of a Muslim organization based in PK5 interviewed by Amnesty International said:

"Justice operates in silos. Muslims are locked down in PK5 and cannot even go out to file complaints in courts, fearing being attacked. Muslims no longer have an interest in justice. They think that to go to justice is a waste of time because they will not win their case. They can only put everything in God's hands." [112]

2.3 DESTROYED COURT BUILDINGS REMAIN NON-OPERATIONAL

Rebuilding CAR's justice system means, in many instances, rebuilding its physical infrastructure and ensuring the presence of functioning judicial institutions, especially outside Bangui.

During the 2013 conflict ,government facilities and records were looted and destroyed[113]. In many jurisdictions, dilapidated, cramped or makeshift buildings are used to host the courts. In some jurisdictions, courts are housed within public buildings or in private settings.[114] For example, in the High Court of Boda (district of Lobaye) the trial sessions for civil and administrative matters are taking place in a room of the City Hall, which could undermine its perceived independence, while in Carnot (district of Mambere-Kadei), the High Court is holding its sessions in the former headquarters of the Postal office. In the High Court of Mobaye (district of Basse-Kotto), the president of the Court receives parties to the proceedings under a mango tree in his courtyard.[115]

[111] The victim filed a complaint at the High Court of Bangui. Amnesty International Interview with a victim, 13 October 2016, Bangui.
[112] Amnesty International Interview with an NGO, 13 October 2016, Bangui.
[113] Various judicial infrastructures were vandalized and looted (appeals courts, high courts, prisons, accommodation of magistrates and clerks, police station and gendarmerie).
[114] Amnesty International Interview with MINJUSTICE staff, 10 October 2016, Bangui. Also, Ministry of Justice, *Plan d'Urgence du Ministère de la Justice Chargé de la Réforme Judiciaire et des Droits de l'homme*, November 2015, pp 17-25.
[115] Amnesty International Interview with MINJUSTICE staff, 10 October 2016, Bangui.

Picture of the previous High Court of Carnot looted during the 2012 – 2013 crisis, June 2016 @private

Legal staff and judges interviewed by Amnesty International reported a lack of material resources and equipment, including typewriters or computers, in most jurisdictions.[116] However, during the criminal trial sessions in 2015 and 2016 in Bangui, UNDP provided much of this equipment.

To address some of these concerns, mobile courts have begun taking place in the provinces, with the support of international partners, but currently only used for administrative issues. This programme should be expanded, in addition to programmes to rebuild permanent infrastructure, and mobile court hearings could also be held on criminal matters.[117]

2.4 SHORTAGE OF LEGAL PERSONNEL

Judges and lawyers who met with Amnesty International reported a deficiency in training and a shortage of staff among judges, judicial officers, and other support staff[118]. With just 163 magistrates[119], and 113 lawyers[120] in service in CAR, there is a clear need to support the training and recruitment of key personnel, as well as ensuring adequate remuneration. Efforts are also needed to ensure a degree of diversity. While some magistrates are located across the country, the vast majority are based in Bangui[121], and only one lawyer is based outside of the capital city, in Berberati. Just 11 serving magistrates and five serving lawyers are female, and only a handful are Muslim.

While initial professional training exists for magistrates and clerks, there is no such professional training for lawyers or for support staff. For example, the Professional Lawyer's Certificate (*Certificat d'Aptitude à la Profession d'Avocat*) is still not in effect and the admission to the Bar in CAR is not based on the results of national exam, but instead on a review of applicants' files. There is only one training center for magistrates, *Ecole Nationale d'Administration et de Magistrature* (ENAM), located in Bangui, which has only recently restarted operations.

High legal costs are another factor limiting access to justice, even though the law in CAR provides for legal aid through the assignment of the services of a lawyer for defendants who cannot afford to pay[122]. The lawyers' fees have been fixed by practice at a rate of 5,000 francs CFA (approximately $USD 8 for such cases, which is considered by many lawyers interviewed by Amnesty International as very low[123]. As a result, very few lawyers – usually those less experienced – are willing to take cases.

A draft decree increasing the fees of legal assistance was submitted in August 2016 by the president of the Bar to the Council of Ministers for adoption[124]. Organizations such as *Avocats Sans Frontières* (ASF) are also currently working on providing legal aid services.[125]

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[116] Ministry of Justice, *Plan d'Urgence du Ministère de la Justice Chargé de la Réforme Judiciaire et des Droits de l'homme*, November 2015, p.22. Also Amnesty International Interview with MINJUSTICE staff, 10 October 2016, Bangui.
[117] In DRC, there is a well-established system of mobile court hearings, support by the UN peacekeeping mission known as MONUSCO, the UNDP and other international partners, including for crimes under international law. The aim of such mobile court hearings is to ensure that justice can be done even in remote locations, closer to where the crimes took place and the victims are located. It also has a pedagogical effect of demonstrating to affected communities that there is accountability for such crimes. See also MINJUSTICE, *Plan d'Urgence du Ministère de la Justice*, November 2015, p. 9 which recommends such mobile hearings.
[118] Amnesty International Interview with a lawyer 10 June 2016, Bangui.
[119] In addition, there are also 21 magistrates on secondment, 10 on standby, two on sick leave and 19 auditors. Ministry of Justice records, 10 October 2016, Bangui.
[120] CAR Bar association records.
[121] Amnesty International Interview with MINIJUSTICE staff, 07 June 2016, Bangui.
[122] Decree No. 113 of 12 April 1962 and Law No. 10.006 of 26 June 2010 on the status of the Legal profession in CAR.
[123] Amnesty International Interviews with lawyers, June and October 2016.
[124] The draft decree proposes a rate of 230.000 CFA (approximately $US385) per case. This amount may vary depending on the experience of the lawyer.
[125] Amnesty International Interviews with a member from an international NGO and diplomats, October 2016 Bangui.

2.5 INSECURITY CONTINUES TO LIMIT THE REDEPLOYMENT OF JUDGES

Ensuring greater security will also be essential for the deployment of judicial staff and re-operationalization of courts. For instance, in the jurisdiction of the Court of Appeal of Bangui, the High Courts of Batangafo (district of Ouham) remains occupied by MINUSCA, with security concerns preventing the redeployment of the judiciary.[126] In the jurisdiction of Kaga-bandoro, ex-Seleka forces are occupying the building of the High Court.[127]

One magistrate appointed to the High Court of Ndélé (district of Vakaga) explained to Amnesty International how he has been unable to practice since 2013, and has been unable to take up his position because of insecurity, the lack of facilities, and the strong presence of armed groups in the area:

"Armed groups exercise their own justice. The police and gendarmerie units are not functional. Facilities are inexistent and even the building of the prefecture that used to serve as the Court was vandalized."[128]

Magistrates and judicial staff may also be subjected to intimidations and threats, especially those working on very complex and highly sensitive cases involving allegations of crimes under international law. The killing of a senior magistrate and a member of the Transitional Assembly in November 2013 and February 2014, respectively[129], exacerbated a climate of fear among justice personnel in the exercise of their duty.

Despite these incidents and the climate of fear, there is very limited protection for judges, prosecutors, and other judicial support staff. During the two criminal trial sessions held in Bangui, the security of courts and magistrates was ensured during trials by Police and Gendarmerie, supported by MINUSCA[130], but many magistrates and prosecutors indicated that they were concerned about their safety once they left the courtroom. Although agents are deployed to protect a small number of individuals including the Public Prosecutor of Bangui and the Prosecutor of the High Court of Bangui[131], MINUSCA has no mandate to ensure the security of magistrates after working hours, and has limited capacity to provide personnel to protect judicial staff in Bangui and in the regions. Such limited protection has undermined efforts made by MINUSCA, UNDP and UNWOMEN to support the redeployment of magistrates across the country. [132]

2.6 FEAR OF REPRISALS AND LACK OF WITNESS PROTECTION

The need for protection also applies to witnesses and victims. Senior judicial officials indicated that the fear of reprisals is one of the main reasons given by victims and witnesses for not seeking justice and for not appearing in court to testify.[133] One civil society member told Amnesty International that victims are afraid to speak out because "one can take you from your home and kill you"[134], while senior staff of the Ministry of Justice and legal

[126] Ministry of Justice, *Plan d'Urgence du Ministère de la Justice Chargé de la Réforme Judiciaire et des Droits de l'homme*, November 2015, p.22. Also Amnesty International Interview with CAR judicial staff, 10 October 2016, Bangui.
[127] Amnesty International Interview with MINJUSTICE staff, 07 June 2016, Bangui.
[128] Amnesty International Interview with a judge, October 2016, Bangui.
[129] Amnesty, *Time for Accountability,* p.11.
[130] Amnesty International Interview with MINJUSTICE staff, 10 October 2016, Bangui and also Amnesty International trial observation during the criminal trial session from 26 August to 26 September 2016, Bangui.
[131] Amnesty International Interview with judges, 6 June 2016, Bangui.
[132] Amnesty International Interview with UNDP and MINUSCA staff, 6 June2016.
[133] Amnesty International Interview with Minister of Justice, and Judicial staff, June and October 2016.
[134] Amnesty International Interview with a victim, June 2016, Bangui.

practitioners acknowledged that the absence of victim and witness protection mechanisms clearly jeopardizes their willingness to come forward[135].

There is currently no national witness protection mechanism and no legislation which specifically regulates protection and support of victims and witnesses before, during or after legal proceedings. In the absence of such specific provisions, courts could use Article 222 of the CAR Code of Criminal Procedure[136], or more progressively apply international treaties such as the Rome Statute[137], to put in place witness protection measures, but this has never been done. The lack of protection risks significantly undermining victims' trust in the justice system, and provides one explanation why, during the criminal trial sessions held in Bangui in June 2015 and August 2016, very few witnesses appeared before the Court.[138]

One man whose house was looted and property destroyed by suspected ex-Seleka fighters on 5 December 2013 in the neighbourhood of Fatima Kokolo II told Amnesty International that:

"I have not filed a complaint to the High Court because of the problem of insecurity that exists. If I lodge a complaint, I will be a target and they [ex-Seleka] will try to kill me. Why should I risk my life? In any event, I will never win a trial because one cannot trust the justice system."[139]

2.7 LACK OF TRAINING, CAPACITY AND ADEQUATE EQUIPMENT FOR JUDICIAL POLICE

Under the supervision of the Public Prosecutor, the judicial police tasks are carried out primarily by the Police and Gendarmerie who support the judiciary and have responsibility for enforcing law and maintaining order.

Of 3,700 registered police and gendarmerie officers, only 800 are deployed outside Bangui[140]. The ratio of one policeman per 1,250 people is quite low[141]. Senior judiciary staff interviewed by Amnesty International reported that the judicial police lack training, which raises doubts about their capacity to carry out interviews, conduct thorough preliminary investigations and collect physical evidence. Furthermore, they also lack forensic capacity in investigations, as well as other important technical equipment, including computers, typewriters, vehicles, databases and associated services[142].

Investigations in certain locations are also difficult because of security constraints. MINUSCA has, in some of the cases transferred to Bangui, supported investigations into these cases in the provinces, and such efforts should be continued with international staff providing logistical and technical assistance[143]. Measures to protect

[135] Amnesty International Interview with a lawyer, MINJUSTICE staff and Office of the Public Prosecutor of Bangui, June and October 2016, Bangui.
[136] CAR Penal Procedure Code, Article 222, which provides that the President of the Criminal Court has the discretion to take measures that he believes will be useful to discover the truth; Amnesty International trial observation during the criminal trial session from 26 August to 26 September 2016.
[137] Amnesty International trial observation during the criminal trial session from 26 August to 26 September 2016, Bangui. In DRC, for example, in the absence of specific witness protection legislation, judges use similar provisions available in the legislation, as well as the direct application of the Rome Statute, in order to put in place witness protection measures, particularly for vulnerable witnesses, including shielding the identity of witnesses, allowing witnesses to testify without showing their face, and testifying without the accused seeing them.
[138] Amnesty International trial observation during the criminal trial session from 26 August to 26 September 2016.
[139] Amnesty International Interview with a victim, 13 October 2016, Bangui.
[140] UNSC, *Special Report of the Secretary-General on the strategic review of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic*, June 2016, available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2016_565.pdf (hereinafter: UNSC, *Special Report of the Secretary-General on the strategic review of MINUSCA).*
[141] UNSC, *Special Report of the Secretary-General on the strategic review of MINUSCA.*
[142] Amnesty International Interview with MINJUSTICE staff, judges and Office of the Public Prosecutor of Bangui, June and October 2016.
[143] Amnesty International Interview with MINUSCA staff, October 2016, Bangui. In DRC, there are well-established programmes of assistance to national magistrates in conducting investigations in remote areas including the Joint

witnesses and victims also need to be considered during such investigations.

2.8 CRUMBLING AND NON-FUNCTIONING PRISONS

The penitentiary system in CAR is governed by Law No. 12.003 of 12 April 2012 and was already very weak prior to the recent crisis. Before 2013, there was an overall inmate population ranging between 2,000 and 2,500.[144]

The prison in Carnot looted during 2012 -2013 crisis. June 2016, @Private

NATIONAL CORRECTIONS SYSTEM

Of the 35 official prisons across CAR, only eight are functional or under rehabilitation, as of October 2016. In the jurisdiction of the Court of Appeal of Bouar (district of Nana-Mambéré), the prisons of Berberati (district of Mambere-Kadei) and Bouar are operational with a current inmate population of 80 and 109 prisoners, respectively[145], while the prisons of Sibut (district of Kemo) and Bossembelé (district of Ombella-M'Poko) are under rehabilitation. In the jurisdiction of the Court of Appeal of Bangui, with the exception of Ngaragba, *Camp de Roux*, Bimbo[146] and Mbaiki[147], the other High Courts of this jurisdiction lack prisons. There are no functional prisons in the East region.[148]

There is no centralized recordkeeping system to track the number of prisoners across the country, although some efforts were made in Bangui to maintain an up-to-date registry in the prisons. While in Bangui, men and women are held in separate facilities, but in other prisons they are held in the same premises.[149] Similarly, there

Investigation Team programme of the Joint Human Rights Office, and the Prosecution Support Cells organized by the MONUSCO Justice and Corrections Section. See http://monusco.unmissions.org/en/military-justice. Such programmes could be emulated in CAR.

[144] Ministry of Justice, *Programme décennal de réforme de la justice en République Centrafricaine*, January 2010, p.22.

[145] Amnesty International Interview with MINJUSTICE staff, 10 October 2016, Bangui. Figures as of December 2016.

[146] As of December 2016, there were 42 detainees.

[147] As of December 2016, there were 40 detainees.

[148] As a result of this situation, many of those arrested by MINUSCA under UTMs were transferred to Bangui, so that they could be imprisoned in more secure conditions. Since the beginning of 2016, 80 people were transferred by MINUSCA from various provinces to Bangui (Amnesty International Interview with MINUSCA staff, October 2016, Bangui).

[149] Amnesty International visit to Ngaragba prison in June 2016. See also Article 11 of the Mandela Rules states that women

is no separation between the categories of detainees; for example, the Ngaragba detention facility does not separate convicted criminals from suspects under investigation.

The prisons are administered mainly by small numbers of military staff, with limited to no training on prison administration and human rights issues. Many of the prison structures are old and badly maintained.

Prison conditions are dire, basic necessities such as food, clothing, and medicine are insufficient and often inadequate; hygiene and accommodation standards are low and a significant proportion of inmates are detained without charge or trial. For example, when Amnesty International's researchers visited Bangui's main prison, known as Ngaragba, in June 2016, there were only 11 functional latrines for over 414 detainees.[150]

Built in 1947 for a maximum capacity of 350 people, the prison of Ngaragba is overcrowded: according to the prison authorities, in June 2016, two-thirds of its detainees were held in pretrial detention.[151] The juvenile prisoners are kept in the same precinct as adults although in different cells[152]. As of December 2016, the prison had a total of 615 detainees.

Prison security remains problematic and prison escapes and assisted escapes are recurrent. Between 19 and 23 September 2016 a prisoners' riot in Ngaragba was put down by the guards using tear gas. MINUSCA's Justice and Correction Unit claims that the use of force was proportionate, but that the beatings which precipitated the riots needed to be further investigated. Inmates had protested following an incident in which at least 21 among them were severely beaten by prison guards for having been found with illegal substances, including alcohol and marijuana.

Since September 2015, there have been several prison breaks across CAR: on 28 September 2015, 689 inmates, including some high-profile individuals and 130 who had been arrested by MINUSCA under UTMs[153], escaped from the Ngaragba prison in Bangui; on 29 September 2015, at least 80 others, of whom 19 were suspected Anti-balaka, escaped from unprotected detention facilities in Bouar and Sibut[154]; on 11 May 2016, more than 20 inmates escaped from the prison in Bambari.[155]

Amnesty International also visited the High Security prison known as *Camp de Roux* on 13 October 2016. The prison had a total of 39 detainees of whom 26 were awaiting trial. They were held in two buildings, one comprised of two cells for a total capacity of 16, but currently hosting 24 persons. While all cells had toilets and showers inside, at least four were out of use. Only one meal per day is provided by the prison.

MINUSCA and the European Union are both engaged in prison rehabilitation programmes. MINUSCA also has stood in for prison staff at Ngaragba.

2.9 THE NEED TO INVEST IN JUSTICE

The justice sector in CAR is facing a crippling lack of funding, with the Ministry of Justice's low annual budget allocation making this sensitive sector one of the least resourced. A senior staff member of the Ministry of Justice interviewed by Amnesty International referred to his Ministry as "the Cinderella of CAR's public administration",

and men should be detained in separate institutions or on separate premises.
[150] Amnesty International Interview with prison staff, Ngaragba, June 2016, Bangui.
[151] Amnesty International Interview with prison staff, Ngaragba, June 2016, Bangui.
[152] This violates rules 11 and 112 of the Mandela Rules and is contrary to articles 13.4, 26.3 and 27.1 of the Beijing Rules for the Administration of Juvenile Justice, 1985. In June 2016, there were 16 minors out of 414 inmates (Amnesty International interview with Prison manager, Ngaragba, June 2016, Bangui).
[153] Amnesty International Interview with MINUSCA staff, October 2016.
[154] UN Security Council, *Letter dated 21 December 2015 from the Panel of Experts on the Central African Republic extended pursuant to Security Council resolution 2196 (2015) addressed to the President of the Security Council*, S/2015/936, 21 December 2015,available at www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_936.pdf
[155] RJDH, *Une vingtaine de prisonniers s'évade de la maison carcérale de la ville*, 12 May 2016, http://rjdh.org/bambari-vingtaine-de-prisonniers-sevade-de-maison-carcerale-de-ville/

always the poor relation of other departments.

Budget allocations to the Ministry of Justice for the last six years demonstrate how the sector has received on average less than 2% of the national budget over this period, despite increasing in the last two years.

BUDGET[156]	2011[157]	2012	2013	2014	2015	2016
MINISTRY OF JUSTICE'S ANNUAL BUDGET (USD MILLIONS)	8.2	6.9	5.43	5.9	11.6	9.6
STATE'S ANNUAL BUDGET (USD MILLIONS)	437.4	441.3	340.6	375.1	387.1	439.4
PERCENTAGE OF STATE ANNUAL BUDGET	1,9 %	1,6%	1,58 %	1,57 %	3,02 %	2,18 %

CAR's National Recovery and Peacebuilding Plan 2017-21, authored by the CAR authorities with assistance from the EU, UN and World Bank, estimates that US$105 million is needed over fiveyears – from US$19 million needed in 2017/18 to US$40 million in 2010/21 - to advance justice reform and tackle impunity.[158] The funding would cover activities including the resumption of trials in various regions across CAR, the establishment of mobile courts, the operations of the Special Criminal Court, and programmes to develop an independent, impartial and equitable judiciary. The Plan recognizes that although the CAR government needs to invest in the sector, much of this will need to be funded by international partners. This is one part of a larger funding request for over US$3.1 billion over four years made in the National Plan to cover a wider range of sectors and objectives. At a donor conference in November 2016, more than US$2 billion was pledged towards this plan.

[156] Finance law 2013 to 2016. Currency in the table is in USD and figures in million.
[157] Data for the years 2011 and 2012 can be found on UNDP, *L'appui du PNUD à l'État de droit en République centrafricaine* (2008 - 2011), August 2012, available at www.undp.org/content/dam/car/docs/gouvernance/rcafb_notedepratique-pred2008-2011.pdf,
[158] CAR's National Recovery and Peacebuilding Plan 2017-21.

3. INTERNATIONAL AND HYBRID JUSTICE MECHANISMS

In June 2015, CAR's transitional president promulgated a law establishing a Special Criminal Court (SCC) within the national judicial system, comprised of national and international judges, to investigate and prosecute the most serious crimes committed in the country since 2003, including genocide, war crimes and crimes against humanity.[159]

The government referred the situation in CAR to the ICC in 2014, and investigations are ongoing into crimes under international law committed since the conflict began in 2012.

3.1 SPECIAL CRIMINAL COURT

LAW No. 15003 ESTABLISHING THE SPECIAL CRIMINAL COURT

Promulgated in June 2015, the law (*'loi organique')* provides for an SCC whose mandate is to investigate and prosecute, for a renewable five-year period, "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."[160]

The SCC's territorial jurisdiction extends to crimes committed both in CAR and in states with which CAR has signed international cooperation agreements[161]. The law provides for life imprisonment as the maximum sentence[162]. The

[159] In 2014, a Memorandum of Understanding was signed between the government of CAR and the United Nations (MINUSCA) regarding the establishment of the court, signed 5 August by Isabelle Gaudeuille, Minister of Justice, and Babacar Gaye, Special Representative of UN Secretary General, 7 August 2014.
[160] *Loi organique* No. 15003 portant création, organisation et fonctionnement de la Cour Pénale Spéciale, 3 June 2015, Article 3 available at https://rongdhrca.wordpress.com/2015/07/22/loi-organique-n15-003-portant-creation-organisation-et-fonctionnement-de-la-cour-penale-speciale/ (hereinafter : *Loi Organique*).
[161] *Loi Organique*, Article 4.
[162] *Loi Organique,* Article 59.

SCC is a mixed judicial mechanism within the CAR national court system made up of 25 judges, of whom 13 are Central African and 12 are international.[163] The law provides that the President of the court will be a CAR national, while the Special Prosecutor will be international.[164]

The law provides that the budget of the SCC is the responsibility of the international community, and financial resources are to be raised through contributions from MINUSCA and any other donors, in consultation with the CAR government.[165]

Establishment and Structure

The establishment of the court is envisaged to be accomplished in three phases over five years. The *Loi Organique* provides that the offices of the Special Prosecutor, the *Chambre d'Instruction* and the *Chambre d'Accusation Spéciale* are to be set up before the *Chambre d'Assises (*Trial Chamber) and *Chambre d'Appel* (Appeals Chamber) are in place[166], thus allowing investigations to commence before all structures of the court are established.

The first phase, anticipated to take three years, is itself divided into three parts. The first part focuses on the operationalization of the court, including buildings, logistics and recruitment of personnel. The second involves the start of investigations, and the third the start of the prosecutions. The first and second sub-phases are anticipated to last 14 months, a period for which a budget has already been agreed and most funding obtained.[167]

Trials will take place in phase two, and appeals in phase three. Together, the second and third phases are anticipated to take two years, although the experiences of other hybrid and *ad hoc* tribunals suggest this time frame is too short and that the mandate of the court will need to be renewed.

The SCC will be located in the current building of the *Tribunal de Grande Instance* of Bangui, which has been approved by a team of UN security experts. The building will be available by January 2017, but will need to be rehabilitated.[168] Another building has also been designated for the office of the Special Judicial Police Unit. It will be critical to ensure that there is sufficient security provided both for the court facility, and the magistrates and other staff working for the court.[169]

The Rules of Procedure and Evidence for the court have not yet been drafted, although the terms of reference for a consultant to draft the rules have been developed.[170]

A joint project between MINUSCA, UNDP and the national authorities was signed in August 2016 which provides a roadmap for the operationalization of the SCC.[171] The Human Rights Division of MINUSCA and UNDP are also engaged in a six-month mapping project of crimes committed in CAR since 2003, and MINUSCA has also engaged victims and witness protection advisors for both the SCC and the national courts.

[163] The law also provides for the national and international composition of each panel of judges: one international and one national judge in each of the three cabinets of the Chambres d'Instructions (*Loi Organique*, Article 11), two international and one national judge in the Chambre d'Accusation Spéciale which sits on appeals from the Cabinets d'Instruction (*Loi Organique,* Article 12), one international and two national judges in each of the three sections of the Chambre d'Assises (Trial Chamber) (*Loi Organique*, Article 13), and two international and one national judge on the Chambre d'Appel (*Loi Organique*, Article 14).
[164] *Loi Organique,* Articles 15 and 18.
[165] *Loi Organique,* Article 53.
[166] *Loi Organique*, Article 71.
[167] CAR government et al, *Projet conjoint*, p. 15.
[168] Amnesty International Interviews with MINUSCA staff, EU official, judges, June and October 2016, Bangui.
[169] Amnesty International Interview with MINUSCA staff, June and October 2016, Bangui. Both international and national magistrates will receive security allowances, and may be housed together to ensure that adequate security can be provided.
[170] Amnesty International telephone Interviews with MINUSCA staff, July 2016, DPKO official, October 2016 and UNDP staff, October 2016, Bangui.
[171] CAR government et al, *Projet conjoint* . MINUSCA has set up a section within the Justice and Corrections unit to provide support to the national authorities in the establishment of the court, and UNDP also has a focal point supporting the court.

HYBRID COURTS

In recent years, hybrid mechanisms have increasingly been used or proposed, including within transitional justice processes. While there is no uniform definition, a "hybrid" (or "internationalized") court generally has mixed composition and jurisdiction over both national and international crimes, blending both national and international law, personnel and funding, and usually operating within the jurisdiction where the crimes occurred. Hybrid courts are usually established to investigate and prosecute crimes under international law in states which have gone through conflict or crisis and where numerous such crimes have been committed. These courts are often established where a state's domestic justice system lacks the necessary infrastructure, human resources, legal framework, or independence, leaving it unable to meet fair trial standards or confront the complexities and political sensitivities of prosecutions. Hybrid courts are seen to offer certain advantages in comparison to *ad hoc* tribunals established by the UN Security Council, such as the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY), which were costly, and resulted in lengthy trials taking place in locations far from where the crimes had occurred.

Hybrid courts may be established in many different forms. Some may form part of the national justice system, but have international personnel, such as the proposed SCC in CAR, the proposed Specialized Mixed Chambers in the Democratic Republic of Congo (DRC) or the Extraordinary African Chambers (EAC) in Senegal. Others are created as a result of an agreement between the UN and the national authorities such as the Extraordinary Chambers in the Courts of Cambodia (ECCC) and the Special Court for Sierra Leone (SCSL). Some may not be established in the exact location where crimes were committed but in a neighbouring country, such as the EAC, established in Senegal to prosecute crimes committed in Chad.

3.2 PROGRESS AND POTENTIAL BENEFITS

The structure of the SCC and the presence of international judges and personnel will allow it to function, and be perceived to function, with greater independence and impartiality than other courts within the national justice system. There are also greater guarantees that prosecutions and trials before the SCC will be conducted in accordance with international fair trial rights and that the necessary security and witness and victim protection measures will be put in place. These elements will also help to build public confidence in the CAR justice system and bring an end to the pervasive culture of impunity.

The SCC will fill a gap between the national justice system (which will try most criminal cases) and the ICC (which will likely target only a limited number of alleged high-level perpetrators). If it succeeds, it could set a precedent for shared responsibility between national, international, and hybrid institutions in prosecuting crimes under international law. Strengthening the national judicial system is an essential long-term goal, but the SCC is the most viable option for ensuring accountability for the majority of high-level alleged perpetrators in the short and medium term.

As the SCC will be part of the national courts of CAR, it can also contribute to strengthening the capacities of the national judicial system. The project document outlining the agreement between the CAR authorities and UN for the operationalisation of the SCC stresses that the SCC should be a catalyst for developing national capacities and in this way leaving a legacy for the country.[172]

The SCC should therefore be structured to benefit the national justice system both during its operation and after its mandate is complete. This is all the more important given that one of the concerns articulated by some national authorities and some donors is that the focus on the Special Court may detract from efforts to reform the national justice system.[173] The project document specifically makes this a feature of the court's design, as it provides that witness and protection measures be established for both the SCC and other national courts, and that relevant training be provided for all CAR magistrates, not only those serving on the SCC.

The establishment of the SCC can also potentially yield benefits for both national and international magistrates

[172] CAR government et al, *Projet conjoint,* p. 14.
[173] Amnesty International Interview with judges, CAR and EU officials, Bangui and Brussels, June and October 2016.

and staff, especially for sharing of experiences, capacity building, and transfer of skills in the prosecution and trial of crimes under international law, and for witness protection and fair trial rights.

The SCC will also have the advantage of being located in the same country where the crimes took place, in contrast to the proceedings before the ICC. This makes it easier for witnesses and victims to participate, and for those affected by the conflict to follow court proceedings more easily, particularly if outreach is effective, especially outside Bangui.

3.3 OPERATIONALIZING THE SCC – CHALLENGES TO OVERCOME

While the adoption of the *Loi Organique* represents a positive step forward in combatting impunity in CAR, the main challenge will be in actually implementing the law and operationalizing the SCC. Since the promulgation of the law, CAR authorities have taken steps towards the establishment of the court, with the support of MINUSCA, including allocating a building, adopting necessary decrees for appointing national and international personnel, validating the terms of reference of international personnel, establishing a committee to select national magistrates and staff, and raising funds for the implementation of the first phases of the court's establishment.

However, more than a year after the promulgation of the law, much remains to be done to ensure that the court effectively achieves accountability, meets international fair trial standards, has national legitimacy, and incorporates the best practices of other hybrid and *ad hoc* tribunals.

Ultimately, the SCC can only be successfully established and fulfil its mandate with sufficient backing and commitment from the CAR authorities, including respecting the timelines set out in the joint project document for the operationalization of the court.[174] It is also crucial that there be broader national ownership of the court, and that all relevant stakeholders, including civil society, are consulted throughout the process of its establishment, including with respect to key elements such as the Rules of Procedure and Evidence.

3.4 RECRUITMENT OF QUALIFIED NATIONAL AND INTERNATIONAL JUDGES AND STAFF IN TRANSPARENT SELECTION PROCESSES

A significant determinant of the success of the SCC will be the transparent and merit-based recruitment of well-qualified national and international magistrates, accompanied by appropriate training.

The recruitment of national magistrates is the responsibility of the CAR government, which has set up a selection committee[175] and agreed the terms of reference for national staff.[176] Despite several delays, during which meetings of this committee have not been regularly held[177], the recruitment process for certain national

[174] Amnesty International Interview with MINUSCA staff, June 2016, Bangui.
[175] *Arrêté* No. 0251 *Portant Création du Comité de Sélection des Candidats Nationaux aux Fonctions de Membres de la Cour Pénale Spéciale*, signed by the Minister of Justice on 25 November 2015 (hereinafter : *Arrêté* No. 0251). The Committee is headed by the President of the *Cour de Cassation* and includes representatives of the Ministry of Justice, the Bar and civil society as well as observers from MINUSCA and UNDP (*Arrêté No. 0251,* Article 2). The Committee was established by the Minister of Justice.
[176] These terms of reference have been set out in accordance with the procedures set out in the *Loi Organique* and the decree establishing the committee.
[177] Article 5(1) of *Arrêté* No. 0251 provides that meetings of the committee should be held at least twice a week. Amnesty International Interview with UN and MINUSCA officials, June and October 2016, Bangui, who indicated that the meetings had not been regularly held.

positions, including the Deputy Prosecutors, the Registrar and the *Juges d'Instruction*, was launched in December 2016.[178] Another committee has been created for the selection of the members of the Special Judicial Police Unit.

It is important that the selection of the national magistrates and staff, including the Deputy Prosecutors and Registrar, is transparent and merit-based. As required by the *Loi Organique* and thedecree establishing the selection committee, advertisements for the positions should be distributed widely throughout the country to ensure that all eligible candidates are aware and can participate in the selection process[179] and candidates for positions of magistrates should include not only magistrates currently serving in the national courts, but also other legally trained professionals and academics.[180]

Once recruited, it will be critical to provide training to national magistrates – who will have limited experience of prosecuting and trying cases under international law - in international human rights law, international humanitarian law and international criminal law and procedure, as well as on witness protection and specific issues relating to the prosecution and trial of cases of sexual violence.

Concerns about the independence, impartiality and competence of the national judiciary in CAR, as identified in Chapter 2, can be partially addressed by ensuring that national judges in the SCC represent different geographical areas and religious communities. This is a challenge given the limited representation of women and Muslims, but will be essential to ensure the fairness – and the perception of fairness – of the proceedings. It will also be critical to ensure that adequate disciplinary procedures for misconduct are put in place, including procedures to raise and address perceived partisanship. The presence of a majority of international judges in the *Chambre d'Accusation Spéciale* and the *Chambre d'Appel* may also mitigate any real or perceived bias.

The recruitment of international staff is being conducted by MINUSCA. International judges and staff will be seconded by their countries of origin and therefore receive salaries set by and paid by their home jurisdictions,[181] which is an innovative way to address a perennial source of tension between national and international personnel in hybrid tribunals.[182]

This process has been lengthy and the terms of reference for the international positions were validated only in May 2016. Contractual agreements and security arrangements still need to be put in place, however, before the recruitment of international personnel could officially begin.[183] The first selection to be made will be that of the Special Prosecutor, whose appointment is expected towards the beginning of 2017.[184] Calls to states for nominations for other international positions were launched by the United Nations in November 2016. The nomination and selection of highly qualified international judges and staff from countries with a civil law tradition will be critical to the court's success, and states should be encouraged to nominate suitable candidates. In addition to sufficient training in international humanitarian and criminal law, international staff will also require training on the substantive and procedural laws of CAR.

3.5 SUSTAINED FUNDING

The importance of sustainable funding is highlighted by the experiences of other hybrid tribunals, including at

[178] Avis d'Appel à Candidature, Direction du Cabinet, No. 298MMJDH/DirCab.16, Ministère de la Justice et Droits de l'Homme, 7 December 2016.
[179] *Arrêté* No. 0251, Article 6.
[180] *Loi Organique*, Article 21; *Arrêté* No. 0251, Article 7(1).
[181] Amnesty International Interview with MINUSCA staff and government officials, June 2016, Bangui. Both national and international judges will receive security allowances, and the international judges will receive a relocation allowance
[182] This solution was necessary to resolve concerns regarding discrepancies in salaries between national and international magistrates. Such discrepancies between the salaries of international and national staff led to tensions at the Special Court for Sierra Leone. Moreover, in the Democratic Republic of the Congo, one of objections often made by national authorities against the proposed Specialized Mixed Chambers was that the salary differential between international judges and national judges would lead to tension.
[183] Amnesty International Interviews with UNDP and MINUSCA staff, July 2016, Bangui.
[184] The Special Prosecutor was initially supposed to be in place by December 2016. Amnesty International Interviews with MINUSCA and UNDP staff, June 2016, Bangui. This was confirmed by the Minister of Justice. See ACAP, *Le Ministre Flavien MBata proclame la mise en place effective de la Cour Pénale Spéciale*, 26 July 2016.

the Special Court for Sierra Leone (SCSL) and the Extraordinary Chambers in the Courts of Cambodia (ECCC), where the reliance on voluntary donations led to a lack of predictability of funding which undermined the stability of these courts.[185] At the Special Court for Sierra Leone, for example, this funding model led to considerable insecurity regarding the continuity of the court, as well as for personnel, including judges.

To date, MINUSCA has obtained financial, technical and logistical support from international partners, including MINUSCA, UNDP, the Netherlands, France and the United States. The funds currently total US$5 million, although US$7 million is required to cover the first 14 months of the operations of the court, according to the budget agreed and adopted by the national authorities and the United Nations in August.

It is crucial that sustained funding is ensured for the rest of the court's operations, particularly if it extends its mandate past the initial five years, and potential donors should be encouraged to make multiyear commitments until the completion of trials and appeals. Officials at MINUSCA have indicated that, in the worst-case scenario, if there is not enough funding for trials to take place before the SCC, trials could take place before national courts, after having been investigated by the SCC.[186] Such a scenario would risk undermining many of the objectives underlying the court's establishment.

3.6 EVIDENCE PRESERVATION AND PROSECUTORIAL STRATEGY

Since the start of the conflict in CAR, one ongoing concern has been documentation of crimes under international law, and evidence collection and preservation, which builds the foundation for future criminal prosecutions. Crimes were committed sometimes more than four years ago, so many victims may have "disappeared," and there may be problems in gathering sufficient credible evidence. This is why it is all the more important that the Special Prosecutor is appointed and investigations begin as soon as possible. With the establishment of the court in phases, and prioritization of the operationalization of the office of the Special Prosecutor before the rest of the court is set up, the SCC has the potential of serving as a model for other hybrid tribunals which have similar concerns about evidence preservation.[187]

In the meantime, it is crucial to improve documentation of human rights abuses and crimes under international law committed by all parties to the conflict and to support civil society organizations in these efforts. The above-mentioned UN human rights mapping report will be submitted to the Prosecutor of the SCC, and will provide a comprehensive overview of all crimes under international law committed during this period. It should also inform the SCC's prosecutorial strategy.[188]

Unlike at several other hybrid or *ad hoc* tribunals, the Special Prosecutor is not obliged to prosecute only "those most responsible", so he/she will have broad discretion to select which cases the Special Court will investigate and prosecute. It is therefore important that a coherent, transparent prosecutorial strategy is developed. In doing so, the Special Prosecutor will need to take into account the need to investigate and prosecute suspected perpetrators of crimes under international law on both sides of the conflict, as well as the need to prosecute high enough into the chain-of-command responsibility.

3.7 WITNESS AND VICTIM PROTECTION

In light of the serious concerns regarding the security of witnesses and victims, and their legitimate fear of

[185] R. Cryer, *An Introduction to Criminal Law and Procedure*, Cambridge University Press (2010), p. 198.
[186] Amnesty International Interview with MINUSCA staff, June 2016, Bangui.
[187] A similar model is the European Union's Special Investigative Task Force, a separate unit which was mandated to conduct investigations and preserve evidence for use before the Kosovo Tribunal once established. It then transitioned into the Specialist Prosecutor's Unit once the court was established. Available at www.sitf.eu/index.php/en/about-sitf
[188] Amnesty International Interviews with UNDP/MINUSCA Mapping Project staff, June 2016, Bangui.

reprisals for testifying, as highlighted in Chapter 2, it is critical that the court develops a strong system of witness and victim protection. The importance of witness protection is recognized in Article 3 of the *Loi Organique* which also provides for certain measures including closed sessions and the protection of the identity of witnesses. MINUSCA's human rights section has recruited several experts on witness protection who will assist the court in setting up such a programme.[189]

Although not specifically set out in the *Loi Organique*, an independent unit should be established within the Registry of the SCC to protect victims and witnesses who become at risk due to their willingness to come forward and others who are at risk on account of testimony given by such witnesses. The unit should provide training and advice to all staff on dealing with victims without causing any further harm and should provide support, including psycho-social assistance, to witnesses giving testimony. More broadly, the court should ensure that any witness and victim protection programme be designed concurrently with a domestic witness protection system, and that it is carefully tailored to the realities of the situation in CAR. The government should be encouraged to adopt legislation on witness and victim protection which could include amending the Code of Criminal Procedure.

3.8 OUTREACH AND COMMUNICATION

Since the promulgation of the *Loi Organique*, there has been little public information available about the progress of the operationalization of the SCC. Its slow implementation is viewed with suspicion and disappointment by many - including civil society groups that lobbied at the Bangui Forum for a hybrid mechanism and for the promulgation of the law establishing the court. So far, outreach activities by both the national authorities and MINUSCA have been limited.[190] A member of civil society told Amnesty International:

"A building has been selected to host the court. That's all we know about it. There's no regular and effective communication between the government and the civil society regarding progress, if any, on the implementation of the special court. We don't know anything. Both the government and MINUSCA need to sit with civil society and start informing the population regularly on current and next steps about the court."[191]

In a deeply divided society, outreach will be essential to ensure that justice is seen to be done and that the population of CAR fully understands the findings and decisions of the court, not least because those who feel threatened by the court will do their best to tarnish it. It is thus important to correct inevitable misinformation, counter political attacks against the work of the SCC, ensure the engagement and confidence of victims and affected communities, and to manage expectations. Outreach will also contribute to developing a sense of public ownership of the legal proceedings. In establishing the programme, SCC should look to the experience of other hybrid tribunals with successful outreach programmes.[192]

An outreach unit is envisaged for the court, with funds of US$400,000 so far provided by the UN Volunteers for this purpose.[193] While the SCC appears to have adopted the voluntary funding model for the initial phase of outreach, given its increasing recognition as a core function of such courts the SCC should consider integrating the outreach programme into the core budget of the court in later phases.

MINUSCA has also recently held several information sessions for civil society on the SCC, who have then been encouraged to disseminate information about the establishment of the SCC more broadly to their communities.[194] MINUSCA should continue to inform the population of progress in establishing the court,

[189] Amnesty International Interviews with MINUSCA staff, July 2016, Bangui.
[190] Some national authorities in fact indicated to Amnesty International that it was not their role to provide information to civil society on the progress of the court. Amnesty International Interviews with a judge, June and October 2016.
[191] Amnesty International Interview with members of civil society, June 2016, Bangui.
[192] The SCSL had a successful outreach programme, broadcasted the trial proceedings on the radio including in local languages, and conducted outreach activities throughout Sierra Leone and Liberia. The ECCC also has a strong outreach programme, which brings many people from villages throughout Cambodia to watch the proceedings.
[193] Amnesty International Interview with MINUSCA staff, June 2016, Bangui.
[194] *Agenda de la Session d'Information avec les Organisations de la Société Civile*; *Mise en Œuvre de la Cour Pénale Spéciale et*

particularly outside Bangui.

DEFINITIONS OF CRIMES AND IMMUNITIES

Article 3 of the *Loi Organique* provides that the crimes under international humanitarian law and grave violations of human rights law, including crimes against humanity, war crimes and genocide will be defined according to the CAR Penal Code. However, national definitions of these crimes do not always align with international standards, meaning that in some cases conduct which would be criminalized under international law would go unpunished before the SCC, and in others that the scope of crimes is expanded beyond what is internationally accepted.

For example, the definition of genocide under Article 152 of the Penal Code extends the crime beyond the categories of protected groups set out in Article 6 of the Rome Statute and Article 2 of the Genocide Convention to "any other group defined by specific criteria". This could have the result of expanding the definition of genocide to many other groups, thus potentially expanding too broadly the scope of the crime. The drafters of the Genocide Convention and the Rome Statute defined these protective groups exhaustively.[195]

In addition, the list of war crimes enumerated in Article 8(2)(e) of the Rome Statute (applicable in a non-international armed conflict and thus likely to be most relevant in the context of the conflict in CAR) are not included in the definitions of war crimes in CAR's Penal Code, which may have the result that certain conduct including the war crimes of intentionally directing attacks against the civilian population, rape and pillage in a non-international armed conflict will not be criminalized before the SCC. The definition of crimes against humanity in Article 153 of the Penal Code also does not include a requirement that an attack be committed pursuant to or in furtherance of an organizational policy, as provided in Article 7(2) of the Rome Statute.[196] There are also several other discrepancies.[197]

Such discrepancies could potentially be overcome if magistrates interpret these provisions in accordance with Article 3 of the *Loi Organique*, which provides that substantive international law can apply in instances in which CAR national law does not make provision regarding a matter, or where it is inconsistent with international standards. In addition to interpreting the provisions in this way, the CAR authorities should reform the Penal Code to align these provisions with international definitions of these crimes.

Another area of concern lies with respect to immunities, an issue that has been raised previously by Amnesty International and several other rights organizations.[198] The *Loi Organique* and the Penal Code would appear to preclude immunities for heads of state and other senior officials for war crimes, crimes against humanity and genocide.[199] However, commentators such as Patryck Labuda have pointed to a lack of clarity as to how they can be reconciled with the Constitution, which does provide for functional immunities for the President (except for high treason) and parliamentarians[200], which presumably would take precedence over the other legislation including the *Loi Organique*. Moreover, the Constitution also provides that the President can only be tried before a specific

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Sensibilisation des Populations et des Victimes, MINUSCA, 18 October 2016 (received from UNDP-Bangui).

[195] W. Schabas, *An Introduction to the International Criminal Court*, 4th ed., Cambridge University Press; 2011, p. 105; *Report of the Ad Hoc Committee on the Establishment of an International Criminal Court*, UN GAOR 50th Sess., Supp. No. 22, A/50/22 (19950, paras. 60-61 and *Report of the Preparatory Committee on the Establishment of an International Criminal Court*, vol. I, UN GAOR, 51st Sess., Supp. No. 22, A/51/22 (1996), paras. 59-60.

[196] For extensive discussions of the differences between the definitions of these crimes under the CAR Penal Code and international definitions, *see* G. Musila, *The Special Criminal Court and other options of accountability in the Central African Republic: Legal and Policy Recommendations,* pp. 15-18, available at: www.nurembergacademy.org/fileadmin/media/pdf/publications/car_publication.pdf *See also* P. Labuda, *The Special Criminal Court in the Central African Republic: Failure or Vindication of Complementarity, i*n 15(1) Journal of International Criminal Justice, 2017 (Forthcoming), pp. 15-20 (hereinafter: Labuda, *The SCC in CAR*).

[197] Labuda, *The SCC in CAR*, pp. 15-20.

[198] Amnesty International (*and 23 other civil society organisations), Central African Republic: Key Step Toward Justice,* 24 April 2015, available at: www.amnesty.org/en/latest/news/2015/04/central-african-republic-key-step-toward-justice/

[199] Article 162 of the Penal Code provides that there can be no immunity from prosecution for war crimes, crimes against humanity and genocide. Article 56 of the *Loi Organique* provides that there can be no immunity based on official status. However, while the *Loi Organique* does provide that the law shall apply equally to all persons without any distinction based on official capacity, which is taken verbatim from Article 27 of the Rome Statute, it does not reproduce the provisions from the same article specifying that this includes official capacity as a head of state or government, a member of a government or elected party, an elected official or member of Parliament. The statute also does not replicate Article 27(2) of the Rome Statute which provides that immunities shall not be a bar to the court exercising jurisdiction, which is also of concern.

[200] Constitution, Articles 127 and 67. See Labuda, *The SCC in CAR*, pp. 27-28.

judicial body so it is difficult to see how this could be reconciled with any potential trial before the SCC.[201]

3.9 DEFENCE RIGHTS AND LEGAL AID

To ensure that trials before the SCC comply with international fair trial standards and that the equality of arms is assured, those accused of crimes before the SCC must have the right to due process, including the right to be presumed innocent until and unless they are proven guilty beyond a reasonable doubt according to law in criminal proceedings which comply with international law and standards. Defendants must also have access to highly qualified counsel.

The provision of legal aid is a crucial element of this. While the *Loi Organique* does not specifically provide for this, the SCC should also establish a legal aid programme with adequate resources to ensure that suspects and accused have an opportunity equal to that of the prosecutor to conduct a defence. Legal aid must be sufficient to conduct potentially complex proceedings, including allowing for the defence to conduct its own investigations. As was demonstrated by the recent strike of pro bono lawyers prior to the last criminal trial session, it is crucial that defence attorneys are sufficiently remunerated.

The SCC should also consider establishing the Defence Office within the Registry to maintain a list of qualified counsel, to administer legal aid and to potentially provide expert legal and other support to defence teams.[202]

3.10 COORDINATION WITH NATIONAL COURTS AND THE ICC

Effective accountability in CAR will require close coordination between the SCC, the national justice system and the ICC to ensure they are complementary and mutually reinforcing.

The *Loi Organique* specifically provides that the SCC has primacy over the national courts[203], yet in practice it will depend on the domestic judicial system to try a significant number of its potential cases. As such, the domestic system will need to be reformed and strengthened so that it has the capacity to try cases involving crimes under international law.

For example, although the *Loi Organique* does not limit the SCC's jurisdiction to only those "most responsible" for the crimes committed during the conflict, as some other hybrid courts do[204], capacity limits are likely to mean the SCC focuses on such cases while the domestic courts will have the responsibility of trying the remaining. Delays in operationalizing the SCC also mean that the legal limits for pre-trial detention for many of those already arrested will be exceeded before the SCC is functional, and domestic courts will be required to try them also. Article 72 of the *Loi Organique* does, however, provide that all cases investigated before the court is established falling within the competence of the court will be transferred to the court once established.[205]

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[201] By virtue of Article 27, the ICC would in any event have jurisdiction regardless of any immunities that might apply domestically.
[202] The SCSL included an Office of the Principal Defender within the Registry, and the ICC also has an Office of the Public Defender within the Registry. The Special Tribunal for Lebanon is the only tribunal which includes the Defence Office as a separate and independent organ of the court (Article 13, Statute of STL). This is also being proposed for the expanded African Court of Justice and Human Rights (see *Statute of the African Court of Justice and Human Rights* (as amended), Article 22C(1) and (2), which in Article 22C(7) goes even further to propose that the Principal Defender should have the same status as the Prosecutor. While an independent Defence office might be preferable, this is not provided for by the *Loi Organique*.
[203] *Loi Organique*, Articles 3, 36 and 72.
[204] Such as the Special Court of Sierra Leone, which was mandated to try those "bearing the greatest responsibility" for crimes committed in Sierra Leone after 30 November 1996, Statute of SCSL, Article 1(1).
[205] *Loi Organique,* Article 72.

Further, as highlighted earlier, officials at MINUSCA have indicated that, if there is not enough funding for trials to take place before the SCC, trials could take place before national courts after having been investigated by the SCC[206] As detailed above in Chapter 2, given the many weaknesses of the national justice system, and in particular problems relating to witness and victim protection, this would obviously not be ideal. This also points again to the need to strengthen the domestic justice system so that it has the capacity to deal with such crimes if it is so required.

The creation of the SCC marks the first time a hybrid court will work in a country where ICC investigations are also underway, which may represent an important innovation particularly if there is effective coordination between the ICC and SCC. Article 37 of the *Loi Organique* provides that if the Prosecutor of the ICC is "seized of a case, then the SCC will recognize the primacy of the ICC and will not pursue the case"[207], in what some have called "reverse complementarity". However, as some critics such as Labuda have pointed out, it is not clear whether this provision can be reconciled with the complementarity regime at the ICC, where under Article 17 of the ICC Statute, the ICC must defer to national investigations and prosecutions of international crimes[208].

In practical terms, the Office of the Prosecutor of the ICC has engaged in preliminary discussions with MINUSCA and national authorities regarding potential future cooperation. During its investigations, the ICC will no doubt uncover information that would be relevant for the SCC in its own investigations and prosecutions. However, the ICC has indicated that it will only be able to determine whether it can share information with the SCC, and in particular witness statements, once the Rules of Procedure and Evidence are in place, and once the witness and victim protection programme can be assessed.[209] The ICC in the past provided such statements to certain countries that met the relevant standards. However, even if the ICC cannot provide the statements, it will likely share open source material and provide investigative leads.[210] The two institutions will need to develop innovative working arrangements, including potentially signing an MOU, regarding issues such as information sharing and cooperation, to maximize their efficiency and increase opportunities for accountability, as provided for by Article 37 of the *Loi Organique*.

3.11 COORDINATION WITH ANY TRUTH AND RECONCILIATION COMMISSION

The pact adopted after the Bangui Forum in 2015 also proposed the creation of a Truth, Justice, Reparation and Reconciliation Commission. The process to establish the commission will take place in three phases: the first involves documentation and research; the second involves a consultative process with all relevant actors; and the third involves the drafting and adoption of a law establishing the Commission.[211] While certain steps have been taken to move forward with its establishment, including information-sharing sessions with civil society from other post-conflict countries,[212] the consultation process that is a necessary precursor to the establishment of this commission has not yet taken place.[213]

While judicial processes are important, other transitional justice mechanisms such as truth and reconciliation commissions (TRCs) can address larger patterns of abuse in order to offer a more complete accounting of the

[206] Amnesty International Interview with MINUSCA staff, June 2016, Bangui. This is also specifically provided for in Article 71(3) of the *Loi Organique*.
[207] Article 37, *Loi Organique*.
[208] Labuda, *The SCC in CAR*, pp.23-25. This conflict may result in difficulties if for example, one of the defendants before the ICC in the CAR launches an admissibility challenge in which the ICC would have to consider whether the SCC is "unwilling or unable" to prosecute the case in order to determine whether it had jurisdiction. In this scenario, it is unlikely that the ICC would be able to hold that the SCC was "unwilling or unable" to prosecute the case, and would have to send it back to the SCC, regardless of Article 37 of the SCC.
[209] Amnesty International telephone Interview with OTP, ICC, June 2016.
[210] Amnesty International telephone Interview with OTP, ICC, June 2016.
[211] RJDH, *La Centrafrique s'inspire de l'expérience rwandaise pour la mise en place de la Commission Vérité, Justice, Réparations et Réconciliation,* 2 November 2016, available at http://rjdh.org/centrafrique-sinspire-de-lexperience-rwandaise-mise-place-de-commission-verite-justice-reparations-reconciliation/ (hereinafter : RJDH, *La Centrafrique s'inspire de l'expérience rwandaise).*
[212] RJDH, *La Centrafrique s'inspire de l'expérience rwandaise.*
[213] Report of the Independent Expert on the Situation on Human Rights in the Central African Republic, 22 July 2016, UN Doc. A/HRC/33/63, para. 97.

causes and consequences of the conflict, as they are not limited by the scope of judicial investigations. In some instances, TRCs have also proved useful in allowing people to recount their experiences and in allowing victims to learn about specific events or the fate of their relatives. A TRC may serve both the purpose of establishing a more complete and accurate picture of the conflict and enabling victims' access to the truth. Information gathered within a truth commission can also be useful to the judicial process, reinforcing the idea of complementarity between these truth, justice and reparation mechanisms.

However, the systems to be put in place for interactions between the SCC and any TRC should be carefully considered, to avoid tensions between the institutions including over, for example, whether accused persons before the SCC can testify before the TRC, and whether and how information will be shared between the institutions.[214] The SCC and any possible TRC should contemplate the conclusion of "advance agreements on certain practical issues (including information sharing, exhumations, access to detainees, joint communications, resolving of disputes by independent third parties, and outreach events)".[215] In accordance with international law, there should be no amnesties or pardons for crimes under international law before the TRC.[216]

3.12 INTERNATIONAL CRIMINAL COURT

CAR has been a party to the Rome Statute since 3 October 2001, and has been the subject of two separate investigations by the ICC. Following the investigations into the 2002-2003 conflict in CAR known as "CAR I", Jean-Pierre Bemba was convicted in March 2016 of crimes against humanity (murder and rape) and war crimes (murder, rape and pillaging) and sentenced to 18 years imprisonment in June 2016.

Alleged war crimes and crimes against humanity committed in the context of the conflict which began in 2012 have been the subject of the "CAR II" investigation which began in September 2014, following referral by the government of CAR in the same year. The Prosecutor has indicated that there is a reasonable basis to believe that the following crimes have been committed: war crimes, including murder, rape, pillaging, attacks against humanitarian missions, and use of children under 15 in combat, and crimes against humanity including murder, rape, forced displacement, and persecution[217].

The ICC will likely focus on a small number of alleged high-level perpetrators, so it will still be necessary for the SCC and domestic courts to try other cases involving crimes under international law committed during the conflict. Two separate teams are working on investigations - one into crimes committed by the ex-Seleka and one into committed by the Anti-balaka – and given the sensitive nature of the conflict it would be prudent to issue arrest warrants against ex-Seleka and Anti-balaka leaders suspected of committing crimes under international law at the same time.

As with the SCC, civil society has been frustrated by the slow progress of the ICC investigations, and the lack of information provided by the ICC about these investigations.[218] According to the ICC, its limited communication to civil society about the investigations has also been in part due to fears of raising expectations. A communication strategy is being developed by OTP/Registry which will include increased outreach and radio communication.[219] In general, investigations have suffered some delays due to lack of evidence of the chain of command for the Anti-balaka, as well as a lack of resources, particularly as some resources have been diverted

[214] In Sierra Leone, for example, tensions arose between the SCSL and the TRC which was also established after the conflict, particularly when the TRC sought testimony from one of the accused persons before the SCSL, which the court refused to allow.
[215] OHCHR, *Rule of Law Tools, Prosecution Initiatives*, p. 10, available at www.ohchr.org/Documents/Publications/RuleoflawProsecutionsen.pdf
[216] See analysis in Amnesty International, *International Law Commission: Initial Recommendations for a Convention on Crimes Against Humanity* (Index: IOR 40/1227/2015), 2015 ("Recommendations to ILC on Draft Convention on Crimes against Humanity"), pp. 15-23. Amnesty International has consistently opposed, without exception, amnesties, pardons and similar measures of impunity for crimes under international law that are prohibited by international law and prevent the emergence of truth, a final judicial determination of guilt or innocence and full reparation to victims and their families. See: Amnesty International, *Sierra Leone: Special Court for Sierra Leone: denial of right to appeal and prohibition of amnesties for crimes under international law* (Index: AFR 51/012/2003), October 2003.
[217] ICC, Central African Republic II, available at https://www.icc-cpi.int/carII
[218] Amnesty International Interview with members of civil society, June and October 2016.
[219] Amnesty International telephone Interview with OTP, ICC, June 2016.

to the case of Dominic Ongwen[220].

Both the transitional authorities and the current government have been supportive of the ICC's investigations. They should continue to ensure full cooperation with the ICC to ensure the success of its work. Cooperation should be afforded to the Office of the Prosecutor in relation to investigations, as well as with the other organs of the Court that carry out other important activities such as the protection of victims and witnesses, facilitation of the participation of victims in ICC proceedings, and outreach to affected communities and other stakeholders.

[220] Amnesty International telephone interview with OTP, ICC, June 2016. Dominic Ongwen, a senior LRA commander, surrendered to US forces in CAR, and was transferred to the ICC in January 2015. His trial began in December 2016. As his surrender was not expected, it was necessary to divert funds that would otherwise have been used for other investigations to the investigation of his case.

4. RECOMMENDATIONS

Building sustainable peace in CAR and ensuring justice for victims of the conflict requires scaling up efforts to end impunity, ensure accountability, and break the cycle of violence and injustice. To achieve this, perpetrators of serious human rights violations and abuses and crimes under international law should be held accountable in criminal courts, and national and international justice mechanisms must be well-equipped to achieve this.

The scale of the challenge in CAR is significant, and will require genuine political will on behalf of both the CAR authorities and the international community, as well as the investment of financial, human and technical resources to rebuild the justice system across the country, fully operationalize the SCC and re-establish the rule of law in CAR.

Ensuring the funding requested for the justice sector in CAR's National Recovery and Peacebuilding Plan - $105 million over five years – will be a significant test of the international community's commitment. Executing the arrests of prominent individuals suspected of perpetrating crimes under international law will be a significant test of CAR's authorities.

4.1 MONITOR, DOCUMENT AND REPORT HUMAN RIGHTS ABUSES AND CRIMES UNDER INTERNATIONAL LAW

To CAR's international partners

- Invest in strengthening capacity and providing material support to national human rights NGOs, including organizations working with Muslim communities, which monitor, document and report human rights abuses and crimes under international law, especially outside Bangui;

To the Office of the High Commissioner of Human Rights and MINUSCA

- Continue to monitor, investigate and publicly report on allegations of abuses and crimes under international law by all sides in the conflict.

- Ensure that human rights monitors are deployed in adequate numbers, both in Bangui and in the provinces.

4.2 IMPROVE ABILITY TO CONDUCT INVESTIGATIONS AND ARRESTS

To the UN Security Council

- Continually review the capacity of MINUSCA so it can fully deliver its mandate, including arresting those suspected of having committed crimes under international law through the effective implementation of Urgent Temporary Measures, while protecting civilians.

To MINUSCA and CAR authorities

- Ensure allegations of serious crimes committed by members of armed groups and militias in CAR are promptly and independently investigated and those reasonably suspected of being responsible for these crimes are tried in proceedings that fully respect international fair trial standards with no recourse to the death penalty.

- Improve coordination and communication and consider ways to jointly and strategically plan arrests.

To CAR authorities

- Make sure arrest warrants are issued against suspected perpetrators and communicated in a timely way to MINUSCA.

To CAR's international partners

- Provide technical and financial support for the training of gendarmes and police to conduct their investigations, including by collecting material evidence.

4.3 VETTING

To CAR authorities

- Refrain from appointing individuals suspected of human rights abuses and crimes under international law to positions that they might use to either commit other abuses and crimes or prevent any investigation of themselves or their allies.

- Suspend individuals already holding such positions pending investigations.

4.4 REBUILD THE NATIONAL JUSTICE SYSTEM

To CAR authorities

- Safely redeploy judicial personnel across the country and reopen courts with the necessary means to function; in particular, ensure that the offices of the prosecutors, the investigative judges, as well as justicemembers of the national gendarmerie in charge of investigating crimes, are equipped with means of communication, security and mobility they need, and provided with physical protection.

- Provide financial support to rebuild and refurbish courts across CAR and ensure their effective functioning, as well as organize mobile court hearings, particularly in remote areas or areas where court buildings have been destroyed.

- Ensure regular and continuing training for legal professionals, namely magistrates, judges, clerks, lawyers, notaries, and bailiffs, through centralized training facilities.

- Give higher priority to the justice sector in the allocation of state resources so it can function effectively.

- Ensure detainees are not held beyond the legal pre-trial detention term by holding regular criminal trial sessions, and providing access to courts and adequate resources to process cases; as well as ensuring access to lawyers and families.

- Encourage magistrates to use Article 222 of the Code of Criminal Procedure and directly apply the Rome Statute to put in place protective measures for victims and witnesses, prior to the adoption of comprehensive witness protection legislation and/or amendments to the Code of Criminal Procedure.

To CAR's international partners

- Provide sufficient financial assistance to fully fund the plan to support the justice sector, as outlined in the CAR National Recovery and Peacebuilding Plan 2017-2021.

- Support national authorities in the development and implementation of a long-term capacity-building plan for judicial staff, police and gendarmerie.

- Invest in justice-oriented programmes aimed at renovating and rebuilding judicial infrastructure across CAR.

4.5 IMPROVE PRISON CONDITIONS AND SECURITY

To CAR authorities

- Ensure that conditions in detention facilities are humane and preserve prisoners' physical and psychological integrity by providing all detainees with professional medical care, adequate food, water, lighting, cooling, and ventilation, in accordance with international standards.

- In the Ngaragba prison in Bangui, complete projects to build and refurbish cells as soon as possible to address overcrowding, and make sure convicted prisoners are held separately from detainees.

- Implement the existing legislation providing for the civilian management of the prisons and deploy civilian staff to prisons.

- Upgrade detention facilities to prevent escapes, including by boosting security and providing adequate, regularly and sufficiently paid and trained security personnel.

- Establish and maintain a centralized and public register of all detainees, detailing the date of orders of arrest and detention, transfer, release and revocation.

- Establish independent national preventive mechanisms for the prevention of torture and other cruel,

inhuman or degrading treatment or punishment for all places of detention in accordance with the obligations under the Optional Protocol to the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment.

- Continue to grant unhindered access to all detention facilities to national and international human rights monitors and judicial monitors.

To CAR's international partners

- Provide sustainable, long-term financial support to train prison staff and rebuild and refurbish prisons across CAR so that conditions are brought into line with international standards.

4.6 REVIEW DOMESTIC LEGISLATION

To CAR authorities

- Make any 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 Criminal Code.

- 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; establish an independent victim and witness protection unit and ensure that training on the treatment and protection of victims and witnesses is mandatory for all magistrates and court staff.

- Review the legislation setting the compensation for pro-bono lawyers, ensuring that it is sufficient to allow them to provide an effective legal defence or assistance to defendants throughout criminal proceedings.

4.7 OPERATIONALIZE THE SPECIAL CRIMINAL COURT

To CAR authorities, MINUSCA and UNDP

- Expedite the establishment of the SCC, and ensure that all timelines are complied with, including for the nomination of international and national judges and staff.

- Ensure that the clear selection process for national and international judges and other staff members of the SCC is independent, transparent, and merit-based.

- Develop Rules of Procedure and Evidence that comply with international fair trial standards, drawing from the experiences of other *ad hoc* and hybrid tribunals and do so in consultation with all relevant stakeholders including civil society.

- Ensure that judges from CAR on the court represent different geographical areas, ethnic, and religious communities.

- Put in place adequate disciplinary measures for misconduct by judges and staff.

- Provide appropriate training for national and international judges in international criminal law and practice, international humanitarian law and international human rights law, with specific emphasis on gender-based violence, violence against children, and victims' rights.

- Ensure that the applicable substantive and procedural law and modes of liability are interpreted in accordance with international law, and undertake necessary reforms of national criminal legislation including the penal code, to ensure that the definitions of crimes against humanity, war crimes and genocide are defined in accordance with international law.

- Establish and sustainably fund an outreach unit, which should develop and conduct a comprehensive program to inform the population about the activities of the SCC and developments in investigations and cases throughout all stages of the process.

- Guarantee fair trial rights in accordance with international legal standards for all those accused of crimes before the SCC, establish a legal aid programme, and consider the establishment of a Defence Office within the Registry.

- Ensure that other transitional justice mechanisms, including any possible Truth and Reconciliation Commission that may be established, coordinate with and complement the SCC.

- Exclude amnesties and pardons for crimes under international law before any possible TRC that may be established.

- Provide, at the outset, a long-term, stable and secure method of funding for the operation of the SCC.

- Ensure that issues of legacy are considered and incorporated into the relevant instruments at the outset of the establishment of the SCC.

- Develop innovative working arrangements with the ICC governing mutual cooperation to maximize efficiency and increase opportunities for accountability.

To CAR's international partners

- Provide sustainable, long-term financial support to the SCC, including to victim and witness protection programmes.

- Nominate qualified judges and staff, with extensive domestic experience, and preferably experience with crimes under international law, to the SCC in the current calls for nominations.

4.8 MORE EFFECTIVE INVOLVEMENT OF THE INTERNATIONAL CRIMINAL COURT

To the ICC

- Investigate with a view to prosecuting crimes committed by all parties to the conflict on the basis of the same objective criteria.

- Issue arrest warrants for suspected high-level perpetrators from all sides to the conflict at the same time in order to maintain real and perceived impartiality.

- Increase ICC outreach and public information and consultation with affected communities in order to better inform decisions regarding case selection and prioritization.

- Consider ways the ICC can improve the sharing of relevant expertise with the SCC to promote fair, effective trials for serious crimes in CAR.

To CAR authorities

- Ensure continued full cooperation with the ICC, including with the Office of the Prosecutor in terms of investigations.

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THE LONG WAIT FOR JUSTICE

ACCOUNTABILITY IN CENTRAL AFRICAN REPUBLIC

Since the outbreak of conflict in the Central African Republic (CAR), both the national authorities and the international community have made important commitments to ensure justice and accountability for the large-scale human rights violations and crimes under international law committed across the country in recent years.

Yet despite some important progress, for example in the establishment of the hybrid Special Criminal Court, the vast majority of individuals suspected of having committed crimes under international law during the conflict in CAR still remain free of effective investigation or arrest. Some continue to live in their communities side by side with their victims, others continue to hold influential roles. A significant number remain active in the conflict, continuing to fuel instability and perpetrate further human rights violations.

CAR's domestic justice system is in disrepair, and in urgent need of investment and reform to ensure destroyed courtrooms can be rebuilt, unsafe prisons rehabilitated and judges and lawyers deployed across the country. Sustained investment will also be required to make the Special Criminal Court an effective body able to meet the expectations of the population, conduct fair trials and protect witnesses and victims, all while coordinating with other mechanisms such as the International Criminal Court and any truth, justice and reconciliation commission.

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