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## “Looking for Justice”

The Special Criminal Court, a New Opportunity for Victims  
in the Central African Republic



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in the Central African Republic

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## The Special Criminal Court, a New Opportunity for Victims in the Central African Republic

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## Summary

The establishment of the Special Criminal Court (SCC) in the Central African Republic is a significant, unprecedented initiative to deliver justice for victims of brutal crimes committed during conflicts there since 2003. The court, established by law in 2015, is integrated into the Central African Republic's domestic judicial system, but staffed by both international and Central African judges, prosecutors, and administrators.

Together with the International Criminal Court (ICC), which has two investigations into crimes committed in the country, the SCC is a significant opportunity to end the widespread impunity that victims of the cycles of violence in the Central African Republic have faced. By delivering justice at a national level, the SCC offers a chance to increase the resonance of trials with victims and others most affected by the crimes, and to bolster domestic ownership and capacity in the delivery of justice for atrocity crimes. The SCC may also serve as a potential model for other countries that are seeking to pursue justice for international crimes in their national systems.

While creating an avenue for justice for the gravest crimes cannot solve the full range of complex problems the Central African Republic faces, experience suggests that continued abuses are being fueled by lack of accountability. By contrast, fair, credible trials of grave crimes can build respect for the rule of law, contributing to long-term stability, in combination with other factors.

This report discusses the progress, obstacles, and challenges for the SCC in its initial phases to date. It is not intended to provide a conclusive assessment of the court, but offers observations on the current stage of its development. The report updates developments at the court since the Human Rights Watch July 2017 report, *Killing Without Consequence: War Crimes, Crimes Against Humanity and the Special Criminal Court in the Central African Republic*.

The SCC has made important progress, especially in 2017, but continues to face intense challenges. While getting the court operational has taken longer than anticipated, it has involved important steps to protect the court's credibility, independence, and impartiality.

Central African victims, activists, and justice practitioners reaffirmed a continued, urgent, and unequivocal demand for justice for war crimes and crimes against humanity that have been committed during Human Rights Watch’s research. International partners will need to provide strong political backing and financial support for this court to succeed, alongside support from the Central African authorities.

# Recommendations

## To the Government of the Central African Republic

- Support the prompt adoption of the Rules of Procedure and Evidence of the Special Criminal Court so the court can move ahead with investigating and prosecuting crimes suffered by Central African victims.
- Expedite and ensure the provision of work facilities for the investigators, magistrates, and SCC support staff, and residences for the SCC national magistrates and their families.
- Expedite the renovation of the former Court of First Instance, which will serve as the Special Criminal Court premises.

## To the Parliament

- Adopt the Rules of Procedure and Evidence of the Special Criminal Court without delay once put before parliament.

## To the United Nations Security Council

- Closely follow and reauthorize continued strong MINUSCA support of the Special Criminal Court and other government efforts to prosecute those responsible for abuses in line with international fair trial standards.

## To the UN Mission in the Central African Republic (MINUSCA)

- Provide full-time security to national magistrates serving on the SCC.
- Maintain and fully deliver on its mandate to the Special Criminal Court over time, particularly with respect to security, victim and witness protection and support, protection of the rights of the accused, and investigation of crimes.

## To the United Nations Development Program (UNDP)

- Maintain support for the Special Criminal Court as part of its joint project on the court.

- As part of UNDP support to the court, ensure the recruitment of Central Africans to conduct SCC outreach and an active outreach program for the SCC in order to minimize misunderstanding and increase the impact of the court.

### **To the European Union, Governments of France, the Netherlands, the United States, and Canada, and Other Government Donors**

- Provide additional financial and political support to the Special Criminal Court to ensure it can implement its mandate to deliver justice for grave crimes committed.
- Utilize the Special Criminal Court reference group, a group composed of states interested in the Special Criminal Court in New York, to galvanize continuous adequate financial support for the SCC.

### **To the International Criminal Court**

- Support effective prosecutions by the Special Criminal Court through sharing information on specific cases where possible.
- Support the development of effective investigations and victim and witness protection and support by continuing to share experience with SCC staff.
- Coordinate with the SCC on outreach programming to minimize confusion among the Central African population on the ICC and SCC and maximize the amount of outreach activities.

## Methodology

This report is based on Human Rights Watch desk research, regular observation of developments at the Special Criminal Court, and research conducted in Bangui, the Central African Republic in October 2017. In Bangui, Human Rights Watch staff held 18 meetings, including group meetings, involving more than 35 individuals, on the Special Criminal Court's work. This is in addition to attending a workshop on the court's draft Rules of Procedure and Evidence. Interviewees included victims of brutal crimes committed during conflicts in the country since 2003 who are working with victim associations, local civil society representatives, lawyers, government officials, the court's magistrates and administrative personnel, United Nations staff, International Criminal Court representatives, international non-governmental organization staff, and donors. Interviews were conducted in French or English, and material in this report reflects a synthesis of notes taken by two staff.

Follow-up interviews were conducted by phone and in person in New York, between October 2017 and May 2018. Some individuals interviewed wished to remain anonymous because they were not authorized to publicly discuss these issues and other names were withheld for security reasons. Generic descriptions of interviewees or pseudonyms are used throughout the report to respect the confidentiality of these sources.

# I. Background

The Central African Republic's current crisis began in late 2012, when mainly Muslim Seleka rebels ousted President Francois Bozizé and seized power through a campaign of violence and terror.<sup>1</sup> In late 2013, Christian and animist militias known as anti-balaka also began to organize counterattacks against the Seleka.<sup>2</sup> The anti-balaka had its roots as local self-defense groups that existed under Bozizé. The group frequently targeted Muslim civilians, associating all Muslims with the Seleka.

As the Seleka and anti-balaka fought each other and carried out increasingly brutal tit-for-tat attacks on those who they perceived as supporting their enemies, civilians were caught in the middle. Many Muslims fled, and with the mass departure of the country's minority Muslim population, the anti-balaka turned on Christians and others they believed had opposed them or had sided with their Muslim neighbors. Over time, the anti-balaka turned on anyone in order to steal or loot.

In late 2013, the African Union (AU) peacekeeping mission was joined by French soldiers to restore order. Violence continued despite the AU and French troops, and in April 2014 the United Nations Security Council authorized a new peacekeeping mission called the Multidimensional Integrated Stabilization Mission in the Central African Republic, known by its French acronym, MINUSCA. The mission had a multi-pronged mandate: protecting civilians; facilitating humanitarian access; monitoring, investigating, and reporting on human rights abuses; and supporting the political transition. As of the most recent figures at writing, which were published in December 2017, MINUSCA had 10,246 troops and 2,020 police deployed in the country.<sup>3</sup>

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<sup>1</sup> This background provides only a brief overview of developments; for a more in-depth discussion of the recent conflict, including detailed descriptions of Seleka and anti-balaka forces, see Human Rights Watch, *Killing Without Consequence: War Crimes, Crimes Against Humanity and the Special Criminal Court in the Central African Republic* (New York: Human Rights Watch, 2017), <https://www.hrw.org/report/2017/07/05/killing-without-consequence/war-crimes-crimes-against-humanity-and-special>.

<sup>2</sup> The term "anti-balaka" means "anti-balles," or bullet, from a Kalashnikov assault rifle.

<sup>3</sup> "MINUSCA Fact Sheet," United Nations Peacekeeping, <https://peacekeeping.un.org/en/mission/minusca> (accessed February 5, 2018).

In March 2016, after two years of an interim government, relatively peaceful elections were organized and Faustin-Archange Touadéra was sworn in as president. But violence and attacks against civilians have nevertheless continued, with Seleka factions and anti-balaka groups still controlling large swaths of the country, especially in the eastern and central regions.<sup>4</sup> In the second half of 2017, violence threatening civilians surged.<sup>5</sup>

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<sup>4</sup> See Human Rights Watch, *Killing Without Consequence*.

<sup>5</sup> Human Rights Watch documented killings by armed groups of at least 249 civilians between May 2017 and October 2017, mostly in the south central and southeastern parts of the country. “Central African Republic: Civilians Targeted as Violence Surges,” Human Rights Watch news release, October 27, 2017, <https://www.hrw.org/news/2017/10/27/central-african-republic-civilians-targeted-violence-surges>. Human Rights Watch also documented 25 cases of rape by armed groups in Basse-Kotto province in May 2017, part of a pattern of systematic rape and sexual abuse of women and girls by armed groups over the past five years. Human Rights Watch, *They Said We Are Their Slaves: Sexual Violence by Armed Groups in the Central African Republic* (New York: Human Rights Watch, 2017), [https://www.hrw.org/sites/default/files/report\\_pdf/car1017\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/car1017_web.pdf), p. 64.

## II. Importance of the SCC for Victims in the Central African Republic

In the Central African Republic, the lack of accountability for crimes committed by government forces in the northeast, together with stark economic and social inequalities, contributed to the sense of frustration and anger that helped form the Seleka movement that overthrew Bozizé.<sup>6</sup> The current conflict has also been marked by near-total impunity. Both the Seleka and anti-balaka have suffered almost no price for committing atrocities, and targeting civilians has become a routine part of their military operations.<sup>7</sup> The lack of accountability when serious crimes are committed has led to further reprisal attacks by one group against the other, intensifying the violence and widening the sectarian divide.

In May 2015, national consultations, known as the Bangui Forum, made clear the Central African people's strong interest in criminal justice for grave crimes committed, with a recommendation for the operationalization of the Special Criminal Court.<sup>8</sup> The SCC complements two ICC investigations into crimes committed in the Central African Republic.<sup>9</sup>

In 2017, the desire to see perpetrators held to account before courts of law remained unequivocal among victims, activists, and members of the legal community that Human Rights Watch interviewed in Bangui.

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<sup>6</sup> See Human Rights Watch, *"I Can Still Smell the Dead": The Forgotten Human Rights Crisis in the Central African Republic* (New York: Human Rights Watch, 2013), <https://www.hrw.org/report/2013/09/18/i-can-still-smell-dead/forgotten-human-rights-crisis-central-african-republic>, p. 164.

<sup>7</sup> See, for example, "Central African Republic: Armed Groups Target Civilians," Human Rights Watch news release, May 2, 2017, <https://www.hrw.org/news/2017/05/02/central-african-republic-armed-groups-target-civilians>; Human Rights Watch, *"They Said We Are Their Slaves."* Rather than facing justice, the perpetrators of atrocities are too often rewarded for their unlawful conduct with promotions, including in the government and army—what some refer to as "the impunity bonus" (*prime à l'impunité*).

<sup>8</sup> UN Security Council, "Report of the Secretary-General on the Situation in the Central African Republic," July 29, 2015, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2015/576](http://www.un.org/ga/search/view_doc.asp?symbol=S/2015/576) (accessed February 22, 2018), paras. 78-81.

<sup>9</sup> In December 2004, the Central African government referred the situation of grave crimes committed in the country during the political upheaval and Bozizé-lead coup in 2002 and 2003 to the ICC. In 2007, the ICC prosecutor announced the opening of a formal investigation into the situation. In May 2014, then-interim president Catherine Samba-Panza referred the situation in the Central African Republic since August 2012 to the ICC, and in September 2014, the prosecutor announced the opening of a second investigation.

Bruno, a victim who works with an association of abuse victims of crimes, told Human Rights Watch:

People who should already be listed as criminals continue to commit crimes. We need an official operational court to dissuade people, and it is regrettable that we don't have it. Victims are looking for justice. They want to see the perpetrators and their accomplices held to account. For me, justice is to face the perpetrators and know why it was done.<sup>10</sup>

Pierre, a representative of another victims' association, told Human Rights Watch:

For many decades, this country has known many crimes that have never been judged. Today's perpetrators are yesterday's victims. We have no confidence in the national justice system. The Special Criminal Court gives us a chance to start from zero and improve the climate.<sup>11</sup>

Henri, a representative of another victims' association, said:

Victims want justice to be done and reparation offered so they can rebuild their lives. They want the authors of the crimes to be brought before justice.<sup>12</sup>

The question most prominent in the minds of some of the victims' association representatives who spoke with Human Rights Watch was not whether the Special Criminal Court was needed, but rather why it is taking so much time to become operational.<sup>13</sup> They noted that the abuses continue, and the number of victims continue to multiply while justice has yet to be delivered. One victim who works with an association of victims, Bernard, told Human Rights Watch: "We need the Special Criminal Court to be rapidly installed."<sup>14</sup>

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<sup>10</sup> Human Rights Watch group interview with representatives of victims' associations, Bangui, October 3, 2017.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

Some of the victim association representatives who spoke with Human Rights Watch also expressed concern that without credible judicial proceedings, there is a greater risk of vigilante justice rendered by mobs, and the likelihood the evidence will be lost.<sup>15</sup>

Members of the Central African human rights and legal community who spoke with Human Rights Watch also stressed the vital need for the Special Criminal Court and frustration that the court has yet to become functional.<sup>16</sup> A lawyer who works with victims of atrocities committed in the country told Human Rights Watch that justice and reparations will help to put an end to human rights abuses.<sup>17</sup>

Central African practitioners working at the Special Criminal Court told Human Rights Watch of the need for justice for the crimes. One practitioner told Human Rights Watch: “We are all victims here. Every one of us has been affected. We want to contribute to the fight against impunity to help bring peace. We want to discourage the tormentors.”<sup>18</sup>

Western diplomats based in Bangui reinforced the importance of accountability efforts, sharing their analysis that impunity for abuses is at the heart of the continued challenges the country faces.<sup>19</sup>

Some Central African lawyers are working as a collective, with the assistance of the International Federation of Human Rights, to assist victims in accessing justice. These lawyers talked to Human Rights Watch about their interest in assisting victims to assure accountability. Robert, one of the lawyers, said: “One can contribute to justice, establishing the truth, and holding those culpable to account.”<sup>20</sup> Jean, another lawyer who is working to assist victims in judicial proceedings, said:

The Special Criminal Court is an opportunity for Central Africans. We hope that judgment of these matters in the Special Criminal Court can be a curb

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<sup>15</sup> Ibid.

<sup>16</sup> Human Rights Watch group interview with civil society representatives, Bangui, October 4, 2017.

<sup>17</sup> Ibid.

<sup>18</sup> Human Rights Watch group interview with SCC staff, Bangui, October 6, 2017.

<sup>19</sup> Human Rights Watch interview with Western diplomat, Bangui, October 4, 2017, and Western diplomat, Bangui, October 5, 2017.

<sup>20</sup> Human Rights Watch group interview with Central African lawyers who are involved in a collective to provide legal representation to victims in judicial proceedings, Bangui, October 3, 2017.

on impunity, because soon there will be a generation that grew up in this crisis, and the executioners must be stopped. The crimes were too much. We have had thousands killed. They have killed people like we have never seen. We need to hold the perpetrators accountable. We hope this has an educational character. People will learn that actions have consequences.<sup>21</sup>

Lawyers conveyed the significance of the SCC as a national initiative. One lawyer told Human Rights Watch: “This is our justice. It’s a national jurisdiction, which has complementarity with the ICC investigations. The ICC will prosecute the big fish.”<sup>22</sup>

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<sup>21</sup> Ibid.

<sup>22</sup> Human Rights Watch group interview with Central African lawyers who are involved in a collective to provide legal representation to victims in judicial proceedings, Bangui, October 3, 2017.

### III. Progress at the SCC

In August 2014, the transitional government signed a memorandum of understanding with MINUSCA that outlined a hybrid judicial accountability mechanism to try crimes committed in the country. The Central African government requested the participation of international staff to strengthen the capacities of the national justice system and to protect the proposed court's independence.<sup>23</sup> On April 22, 2015, the country's interim parliament, the National Transitional Council, adopted a law to create the Special Criminal Court by a vast majority, and on June 3, 2015, Catherine Samba-Panza promulgated the law creating the SCC.

The National Transitional Council tasked the new court to try crimes committed during the recent crisis, as had been proposed by the transitional government, but also those committed since January 1, 2003.<sup>24</sup> The court's mandate is to investigate and prosecute "grave violations of human rights and international humanitarian law committed on the territory of the Central African Republic since January 1st, 2003, as defined by the Central African criminal code and under international law obligations of the Central African Republic, notably the crimes of genocide, crimes against humanity and war crimes."<sup>25</sup>

The SCC is given primacy over the country's ordinary national courts, meaning that the SCC has priority to select and try cases but ordinary courts can still try remaining cases of international crimes.<sup>26</sup> In addition, the law establishing the SCC foresees that if the ICC and the SCC work on the same case, priority will go to the ICC.<sup>27</sup> The SCC has a mandate of five years, which can be renewed.<sup>28</sup>

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<sup>23</sup> Human Rights Watch interview with staff member at Ministry of Justice, Bangui, June 15, 2016.

<sup>24</sup> The current conflict in the Central African Republic is not a stand-alone event. Violence wracked the country in the mid-2000s, with some of the same players still operating today. For more information, see Human Rights Watch, *Central African Republic – State of Anarchy: Rebellion and Abuses Against Civilians*, vol. 19, no. 14(A), September 2007, <https://www.hrw.org/reports/2007/car0907/index.htm>.

<sup>25</sup> Loi Organique, No. 15.003 portant création, organisation et fonctionnement de la cour pénale spéciale, June 3, 2015, [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=92C4EC76991F04C4C1257ECB004E25D5&action=openDocument&xp\\_countryS elected=CF&xp\\_topicSelected=GVAL-992BU6&from=state](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=92C4EC76991F04C4C1257ECB004E25D5&action=openDocument&xp_countryS elected=CF&xp_topicSelected=GVAL-992BU6&from=state) (accessed February 6, 2018), art. 3.

<sup>26</sup> *Ibid.*, arts. 3, 36.

<sup>27</sup> *Ibid.*, art. 37.

<sup>28</sup> *Ibid.*, art. 70.

Victims have an important role in this court. In addition to serving as potential witnesses, victims can join the criminal proceedings as civil parties (*partie civile*). A feature of civil law systems, on which the Central African Republic system is based, civil parties serve as a formal party to the proceedings, alongside the prosecutor and the defendant. Civil parties may take measures such as making submissions to the case file, requesting that an investigation be initiated and that steps be taken to advance the investigation, and examining witnesses.

The opportunity for victims to become civil parties places victims more squarely at the center of the accountability process, and is relatively novel in proceedings involving international crimes.<sup>29</sup> Indigent victims who are civil parties at the SCC are entitled to a lawyer to represent them.<sup>30</sup>

The law establishing the court furthermore provides: “The Government is required to take all measures to provide the Special Criminal Court the means to accomplish this mission in the interest of the victims,” and that the government should ensure support for the preservation of court material during and after the court’s operations for the benefit of victims and the Central African population.<sup>31</sup>

After a period of stagnation, the SCC gained momentum during 2017, and many of the key staff are now appointed. This includes 11 international and national magistrates who are

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<sup>29</sup> Most earlier international and hybrid accountability mechanisms did not allow civil parties, with the exception of the Extraordinary Chambers in the Courts of Cambodia. The more recent Extraordinary African Chambers in Senegal also allowed civil parties. The ICC does not allow civil parties, although the ICC does allow victims to act as “participants” in the proceedings, which involves some of the same roles. For further discussion of the role of civil parties and victim participation at the ICC, see Human Rights Center, UC Berkeley School of Law, “The Victims’ Court?: A Study of 622 Victim Participants at the International Criminal Court” 2015, [https://www.law.berkeley.edu/wp-content/uploads/2015/04/VP\\_report\\_2015\\_final\\_full2.pdf](https://www.law.berkeley.edu/wp-content/uploads/2015/04/VP_report_2015_final_full2.pdf) (accessed January 22, 2018); Human Rights Watch, *Who Will Stand for Us?: Victims’ Legal Representation at the ICC in the Ongwen Case and Beyond* (New York: Human Rights Watch, 2017), <https://www.hrw.org/report/2017/08/29/who-will-stand-us/victims-legal-representation-icc-ongwen-case-and-beyond#baod8f>; “Q&A: The Case of Hissène Habré before the Extraordinary African Chambers in Senegal,” Human Rights Watch news release, May 3, 2016, <https://www.hrw.org/news/2016/05/03/qa-case-hissene-habre-extraordinary-african-chambers-senegal>.

<sup>30</sup> Loi Organique, No. 15.003 portant création, organisation et fonctionnement de la cour pénale spéciale, [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=92C4EC76991Fo4C4C1257ECB004E25D5&action=openDocument&xp\\_countryS\\_elected=CF&xp\\_topicSelected=GVAL-992BU6&from=state](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=92C4EC76991Fo4C4C1257ECB004E25D5&action=openDocument&xp_countryS_elected=CF&xp_topicSelected=GVAL-992BU6&from=state), art. 64.

<sup>31</sup> *Ibid.*, art. 69.

serving as prosecutors, investigating judges, and judges in the indictment chamber at the court, which largely follows a civil law system structure.<sup>32</sup>

On February 15, 2017, President Faustin-Archange Touadéra appointed the court's chief international special prosecutor, Toussaint Muntazini Mukimapa, the former attorney general of the armed forces of the Democratic Republic of Congo.<sup>33</sup> On May 25, Prosecutor Muntazini arrived in the Central African Republic to begin work.<sup>34</sup>

On April 11, 2017, Minister of Justice Flavien Mbata announced the appointment of Adelaïde Dembelé, from Burkina Faso, and Emmanuelle Ducos, from France, to serve as international investigating judges at the court.<sup>35</sup>

On May 5, President Touadéra announced the appointment of five national magistrates to serve at the court: Alain Ouaby-Bekai, as the deputy national special prosecutor; Alain Tolmo, as the substitute<sup>36</sup> national special prosecutor; Patience Guerengbo and Michel Ngokpou as national investigating judges; and Jacob Sanny-Damili as a national judge in the court's indictment chamber.<sup>37</sup>

On June 6, President Touadéra nominated Dieudonné Detchou from Canada as the substitute international special prosecutor.<sup>38</sup> On January 8, 2018 Koffi Kumelio A. Afandé,

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<sup>32</sup> For an organigram of the court's structure, see Cour Pénale Spéciale, "Organigramme de la Cour Pénale Spéciale," <http://cps-rca.cf/fr/organigramme-de-la-cour-penale-speciale> (accessed March 23, 2018).

<sup>33</sup> See Lewis Mudge, "A Step Towards Justice in the Central African Republic," Human Rights Watch news release, February 21, 2017, <https://www.hrw.org/news/2017/02/21/step-toward-justice-central-african-republic>; "Le Congolais Toussaint Muntazini Procureur de la Cour Pénale Spéciale de Centrafrique," MINUSCA press release, February 15, 2017, <https://minusca.unmissions.org/le-congolais-toussaint-muntazini-procureur-de-la-cour-p%C3%A9nale-sp%C3%A9ciale-de-centrafrique> (accessed January 22, 2018).

<sup>34</sup> See "Update on the Operationalization of the Special Criminal Court," January 2018, on file with Human Rights Watch.

<sup>35</sup> For more details on each of the magistrates appointed to date, see Cour Pénale Spéciale, "Nos Magistrats," <http://cps-rca.cf/fr/l-equipe-de-magistrats> (accessed March 23, 2018). See also "Deux nouveaux magistrats pour siéger à la Cour Pénale Spéciale pour la Centrafrique," MINUSCA press release, April 13, 2017, <https://minusca.unmissions.org/deux-nouveaux-magistrats-pour-si%C3%A9ger-%C3%A0-la-cour-p%C3%A9nale-sp%C3%A9ciale-pour-la-centrafrique> (accessed January 22, 2018); "Update on the Operationalization of the Special Criminal Court," January 2018, on file with Human Rights Watch.

<sup>36</sup> The post of "substitute" special prosecutor is seen akin to a second deputy or an assistant special prosecutor according to a UN source. Human Rights Watch email correspondence with UN staff, New York, March 22 and 26, 2018.

<sup>37</sup> See "Cinq magistrats centrafricains nommés à la Cour pénale spéciale," *Journal de Bangui*, May 8, 2017, <http://www.journaldebangui.com/article.php?aid=12249> (accessed January 22, 2018); Cour Pénale Spéciale, "Nos Magistrats," <http://cps-rca.cf/fr/l-equipe-de-magistrats> (accessed March 23, 2018).

<sup>38</sup> See "Le Substitut international nommé pour siéger à la Cour pénale Spéciale," *RJDH*, June 10, 2017, <http://rjdh.org/centrafrique-substitut-international-nomme-sieger-a-cour-penale-speciale/> (accessed January 22, 2018).

from Togo, and Bernadette Houndékandji-Codjovi, from Benin, were nominated to serve as international judges in the indictment chamber, marking the last nominations of international judicial posts needed for the court's first phase of operations.<sup>39</sup>

Several important administrative posts at the SCC have now been appointed as well, including Central African Republic's Dieudonné Selego, who will serve as the court's registrar.<sup>40</sup>

Since 2015, the UN Security Council has mandated MINUSCA to support the operationalization of the Special Criminal Court. Among other things, the most recent Security Council resolution gives the peacekeeping mission the wide ranging tasks of providing:

technical assistance...in order to facilitate the functioning of the SCC, in particular in the areas of investigations, arrests, detention, criminal and forensic analysis, evidence collection and storage, recruitment and selection of personnel, court management, prosecution strategy and case development and the establishment of a legal aid system, as appropriate, as well as, to provide security for magistrates, including at the premises and proceedings of the SCC, and take measures for the protection of victims and witnesses.<sup>41</sup>

In 2016, the Security Council expanded the mission's duties to include mobilizing bilateral and multilateral support for the court itself.<sup>42</sup> MINUSCA works together with UNDP to

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<sup>39</sup> "Update on the Operationalization of the Special Criminal Court," January 2018, on file with Human Rights Watch.

<sup>40</sup> See "Bangui amorce la dernière phase d'opérationnalisation de la Cour Pénale Spéciale," *RJDH*, April 26, 2017, <https://rjdh.org/centrafrique-bangui-amorce-derniere-phase-doperationnalisation-de-cour-penale-speciale/> (accessed January 22, 2018); "Update on the Operationalization of the Special Criminal Court," January 2018, on file with Human Rights Watch.

<sup>41</sup> United Nations Security Council, Resolution 2387 (2017), S/RES/2387 (2017), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2387\(2017\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2387(2017)) (accessed February 5, 2018), para. 43(e)(viii).

<sup>42</sup> *Ibid.*, para. 43(e)(ix); United Nations Security Council, Resolution 2301 (2016), S/RES/2301 (2016), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2301\(2016\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2301(2016)) (accessed February 5, 2018), para. 34(d)(viii).

support the operationalization of the Special Criminal Court as part of a “joint project” on the court.<sup>43</sup>

MINUSCA staff have advanced a wide variety of initiatives for the court’s administration over the course of the last year. These include overseeing and recruiting consultants for the development of the draft Rules of Procedure and Evidence; a witness protection strategy, a detention strategy, an outreach strategy, and a draft memorandum of understanding between the SCC and the ICC.<sup>44</sup>

Central African lawyers have shown significant interest and engagement in the progress being made to operationalize the SCC. Members of the legal community were well represented at a two-day workshop convened by the United Nations and the Central African government in October on the draft rules and actively participated in lengthy debates on specific provisions, including related to the rights of victims at the court.<sup>45</sup> This type of engagement can contribute to the court’s positive impact over the long term.

Plans are underway for the Special Criminal Court premises to be located at the former Court of First Instance (*Tribunal de Grande Instance*), although renovations are still needed before it can be functional; these are expected to take until at least until the end of 2018 according to a UN source in the country. Until the renovations are completed, the court is using an apartment building in Bangui as a makeshift premises. The investigators and the prosecutor are expected to work out of the Commissariat Central as of June 2018, which has also undergone renovations.<sup>46</sup>

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<sup>43</sup> UNDP, MINUSCA, and Central African Republic, “Projet conjoint d’Appui à la Cour Pénale Spéciale de la République Centrafricaine,” on file with Human Rights Watch. The collaboration between UN agencies is pursuant to UN Secretary-General, “Decision No. 2012/13 Rule of Law Arrangements,” UN Interoffice Memorandum, September 11, 2012, <http://www.refworld.org/docid/52ca7a2f4.html> (accessed February 6, 2018). See also UNDP and DPKO, “Global Focal Point for Police, Justice & Corrections,” March 2017, [http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access\\_to\\_justiceandruleoflaw/fact-sheet--global-focal-point-for-police--justice-and-correctio.html](http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/fact-sheet--global-focal-point-for-police--justice-and-correctio.html) (accessed February 6, 2018); see also United Nations Security Council, Resolution 2387 (2017), S/RES/2387 (2017), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2387\(2017\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2387(2017)) (accessed February 5, 2018), para. 43(e)(viii).

<sup>44</sup> Human Rights Watch interview with UN staff, Bangui, October 4, 2017; “Update on the Operationalization of the Special Criminal Court,” January 2018, on file with Human Rights Watch.

<sup>45</sup> Workshop on the Draft Rules of Procedure and Evidence, Bangui, October 2 and 3, 2017, attended by Human Rights Watch researcher.

<sup>46</sup> “Update on the Operationalization of the Special Criminal Court,” January 2018, on file with Human Rights Watch.

## IV. Challenges Ahead

Despite these advances, the Special Criminal Court faces significant obstacles that will need to be addressed for the court to succeed. Prosecuting international crimes is difficult for even the most developed justice systems, while the Central African justice system is extremely weak and under-resourced, and the country faces continued violence and violations of human rights. Development of the justice system overall is needed and should be supported by international donors. This section, however, highlights the pending steps and major challenges ahead for the Special Criminal Court to start its investigations and prosecutions.

### Rules of Procedure and Evidence

The SCC is yet to have rules of procedure and evidence, which are necessary for the court to proceed with any prosecutions. While there is some debate as to whether the rules could be properly adopted by the judges of the SCC or need to be adopted by parliament, consensus for their adoption by parliament emerged in 2017.<sup>47</sup> Members of the Central African legal community who spoke to Human Rights Watch suggested that rules that are not adopted by parliament would lack credibility and curtail a positive legacy for the court in the country.<sup>48</sup>

A key challenge is developing rules that are aligned both with international standards and practice and Central African criminal procedure. The role of the Special Criminal Court as a court within the national justice system should not be overlooked, according to Central African lawyers; the court's impact will be limited if local practice and procedure is not integrated into the rules to the extent possible.<sup>49</sup> There also has been significant

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<sup>47</sup> Discussions at Workshop on the Draft Rules of Procedure and Evidence, Bangui, October 2 and 3, 2017, attended by Human Rights Watch researcher; Human Rights Watch interview with SCC staff, Bangui, October 5, 2017. In addition, not all of the judges are appointed at this phase of the court's operations. See Loi Organique, No. 15.003, portant création, organisation et fonctionnement de la cour pénale spéciale, [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=92C4EC76991Fo4C4C1257ECB004E25D5&action=openDocument&xp\\_countryS elected=CF&xp\\_topicSelected=GVAL-992BU6&from=state](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=92C4EC76991Fo4C4C1257ECB004E25D5&action=openDocument&xp_countryS elected=CF&xp_topicSelected=GVAL-992BU6&from=state), art. 71(1).

<sup>48</sup> Discussions at Workshop on the Draft Rules of Procedure and Evidence, Bangui, October 2 and 3, 2017, attended by Human Rights Watch researcher.

<sup>49</sup> Ibid.

contention around key elements of the rules with respect to victims' interests at the SCC, as discussed in the following section.

Several members of the Central African legal community expressed concern to Human Rights Watch that their initial input for the rules was insufficiently reflected in the draft text developed by international consultants and that consultations on the rules took place when the draft was too advanced.<sup>50</sup> At the same time, the drafters committed to make a number of revisions to the rules at the October 2 and 3 workshop to consider the draft rules.

The rules were to be submitted for approval during parliament's last 2017 session. However, revisions and further consideration of them has taken longer than anticipated, and they are expected to be tabled for consideration during parliament's session which began in March.

In early October, the director-general of the Ministry of Justice identified adoption of the rules by parliament as a priority, and committed to press for the swift adoption of the rules to the SCC.<sup>51</sup>

## Victim Reparations

A major issue has been the type of reparations the Special Criminal Court will have the authority to award victims of the crimes. During consultations on the draft rules, Central African lawyers raised concerns that the proposed language on the rules did not envision the possibility of individual reparations, or even collective reparations, and appeared to only permit the award of "symbolic" reparations, such as memorials.<sup>52</sup>

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<sup>50</sup> Human Rights Watch group interview with Central African civil society representatives, Bangui, October 4, 2017.

<sup>51</sup> Intervention at Workshop on the Draft Rules of Procedure and Evidence, Bangui, October 3, 2017, attended by Human Rights Watch researcher.

<sup>52</sup> Discussions at Workshop on the Draft Rules of Procedure and Evidence, Bangui, October 2 and 3, 2017, attended by Human Rights Watch researcher.

Reparations are a common feature of civil law systems, on which the Central African system is based.<sup>53</sup> Victims of crimes committed in the Central African Republic who are working with victim associations highlighted the importance of the opportunity to pursue reparations.<sup>54</sup> Lawyers argued that victims want reparations, that reparations are their right, and that victims will expect reparations.<sup>55</sup>

The question of reparations presents challenges. Central African officials indicate that the government has neither the capacity nor the willingness to pay reparations, while international partners have indicated they are not prepared to fund reparations.<sup>56</sup> Some Central African lawyers suggest that those convicted may have resources that could be utilized to satisfy a reparations award.<sup>57</sup> However, observers question whether any of the leading individuals implicated in the crimes have substantial resources.<sup>58</sup> Recent experience with the trial and conviction of former Chadian dictator Hissène Habré before the Extraordinary African Chambers in Senegal reinforces the difficulties of satisfying reparation awards where there is a lack of resources.<sup>59</sup>

The issue of judicial reparations sharpened in the Central African Republic with the International Criminal Court proceedings against Jean-Pierre Bemba, a former vice president of the Democratic Republic of Congo, who was convicted in March 2016 of

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<sup>53</sup> Human Rights Watch group interview with Central African civil society representatives, Bangui, October 4, 2017; Human Rights Watch interview with SCC staff, Bangui, October 5, 2017; Discussions at Workshop on the Draft Rules of Procedure and Evidence, Bangui, October 2 and 3, 2017, attended by Human Rights Watch researcher. See also *Avocats Sans Frontières, REDRESS, and FIDH, "Le droit à la réparation dans le Règlement de Procédure et de Preuve de la Cour Pénale Spéciale,"* October 2017, [http://www.asf.be/wp-content/uploads/2017/10/ASF-REDRESS-FIDH\\_CPS\\_Reparations\\_201710.pdf](http://www.asf.be/wp-content/uploads/2017/10/ASF-REDRESS-FIDH_CPS_Reparations_201710.pdf) (accessed January 23, 2018). See also *Loi Portant Code De Procédure Pénale Centrafricain, No. 10.002, January 6, 2010,* <http://www.ilo.org/dyn/natlex/docs/SERIAL/88120/100660/F498635820/CAF-88120.pdf> (accessed March 29, 2018), arts. 2-4.

<sup>54</sup> Human Rights Watch group interview with representatives of victims' associations, Bangui, October 3, 2017.

<sup>55</sup> Human Rights Watch group interview with Central African lawyers involved in representing victims in legal proceedings, Bangui, October 3, 2017.

<sup>56</sup> Intervention by the director general of the Ministry of Justice at the Workshop on the Draft Rules of Procedure and Evidence, Bangui, October 3, 2017, attended by Human Rights Watch researcher.

<sup>57</sup> Human Rights Watch group interview with Central African lawyers involved in representing victims in legal proceedings, Bangui, October 3, 2017.

<sup>58</sup> Discussions at Workshop on the Draft Rules of Procedure and Evidence, Bangui, October 2 and 3, 2017, attended by Human Rights Watch researcher.

<sup>59</sup> *Ibid.* See also, for example, Ruth Maclean, "Hissène Habré Ordered to Pay Millions for Crimes Against Humanity in Chad," *Guardian*, July 29, 2016,

<https://www.theguardian.com/global-development/2016/jul/29/hissene-habre-compensation-90m-crimes-against-humanity-chad> (accessed January 23, 2018); "Senegal: Video of Chad Ex-Dictator's Trial," Human Rights Watch news release, December 6, 2017, <https://www.hrw.org/news/2017/12/06/senegal-video-chad-ex-dictators-trial>.

crimes against humanity and war crimes committed in the Central African Republic in 2002 and 2003 by his troops.<sup>60</sup> The ICC is one of the first international courts with the authority to award reparations, and proceedings related to reparations in the Bemba case began in July 2016, but no decision on reparations has been issued yet.<sup>61</sup>

Human Rights Watch and other international and local civil society groups have highlighted the need to avoid foreclosing the opportunity for victims to receive reparations in the SCC rules.<sup>62</sup> As of January 2018, the rules had been updated to include the possibility of collective and individual reparations.<sup>63</sup>

## Victim and Witness Protection and Support

Protection and support before, during, and after war crimes trials for victims and witnesses involved in the cases are crucial to ensuring their safety and well-being, and to fostering their involvement in proceedings. In the Central African Republic, there is little experience with such protection and support, and the risks for victims and witnesses involved with the Special Criminal Court could be high given the sensitive nature of cases, the location of the

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<sup>60</sup> See Géraldine Mattioli-Zeltner, “Dispatches: High-Profile ICC Warning to Commanders on Rape,” Human Rights Watch dispatch, March 21, 2016, <https://www.hrw.org/news/2016/03/21/dispatches-high-profile-icc-warning-commanders-rape>.

<sup>61</sup> *The Prosecutor v. Jean-Pierre Bemba Gombo*, International Criminal Court, ICC-01/05-01/08, Order Requesting Submissions Relevant to Reparations (Trial Chamber III), July 22, 2016, [https://www.icc-cpi.int/CourtRecords/CR2016\\_05353.PDF](https://www.icc-cpi.int/CourtRecords/CR2016_05353.PDF). See also FIDH, “‘All I Want is Reparation’: Views of Victims of Sexual Violence About Reparation in the Bemba Case Before the International Criminal Court,” November 2017, <https://www.fidh.org/IMG/pdf/rca705ang.pdf> (accessed January 25, 2018).

<sup>62</sup> This is consistent with United Nations General Assembly, “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” Resolution 60/147, A/RES/60/147, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/No5/496/42/PDF/No549642.pdf?OpenElement> (accessed February 22, 2017), arts. 11, 15. Several organizations with particular expertise on reparations offered more detailed written recommendations. See Avocats Sans Frontières, REDRESS, and FIDH, “Le droit à la réparation dans le Règlement de Procédure et de Preuve de la Cour Pénale Spéciale,” October 2017, [http://www.asf.be/wp-content/uploads/2017/10/ASF-REDRESS-FIDH\\_CPS\\_Reparations\\_201710.pdf](http://www.asf.be/wp-content/uploads/2017/10/ASF-REDRESS-FIDH_CPS_Reparations_201710.pdf); Avocats Sans Frontières, “Commentaires Sur Le Projet De Règlement De Procédure Et De Preuve Cour Pénale Spéciale – République Centrafricaine (25 Septembre 2017),” October 12, 2017, on file with Human Rights Watch. Human Rights Watch has previously noted the right to reparations for survivors of sexual violence in conflict, both in the Central African Republic and elsewhere. See Human Rights Watch, “*They Said We are Their Slaves*,” pp. 156-157; Human Rights Watch, “*I Just Sit and Wait to Die*: Reparations for Survivors of Kenya’s 2007-2008 Post-Election Violence (New York: Human Rights Watch, 2016), <https://www.hrw.org/report/2016/02/15/i-just-sit-and-wait-die/reparations-survivors-kenyas-2007-2008-post-election#a3a7c3>.

<sup>63</sup> Human Rights Watch telephone interview with civil society representative, Bangui, January 19, 2018; Human Rights Watch interview with UN staff, New York, January 25, 2018.

court in the country where the crimes were committed, and that armed groups continue to control parts of the country.<sup>64</sup>

Among representatives of victims' associations Human Rights Watch interviewed, there is concern over how the court will protect witnesses and victims involved in the proceedings given the security risks.<sup>65</sup> Recent ministerial appointments of individuals believed to be implicated in abuses heightened these concerns.<sup>66</sup>

The law creating the Special Criminal Court and the draft Rules of Procedure and Evidence provide for measures to protect the witnesses and victims.<sup>67</sup> Since 2015, the Security Council also has explicitly authorized MINUSCA to "take measures for the protection of victims and witnesses."<sup>68</sup>

An international practitioner has been appointed to lead witness protection at the SCC, and he will be joined by two additional international advisors and three Central African protection staff.<sup>69</sup> Consultants also have prepared a witness protection strategy for the SCC, although significant effort will still be needed to transform this strategy into a practical plan that can be implemented in the context of the Central African Republic.<sup>70</sup>

Important experience with victim and witness protection and support in cases involving grave crimes conducted in the country where the crimes were committed exists in Africa and should be drawn from as the Central African Republic moves ahead with the SCC's

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<sup>64</sup> For example, Human Rights Watch has previously documented risks for survivors of sexual violence by armed groups in the Central African Republic and how a lack of victim and witness protection could deter survivors from accessing justice, including at the Special Criminal Court. See Human Rights Watch, *"They Said We Are Their Slaves,"* pp. 131-135, 145-146.

<sup>65</sup> Human Rights Watch group interview with representatives of victims' associations, Bangui, October 3, 2017.

<sup>66</sup> *Ibid.*

<sup>67</sup> See Loi Organique, No. 15.003, art. 3; "Projet de règlement de procédure et de preuve – Cour pénale spéciale – République centrafricaine," September 25, 2017, arts. 131-134, on file with Human Rights Watch.

<sup>68</sup> In 2016, the Council also removed the caveat "as conditions allow" from this language, arguably expanding the scope of the UN's obligations in this regard. See United Nations Security Council, Resolution 2217 (2015), S/RES/2217 (2015), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2217\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2217(2015)) (accessed February 5, 2018), para. 32(g)(ii); United Nations Security Council, Resolution 2301 (2016), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2301\(2016\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2301(2016)) (accessed February 5, 2018), para. 34(d)(vii); United Nations Security Council, Resolution 2387 (2017), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2387\(2017\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2387(2017)) (accessed February 5, 2018), para. 43(e)(viii).

<sup>69</sup> Human Rights Watch interview with SCC staff, Bangui, October 6, 2017.

<sup>70</sup> Human Rights Watch interview with UN staff, Bangui, October 4, 2017; Draft Witness Protection Strategy, on file with Human Rights Watch.

cases.<sup>71</sup> Some components of such efforts, such as at the Special Court for Sierra Leone and the domestic trial of rapes committed in the Democratic Republic of Congo, include:

- Initial assessment of concrete risk for individual victims and witnesses;
- Use of pseudonyms and other measures to protect the identities of victims and witnesses from the public, including using closed sessions, as needed;
- Having psychosocial counselors to support victims and witnesses, and ensuring referral of victims for medical care as needed;
- Possible in-country relocation of at-risk victims and witnesses; and
- Post-testimony follow-up with victims and witnesses to assess continued risk, ensure provision of psychosocial and medical care, and to implement additional protection measures as needed.<sup>72</sup>

## Security

Overall security of the premises and court staff is another major challenge for the Special Criminal Court. There are important questions on how to maintain security for investigations and trials in a country where conflict persists, large parts of the country remain under the control of armed groups, and abuses continue to be perpetrated.

Staff working at the SCC expressed concern about conducting effective investigations in this environment.<sup>73</sup> Central African civil society members also identified security as a top challenge for the SCC.<sup>74</sup>

MINUSCA is currently responsible for security for magistrates, including at the premises and proceedings of the court.<sup>75</sup> Armored vehicles provide security at the court's temporary

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<sup>71</sup> See, for example, Human Rights Watch, *Justice on Trial: Lessons from the Minova Rape Case in the Democratic Republic of Congo* (New York: Human Rights Watch, 2015), [https://www.hrw.org/sites/default/files/report\\_pdf/drc1015\\_4up\\_o.pdf](https://www.hrw.org/sites/default/files/report_pdf/drc1015_4up_o.pdf); *Sierra Leone—Justice in Motion: The Trial Phase of the Special Court for Sierra Leone* (New York: Human Rights Watch, 2005), <https://www.hrw.org/report/2005/11/02/justice-motion/trial-phase-special-court-sierra-leone#852c3a>, section V.

<sup>72</sup> *Ibid.*

<sup>73</sup> Human Rights Watch interview with SCC staff, Bangui, October 5, 2017.

<sup>74</sup> Human Rights Watch group interview with Central African civil society members, Bangui, October 4, 2017.

<sup>75</sup> Human Rights Watch group interview with SCC staff, Bangui, October 6, 2017. See also United Nations Security Council, Resolution 2387 (2017), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2387\(2017\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2387(2017)) (accessed February 5, 2018), para. 43(e)(viii).

premises, and all of the international magistrates appointed to the SCC who have arrived in Bangui are benefitting from close protection by military escorts twenty-four hours per day.<sup>76</sup>

The situation has been more complicated for the national magistrates, who are serving in judicial and prosecutor posts at the court.<sup>77</sup> MINUSCA has indicated its willingness to provide close protection for all of the national magistrates, but the force has been unable to provide that protection due to logistical challenges related to the locations of their residences.<sup>78</sup>

The government, MINUSCA, and the national magistrates have proposed a solution for the longer-term: the national magistrates and their families will relocate to a building provided by the government where MINUSCA is prepared to offer close protection, in cooperation with national security forces.<sup>79</sup> However, it remains unclear when and whether the government will make this building available.<sup>80</sup> In the meantime, some of the magistrates and their families have relocated to areas where they are able to benefit from full-time security by MINUSCA and national security forces, and others were in the process of following suit as of February 2018.<sup>81</sup>

## Fair Trials, Legal Representation, and Detention Facilities

Fair trials are required by international standards and are important to ensure war crimes prosecutions foster greater respect for the rule of law. The Special Criminal Court draft rules provide for protection of internationally accepted rights of the accused, including the

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<sup>76</sup> Human Rights Watch interview with UN staff, Bangui, October 4, 2017; Human Rights Watch interview with SCC staff, Bangui, October 5, 2017.

<sup>77</sup> Human Rights Watch interview with SCC staff, Bangui, October 5, 2017; Human Rights Watch group interview with SCC staff, Bangui, October 6, 2017.

<sup>78</sup> Human Rights Watch interview with UN staff, Bangui, October 4, 2017; Human Rights Watch group interview with SCC staff, Bangui, October 6, 2017; Human Rights Watch interview with UN staff, Bangui, October 6, 2017.

<sup>79</sup> Human Rights Watch interview with SCC staff, Bangui, October 5, 2017; Human Rights Watch interviews with UN staff, Bangui, October 4 and October 6, 2017.

<sup>80</sup> Human Rights Watch interview with UN staff, Bangui, October 4 and October 6, 2017; Human Rights Watch exchange with UN staff, Bangui, February 2018.

<sup>81</sup> Human Rights Watch exchange with UN staff, Bangui, February 2018. MINUSCA had also agreed to escort the national magistrates to and from their residences to the current SCC premises from a group assembly point daily until the proposed building provided by the government for their relocation is available. UN representatives acknowledged the importance of identifying better solutions to providing security for the national magistrates. Human Rights Watch separate interviews with UN staff, October 6, 2017, and UN staff, October 6, 2017.

presumption of innocence and the right to counsel. As discussed above, legal aid for indigent victims who are acting as civil parties and accused is also foreseen.

Arrangements to ensure these rights are protected in practice are yet to be determined and external support will be important to ensure the fairness of the proceedings. There is currently no operational program of legal aid to ensure counsel for indigent accused or victims in the country, though a domestic law on legal aid is in development.<sup>82</sup> Local lawyers are also unlikely to have experience with defending individuals accused of the types of crimes under international law which will be prosecuted before the SCC.<sup>83</sup>

The detention infrastructure, and oversight, is also in shambles. Detention centers tend to be severely overcrowded and detainees often stay in pre-trial custody beyond the proscribed legal limits and with little evidence to justify their ongoing detention. Mass escapes have occurred.<sup>84</sup> Given the conditions of detention and prison facilities, UN staff are exploring creating temporary high-security detention cells within Camp de Roux and Ngaragba prison that can hold SCC suspects.<sup>85</sup> Measures to avoid pre-trial detention of suspects beyond legal limits will also be needed.

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<sup>82</sup> Human Rights Watch exchange with UN staff, Bangui, February 2018; Human Rights Watch telephone interview with civil society representative, Brussels, February 2, 2018; Human Rights Watch telephone interview with civil society representative, Bangui, February 7, 2018. See also International Legal Assistance Consortium, “ILAC Rapport d’évaluation de l’état de droit: République Centrafricaine,” 2017, <http://www.ilacnet.org/wp-content/uploads/2017/05/ILACs-Rule-of-Law-Assessment-Report-Central-Africa-Republic-2017-.pdf> (accessed February 5, 2018), p. 39; Avocats Sans Frontières, “L’aide légale en République centrafricaine: État des lieux,” September 2016, [http://www.asf.be/wp-content/uploads/2016/12/ASF\\_CAR\\_AideL%C3%A9gale2016\\_FR\\_PP.pdf](http://www.asf.be/wp-content/uploads/2016/12/ASF_CAR_AideL%C3%A9gale2016_FR_PP.pdf) (accessed February 5, 2018), pp. 25, 39; Human Rights Watch, “*They Said We Are Their Slaves*,” pp. 137-138.

<sup>83</sup> The arrangements for selection of counsel at the SCC and how they interact with the administration of the court and the Central African bar association has also been a matter of ongoing discussion, particularly among Central African lawyers. Discussions at Workshop on the Draft Rules of Procedure and Evidence, Bangui, October 2 and 3, 2017, attended by Human Rights Watch researcher; Human Rights Watch interview with UN staff, New York, January 25, 2018; Human Rights Watch exchange with UN staff, Bangui, February 2018; Human Rights Watch telephone interview with civil society representative, Bangui, February 7, 2018.

<sup>84</sup> Human Rights Watch interview with UN staff, October 6, 2017; “Central African Republic: New Spate of Senseless Deaths,” Human Rights Watch news release, October 22, 2015, <https://www.hrw.org/news/2015/10/22/central-african-republic-new-spate-senseless-deaths>. Inability to ensure that those arrested for crimes committed during the conflict remain in custody has deterred some survivors of atrocities from seeking justice. See Human Rights Watch, “*They Said We are Their Slaves*,” p. 129.

<sup>85</sup> Human Rights Watch exchange with UN staff, Bangui, February 2018.

## Staffing and Administration

While many staff appointments were made in 2017, key positions at the SCC remained vacant. This included the deputy registrar, which is an international post, and 20 judicial police officers, who will conduct investigations for the SCC.

The deputy registrar will play a major role in the overall functioning of the SCC. Traditionally, registrars in international and hybrid courts—including the Special Criminal Court—have far more responsibility than registrars in domestic courts. In the Central African Republic, registrars are focused on organizing court papers and hearings, and have generally worked with proceedings that last a maximum of 10 days.<sup>86</sup> Registrars in international and hybrid war crimes courts regularly oversee victim and witness protection and support, defense representation, and outreach for cases which last far longer, as will also be the case for the Special Criminal Court.

The SCC's chief registrar, who is from the Central African Republic, has shown a strong interest in benefitting from training and sharing of best practice by international staff.<sup>87</sup> He will need extensive support from the deputy registrar, other registry staff, and MINUSCA to ensure the full range of registry responsibilities are adequately addressed. The deputy registrar post was yet to be filled at time of writing.

Appointments of the judicial police officers reinforced the need for vigilance in protecting the court's independence, impartiality, and perceptions thereof. After a first round of appointments that were substantially different than those proposed by a committee organized for their selection, extensive consultations between MINUSCA, the Central African government, and donors took place.<sup>88</sup> Ultimately, the president annulled the appointments that were made, and appointments of the judicial police officers were sent back to the committee of selection for further consideration with an emphasis on greater

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<sup>86</sup> Human Rights Watch interview with SCC staff, Bangui, October 5, 2017.

<sup>87</sup> Ibid.

<sup>88</sup> Human Rights Watch interview with SCC staff, Bangui, November 23, 2017; Human Rights Watch interview with UN staff, New York, January 25, 2018; Human Rights Watch interview with civil society representative, New York, December 16, 2017. See also Jules Crétios, "Centrafrique : la Cour pénale spéciale connaît ses premiers déboirs," *JeuneAfrrique*, November 20, 2017, <http://www.jeuneafrique.com/494234/societe/centrafrique-la-cour-penale-speciale-connaît-ses-premiers-deboires> (accessed January 25, 2018). See also "RCA: le ministre de la Justice suspecté d'ingérence dans la Cour pénale spéciale," *RFI*, November 18, 2017, <http://www.rfi.fr/afrique/20171118-rca-cour-penale-speciale-bangui-minusca-touadera> (accessed January 25, 2018); Decree 17344, October 6, 2017, on file with Human Rights Watch; Arrête Interministeriel No. 184, November 23, 2017, on file with Human Rights Watch.

attention to regional balance, religion, and gender of the officers.<sup>89</sup> The committee recommending candidates was also expanded to include two additional members from the donor community.<sup>90</sup>

On February 20, the president issued a decree nominating the 20 judicial police officers on the basis of the expanded committee's reconsideration of candidates and their updated recommendations.<sup>91</sup>

The judicial police officers are unlikely to have any experience or training in investigating the types of international crimes which will be prosecuted. The UN organized a training for these investigators in April, and additional training, mentorship, and investigative support from international experts will be essential.<sup>92</sup>

With respect to routine administration, SCC staff have faced basic technological problems due to basic deficiency in the country's infrastructure. Internet connectivity was a significant problem for the magistrates when they first assumed their posts, although as of November 2017, basic internet connectivity had been achieved.<sup>93</sup> The Ministry of Justice is also understaffed, which limits their ability to respond quickly in taking steps to operationalize the court and also to offer assistance to the administration of the SCC.<sup>94</sup>

## Outreach

Accumulated experience in the delivery of justice for serious crimes underscores the importance of proactive, deliberate efforts to inform victims and the larger population about the SCC.

Even in the best circumstances, the majority of alleged perpetrators are unlikely to be tried. It is essential to try to minimize misunderstandings that can fuel misperceptions

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<sup>89</sup> Arrête Interministeriel No. 184, November 23, 2017, on file with Human Rights Watch.

<sup>90</sup> Human Rights Watch email correspondence with UN official, Bangui, November 23, 2017; Human Rights Watch meeting with UN staff, New York, January 25, 2018.

<sup>91</sup> Decree 18.051, February 20, 2018, on file with Human Rights Watch.

<sup>92</sup> Human Rights Watch interview with SCC staff, Bangui, October 5, 2017.

<sup>93</sup> Ibid.; Human Rights Watch group interview with SCC staff, Bangui, October 6, 2017; Human Rights Watch telephone interview with UN staff, New York, November 21, 2017.

<sup>94</sup> Human Rights Watch interview with UN staff, Bangui, October 4, 2017; Human Rights Watch interview with SCC staff, Bangui, October 6, 2017.

and false expectations. Effective outreach initiatives can help achieve this and ensure that proceedings have maximum resonance with those that have been most affected by the crimes.<sup>95</sup>

Targeted outreach will also be important to ensure victims of crimes are aware they can apply to be civil parties, how to do so, and that they can have a legal representative. Availability of accurate information will also help against inflated expectations of acting as a civil party.

Central African civil society members place significant value on the need for outreach and in October 2017 told Human Rights Watch that there was a significant need for greater efforts to inform Central Africans about the court and what it intends to accomplish. “We have the impression that there is a deficit of knowledge about the Special Criminal Court at the interior of the country,” Robert, one civil society activist said.<sup>96</sup> “There is a problem of communication,” said another Central African civil society activist, Ali.<sup>97</sup>

Activists noted that outreach activities have been limited to Bangui and to elites, and this is a major concern.<sup>98</sup> Marie, a civil society activist, suggested to Human Rights Watch: “Even in Bangui, nobody knows about the Special Criminal Court, and victims, they do not know the court exists.”<sup>99</sup>

Civil society members also expressed a strong desire to be involved in assisting outreach on the SCC, and frustration that they had not been more integrated in the development of an outreach strategy.<sup>100</sup> While acknowledging that the UN convened initial discussions on outreach with civil society, activists indicated they would like further involvement in the outreach plans.<sup>101</sup>

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<sup>95</sup> See, for example, Human Rights Watch, *Bosnia—Justice for Atrocity Crimes: Lessons of International Support for Trials before the State Court of Bosnia and Herzegovina* (New York: Human Rights Watch, 2012), <https://www.hrw.org/report/2012/03/12/justice-atrocity-crimes/lessons-international-support-trials-state-court-bosnia#f51425>, section V.

<sup>96</sup> Human Rights Watch group interview with Central African civil society members, Bangui, October 4, 2017.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

UN staff working with the SCC have told Human Rights Watch that there is commitment to outreach on the SCC, noting that an outreach strategy has been prepared by a consultant. Initial outreach events had already occurred, such as an outreach event on July 17, 2017 in Bambari in which the ICC also participated, and events in November 2017 in Kaga Bandoro and Ouham Bossangoa.<sup>102</sup> Practical arrangements to conduct further outreach were underway and UN volunteers were being trained to conduct outreach.<sup>103</sup>

More recently, from January 22 to 26, 2018 MINUSCA's Justice and Corrections Section and UNDP organized five workshops on SCC outreach with leaders of human rights and other civil society organizations, judicial actors, youth group leaders, women's associations, and local journalists. One aim of the workshops was to identify individuals who may be well-placed to conduct SCC outreach activities, and who will be offered additional training to strengthen their skills and knowledge base to conduct outreach in the following months.<sup>104</sup>

These are valuable steps as Central Africans should play a major role in conducting outreach on the SCC. They will be far better placed to appreciate the kinds of questions and concerns of the general population with respect to the SCC and to respond to them in ways that will resonate with the population.

## Relationship with the ICC

In addition to conducting investigations and prosecutions,<sup>105</sup> particularly of those implicated in international crimes at the highest levels of responsibility, ICC involvement in the Central African Republic can help foster greater accountability at the national level.

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<sup>102</sup> Announcements on multiple outreach events are posted on the website of the Special Criminal Court. Cour Pénale Spéciale, "Atelier de Sensibilisation des Organisations de la Société Civile sur la Cour Pénale Spéciale" <http://cps-rca.cf/fr/atelier-de-sensibilisation-des-organisations-de-la-societe-civile-sur-la-cour-penale-speciale> (accessed March 6, 2018). See also Human Rights Watch discussion with ICC representative, Bangui, October 6, 2017; MINUSCA, "Bambari accueille des représentants de la justice internationale," July 18, 2017, <https://www.youtube.com/watch?v=rOkA7QpPQMI> (accessed January 25, 2018).

<sup>103</sup> Human Rights Watch interview with UN staff, October 4, 2017.

<sup>104</sup> Human Rights Watch email correspondence with UN staff, New York, January 31, 2018; Human Rights Watch exchange with UN staff, Bangui, February 2018.

<sup>105</sup> The ICC has two investigations in the Central African Republic, one focused on crimes committed during conflict in 2002 and 2003 and one focused on crimes committed since 2012. In the first investigation, a former vice president from the Democratic Republic of Congo, Jean-Pierre Bemba, has been tried and convicted of war crimes and crimes against humanity, and sentenced to 18 years in prison. No suspects have been charged in the second investigation to date. For more details on the ICC's investigations, see Human Rights Watch, *Killing Without Consequence: War Crimes, Crimes Against Humanity and the Special Criminal Court in the Central African Republic*, pp. 79-80.

Under what is known as the principle of complementarity, the ICC is a court of last resort, stepping in only where national authorities are unable or unwilling to try cases domestically. But even where the ICC has launched its own investigations, its officials and staff members can engage with national authorities to build capacity and political will to support additional prosecutions and investigations. Indeed, given that the ICC is likely to bring only a limited number of cases to trial in each situation country, its efforts to help spur national prosecutions could be an essential element in increasing the effect of the court and its long-term legacy.<sup>106</sup>

The ICC is not, and should not be, expected to function as a development agency, but there are a number of concrete ways in which the ICC can contribute to capacity building efforts, including by sharing expertise on international criminal law, investigations, and victim and witness protection and support with national professionals.<sup>107</sup> The ICC has already offered training to the SCC judges, committed to contribute to training of the SCC investigators, and assistance of this nature should be continued.<sup>108</sup>

The ICC should also take a proactive approach to encouraging an effective prosecution strategy by the SCC, including with assistance on specific cases where possible. This approach is consistent with ICC policy to: “provide national authorities with information collected by the Office that could be of assistance to their national proceedings, subject to the existence of a credible local system of protection for judges or witnesses, the integrity of domestic proceedings and other security caveats.”<sup>109</sup>

There will also be a need for the SCC and ICC to coordinate on outreach activities so their efforts are complementary and to minimize confusion of the roles of the two different institutions.<sup>110</sup>

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<sup>106</sup> See International Criminal Court, “Report of the Court on Complementarity,” ICC-ASP/10/23, November 11, 2011, [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP10/ICC-ASP-10-23-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP10/ICC-ASP-10-23-ENG.pdf) (accessed January 25, 2018).

<sup>107</sup> *Ibid.*, para. 35.

<sup>108</sup> Human Rights Watch interview with UN staff, New York, January 25, 2018; Human Rights Watch email correspondence with UN staff, New York, January 31, 2018. See also “Statement by the Prosecutor of the International Criminal Court, Fatou Bensouda, at the Conclusion of Her Visit to the Central African Republic on Friday, 23 March: Collaboration is Key to Closing the Impunity Gap,” International Criminal Court, Office of the Prosecutor press release, March 27, 2018, <https://www.icc-cpi.int/Pages/item.aspx?name=otp-statement-iraq-13-05-2014> (accessed April 5, 2018).

<sup>109</sup> International Criminal Court, Report of the Court on Complementarity, para. 35.

<sup>110</sup> Human Rights Watch discussion with ICC representative, Bangui, October 6, 2017.

In March 2018, the ICC prosecutor and Special Criminal Court special prosecutor exchanged letters on cooperation during a visit by the ICC’s prosecutor to Bangui. According to one ICC staff member, the letters are a “good start” for cooperation between the SCC and the ICC and provide all that would be included in a formal memorandum of understanding which may be considered at a later stage, if deemed necessary.<sup>111</sup>

## Funding

The financial situation of the SCC remains extremely challenging.<sup>112</sup> The SCC is dependent on voluntary and UN contributions, and its budget is complex because funds are made available from a patchwork of sources, some of which restrict the types of work that may be supported with the funding.<sup>113</sup>

Individual government donations to date have been made by the United States, France, and the Netherlands, and governments are also supporting the court by seconding magistrates and other practitioners to the court.<sup>114</sup> Support from the United Nations comes from MINUSCA and UNDP budgets, including budgets for both discretionary project funds and regular funding.<sup>115</sup>

According to documents from January 2018 prepared by UN staff, the SCC will require between US\$10 and \$13.3 million per year to operate over the next five years, which is a modest budget compared to a number of other war crimes courts.<sup>116</sup> For 2018, there is a funding gap of \$5,100,104 out of an estimated budget of \$10.7 million.<sup>117</sup> MINUSCA is expected to seek to allocate approximately \$5 million to the SCC for its 2018-19 budget,

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<sup>111</sup> Human Rights Watch email exchange with ICC staff, The Hague, April 5, 2018.

<sup>112</sup> Human Rights Watch group interviews with UN staff, Bangui, October 4 and October 6, 2017.

<sup>113</sup> Human Rights Watch interview with UN staff, Bangui, October 6, 2017.

<sup>114</sup> Human Rights Watch interview with UN staff, Bangui, October 4, 2017.

<sup>115</sup> Human Rights Watch interview with UN staff, Bangui, October 4, 2017, and two interviews with UN staff, Bangui, October 6, 2017.

<sup>116</sup> “The Special Criminal Court of The Central African Republic: Funding Requirements,” January 2018, on file with Human Rights Watch; Human Rights Watch interview with UN staff, New York, January 25, 2018; see also Rupert Skilbeck, “Funding Justice: The Price of War Crimes Trials,” Human Rights Brief, vol. 15, no. 3 (2008), <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1028&context=hrbrief> (accessed January 22, 2018), pp. 6-10.

<sup>117</sup> “The Special Criminal Court of The Central African Republic: Funding Requirements,” January 2018, on file with Human Rights Watch.

which would make an important contribution to reducing the 2018 and 2019 funding gaps.<sup>118</sup> In addition, the European Union has expressed recent interest in potentially helping to fund the court.<sup>119</sup> If confirmed, the SCC could be able to cover more of its core functions such as payment of the judges' salaries for the year 2018.<sup>120</sup> But some gaps in funding for 2018 expenses are still anticipated, and funding for 2019 and beyond has yet to be secured.<sup>121</sup>

States should step forward to ensure the SCC has all of the necessary funds to function effectively. Otherwise, the opportunity to deliver justice in a country where it is so needed and desired will be squandered.

Moreover, funding should be provided on a continuous sustained basis. Otherwise, court officials can be expected to have to spend substantial time fundraising instead of advancing the court's core functions, as has happened with other war crimes courts.<sup>122</sup>

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<sup>118</sup> Human Rights Watch telephone interview with UN staff, New York, February 2, 2018.

<sup>119</sup> This information was updated on May 15, 2018. Human Rights Watch email exchange with UN staff, New York, April 5, 2018; Human Rights Watch email exchange with UN staff, New York, May 2, 2018.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

<sup>122</sup> Human Rights Watch exchange with officials from the Special Court for Sierra Leone between 2006 and 2013.

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## “Looking for Justice”

### The Special Criminal Court, a New Opportunity for Victims in the Central African Republic

The establishment of the Special Criminal Court (SCC) in the Central African Republic is an unprecedented initiative to deliver justice for victims of brutal crimes committed during conflicts there since 2003. The court, established in 2015, is integrated into the Central African Republic’s domestic judicial system, but staffed by both international and Central African judges, prosecutors, and administrators.

*“Looking for Justice”*: The Special Criminal Court, a New Opportunity for Victims in the Central African Republic discusses the progress, obstacles, and challenges for the SCC in its initial phases to date. It updates developments at the court since Human Rights Watch’s July 2017 report, *Killing Without Consequence: War Crimes, Crimes Against Humanity and the Special Criminal Court in the Central African Republic*.

The SCC has made important progress, especially in 2017, but continues to face intense challenges such as security, protection of victims and witnesses, and funding. While operationalizing the court has taken longer than anticipated, it has involved important steps to protect the court’s credibility, independence, and impartiality. Central African victims, activists, and justice practitioners who spoke to Human Rights Watch reaffirmed an urgent and unequivocal demand for justice for war crimes and crimes against humanity committed in the country. In the period ahead, international partners should provide strong political backing and financial support for this court to succeed, alongside support from the Central African authorities.

*(above) Participants pose with a banner commemorating an outreach workshop on the Special Criminal Court in Bossangoa, Ouham Prefecture, in the Central African Republic on October 30, 2017.*

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*(front cover) Congolese Special Prosecutor Toussaint Muntazini (R) and the five other judges of the Special Criminal Court (SCC)—which is to investigate and prosecute crimes against humanity and war crimes committed in the Central African Republic since 2003—sit at the National Assembly in Bangui, having been sworn in on June 30, 2017.*

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