

ONE STEP FORWARD, TWO

STEPS BACKWARDS

JUSTICE IN THE CENTRAL AFRICAN REPUBLIC

Very few alleged war criminals have been arrested, prosecuted or tried for the numerous war crimes and crimes against humanity committed in the country in the past two decades. The Special Criminal Court, a UN-sponsored hybrid tribunal, is hitting serious difficulties to fulfil its mandate.

An accused person is wringing his hands in court at the Bangui criminal court in Bangui on January 15, 2020. This was during the last criminal session held in the Central African Republic. © AFP via Getty Images



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1. EXECUTIVE SUMMARY

“We [need] to see the real persecutors being tried, those who may have been at the head of the state or state institutions, and the leaders of rebel groups.”

A woman member of a civil society group, Bangui, October 2021

The present briefing is based on information gathered on justice-related of the past year developments in Central African Republic (CAR) and interviews conducted with more than 40 people in Bangui in October 2021. It is a follow-up to Amnesty’s report titled *“On trial, these warlords lowered their eyes”, The Central African Republic’s Challenging Pursuit of Justice*, published in October 2020.

CAR has suffered waves of violence and armed conflicts since 2002, with numerous crimes under international law being committed with impunity. In December 2020, a new presidential election took place which led to a period of renewed violence, accompanied by human rights violations and abuses by armed groups, CAR military and their allies.

But, despite CAR government’s promises, very few individuals suspected of criminal responsibility for war crimes or crimes against humanity in CAR have been arrested, prosecuted or tried to date. In early 2020, five anti-Balaka leaders – Kevin Bere Bere, Romaric Mandago, Crepin Wakanam, Patrick Gbiako and Yembeline Mbenguia Alpha – were found guilty for the killings of 72 people during the 13 May 2017 attack in Bangassou by a criminal court in Bangui. In parallel, a few trials are ongoing at the ICC – those of Ngaissona, Yekatom and Said.

The Special Criminal Court (SCC), a UN-sponsored hybrid court based in Bangui, was created to fill this accountability gap, as a complementary mechanism to the ICC and the ordinary criminal courts. It started its work over 3 years ago, but it is hitting a major difficulty: the arrest warrants the Court issued are not carried out. At least 25 suspects are subject to arrest warrants but CAR police forces nor MINUSCA is arresting them. In fact, one suspect, Hassan Bouba Ali, was arrested in November 2021 only to be released a few days later by CAR *gendarmerie*, by force and without authorisation from the judges. CAR authorities released a suspect in a move which defies judicial authority, violates the law and their commitments, and disregards victims and survivors’ rights to truth and justice.

In parallel, CAR criminal courts have completely stopped their criminal sessions for over 20 months, leaving victims with no recourse and accused people in pre-trial detention for unreasonable periods of time. Military courts on the other hand have resumed their activities, however they appear to exercise jurisdiction over cases of crimes committed against civilians, which should be brought to ordinary courts or the SCC instead.

CAR authorities and partners, including the UN, partner States and donors, must take all feasible measures to fulfil their commitments towards accountability, including by pushing for, and assisting in, the arrests and prosecutions of all suspects, regardless of the rank or political position they hold. More also needs to be done to ensure the independence and transparency of the SCC, in particular through the transfer of its financial and administrative management to a fully operationalized Registry within the Court and through better communication about ongoing cases before the SCC.

2. BACKGROUND

2.1 METHODOLOGY

From 17 to 28 October 2021, delegates visited Central African Republic (CAR) and had 35 meetings with 44 people, including 33 men and 11 women, from government, civil society, media, international NGOs, diplomats, Central African judicial system including the Special Criminal Court and ordinary tribunals, and the International Criminal Court. In addition to the interviews, the delegates also analysed various documents including legal texts, UN and NGO reports, and speeches made by the authorities in the context of the fight against impunity.

Letters were also sent to CAR Ministry of Justice, the MINUSCA and the UNDP for additional information and reply on 22 November 2021. On 2 December, the UNDP offered to organize a meeting rather than respond by writing, and on 3 December the MINUSCA replied through a confidential letter. As of 6 December, no response was received from the Ministry of Justice.

The present briefing is intended to be an update and follow-up to Amnesty's report titled "On trial, these warlords lowered their eyes", *The Central African Republic's Challenging Pursuit of Justice*, published in October 2020.¹

2.2 SITUATION IN CAR

CAR has suffered waves of violence and armed conflicts since 2002, with numerous crimes under international law and other serious violations and abuses of human rights being committed with impunity. Thousands of civilians were killed, raped, abducted, mutilated, wounded, displaced or had their homes burned. These war crimes and crimes against humanity were committed especially in the 2002-2003² conflict between troops of the former President Ange-Félix Patassé and armed groups headed by François Bozizé, and after 2012 by the Seleka, initially led by former President Michel Djotodia and the anti-Balaka groups associated with Bozizé. Despite the presence of UN peacekeeping forces since 2013³ and successive negotiations to end violence, including the February 2019 peace agreement, violence continues to this day, with regular attacks against civilian populations, killings and other crimes by armed groups, CAR military and their allies.

Presidential elections were held on 27 December 2020. President Faustin-Archange Touadera was re-elected for a 5-year term in 2021 after the confirmation of the results by the Constitutional Court on 18 January 2021.⁴ Prior to this, on 3 December 2020, the candidacy of François Bozizé, was invalidated by the Constitutional Court.⁵ The latter has been wanted under an international arrest warrant since May 2013⁶ on charges of murder, arrest, detention, arbitrary sequestration, torture, summary and extrajudicial executions.

On 17 December 2020, six armed groups merged to create the Coalition of Patriots for Change

¹ Amnesty International, "On trial, these warlords lowered their eyes", *The Central African Republic's Challenging Pursuit of Justice*, (thereafter 'the 2020 report'), (Index AFR 19/3185/2020), October 2020, [amnesty.org/en/documents/afr19/3185/2020/en/](https://www.amnesty.org/en/documents/afr19/3185/2020/en/)

² Rapport du projet mapping documentant les violations du droit international des droits de l'Homme et du droit international commises sur le territoire de la République Centrafricaine de janvier 2003 à décembre 2015 ; Rapport du Secrétaire général des Nations-Unies sur la situation au Tchad et en République Centrafricaine, 2006, [un.org/fr/documents/view_doc.asp?symbol=s/2006/1019](https://www.un.org/fr/documents/view_doc.asp?symbol=s/2006/1019)

³ Amnesty International, *Central African Republic: Human rights crisis spiraling out of control*, October 2013 (index AFR 19/003/2013), [amnesty.org/en/documents/AFR19/003/2013/en/](https://www.amnesty.org/en/documents/AFR19/003/2013/en/)

⁴ France 24, « Centrafrique : la réélection du président Touadéra validée par la Cour constitutionnelle », 18 January 2021, [france24.com/fr/afrique/20210118-centrafrique-la-r%C3%A9%C3%A9lection-du-pr%C3%A9sident-touad%C3%A9ra-valid%C3%A9-par-la-cour-constitutionnelle](https://www.france24.com/fr/afrique/20210118-centrafrique-la-r%C3%A9%C3%A9lection-du-pr%C3%A9sident-touad%C3%A9ra-valid%C3%A9-par-la-cour-constitutionnelle)

⁵ Cour Constitutionnelle, Decision N°026/CC/20 du 3 décembre 2020 arrétant la liste définitive des candidats à l'élection présidentielle du 27 décembre 2020

⁶ Mandat d'arrêt international contre l'ex-président centrafricain François Bozizé, 31 May 2021, reported by Le Monde, [lemonde.fr/afrique/article/2013/05/31/mandat-d-arret-international-contre-l-ex-president-centrafricain-francois-bozize_3421866_3212.html](https://www.lemonde.fr/afrique/article/2013/05/31/mandat-d-arret-international-contre-l-ex-president-centrafricain-francois-bozize_3421866_3212.html)

(CPC).⁷ On 18 December 2020, they launched a series of attacks on several cities⁸ before attacking the capital Bangui on 13 January 2021.⁹ The attack was repelled by the national armed forces, their allies (mercenaries, the Rwandan armed forces) and the peacekeepers of MINUSCA.¹⁰

The conflict then entered another phase - pushing the CPC back from the positions it had occupied. In this phase, the government again benefited from the support of mercenaries,¹¹ and Rwandan forces¹². Numerous human rights violations and abuses were committed by all parties. There were several cases of summary executions, homicide, torture, looting, arson and sexual violence.¹³

In March 2021, the UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination wrote a letter to the Central African Government bringing to its attention information on violations committed by mercenaries used alongside the National Forces, including extrajudicial executions, acts of torture and enforced disappearances.¹⁴ The Government responded¹⁵ by setting up a Commission of Inquiry into the subject.¹⁶ In October 2021 the Minister of Justice hosted a press conference during which he announced the conclusions of the latter, without the report being made public. He claimed that while most of the violations had been committed by the CPC, "Russian instructors" and national forces had also committed violations.¹⁷

It was in this context that CAR President affirmed on 16 July 2021, the start of the judicial year 2020-2021, his "will to fight against social injustice and impunity." He added that he "believes that justice builds a nation, but impunity is the shame of the people." He also urged the Special Criminal Court (SCC) to "work tirelessly to ensure that investigations are completed, and that trials can come to light quickly."

3. ALLEGED RESPONSIBLE FOR WAR CRIMES AND CRIMES AGAINST HUMANITY IN CAR MOSTLY REMAIN FREE, EVEN WHEN SUBJECT TO ARREST WARRANTS

3.1 VERY FEW INDIVIDUALS ARRESTED AND PROSECUTED TO DATE

Very few individuals suspected of criminal responsibility for war crimes or crimes against humanity in CAR have been arrested, prosecuted or tried to date. Jean-Pierre Bemba, president of a Congolese armed group which operated in CAR in 2002-2003, was arrested in 2008, transferred to the

⁷ Declaration de Kamba Koto, dénonciation de l'accord pour la paix et la réconciliation en République centrafricaine, 17 December 2020. The coalition is made up the Retour, Reclamation et Rehabilitation group (3R), the Unit for Peace in the Central African Republic (UPC), the Patriotic Movement for the Central African Republic (MPC), the Popular Front for the Renaissance of the Central African Republic (FPRC), and the two Anti-Balaka wings (Mokom and Ngaïssona).

⁸ CPC, déclaration numéro 1, 17 December 2020.

⁹ La Croix, « Centrafrique: premières attaques rebelles aux environs de Bangui », 13 January 2021, [la-croix.com/Centrafrique-premieres-attaques-rebelles-contre-Bangui-2021-01-13-1301134642](https://www.la-croix.com/Centrafrique-premieres-attaques-rebelles-contre-Bangui-2021-01-13-1301134642)

¹⁰ AP, Central African Republic soldiers repel rebels at capital, 13 January 2021, [apnews.com/article/faustin-archange-touadera-bangui-elections-africa-united-nations-abd7ee15e1864bf5d2321b30e9a4e6bc](https://www.apnews.com/article/faustin-archange-touadera-bangui-elections-africa-united-nations-abd7ee15e1864bf5d2321b30e9a4e6bc)

¹¹ The UN authorized the deployment of Russian "instructors" to train the Central African army in 2018; however in 2021 we observed the direct involvement of the Russian private company Wagner, through its combatants, in the fighting of the conflict. FranceInfo « La Russie équipe et forme les soldats de l'armée en Centrafrique », 24 March 2018, [francetvinfo.fr/monde/afrique/politique-africaine/la-russie-equipe-et-forme-les-soldats-de-larmee-en-centrafrique_3056381.html](https://www.francetvinfo.fr/monde/afrique/politique-africaine/la-russie-equipe-et-forme-les-soldats-de-larmee-en-centrafrique_3056381.html)

¹² Ministry of Defence, Rwanda deploys force protection troops to Central African Republic, 20 December 2020, [mod.gov.rw/news-detail/rwanda-deploys-force-protection-troops-to-central-african-republic](https://www.mod.gov.rw/news-detail/rwanda-deploys-force-protection-troops-to-central-african-republic)

¹³ Amnesty International, « République centrafricaine. Une enquête d'Amnesty révèle l'horreur de violences liées au conflit et aux élections », 25 February 2021, [amnesty.org/fr/latest/press-release/2021/02/central-african-republic-amnesty-investigation-reveals-full-horror/](https://www.amnesty.org/fr/latest/press-release/2021/02/central-african-republic-amnesty-investigation-reveals-full-horror/)

¹⁴ UN, Letter No. AL CAF 1/2021, 26 March 2021, [spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26025](https://www.spcmmreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26025)

¹⁵ Ministry of Foreign Affairs, Letter No. 0030/MAECE.21, 3 June 2021, [spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=36387](https://www.spcmmreports.ohchr.org/TMResultsBase/DownloadFile?gld=36387)

¹⁶ CAR government, Arrêté N°14/21/MIDHGS/ DIRCAB, 4 Mai 2021

¹⁷ RFI, « RCA : le rapport de synthèse de la commission d'enquête spéciale laisse des questions en suspens », 3 October 2021, [rfi.fr/fr/afrique/20211002-rca-le-rapport-de-synth%C3%A8se-de-la-commission-d-enqu%C3%AAtte-sp%C3%A9ciale-laisse-des-questions-en-suspens](https://www.rfi.fr/fr/afrique/20211002-rca-le-rapport-de-synth%C3%A8se-de-la-commission-d-enqu%C3%AAtte-sp%C3%A9ciale-laisse-des-questions-en-suspens)

International Criminal Court (ICC) and acquitted ten years later¹⁸. Then, in early 2020, five anti-Balaka leaders – Kevin Bere Bere, Romaric Mandago, Crepin Wakanam alias Pino Pino, Patrick Gbiako and Yembeline Mbenguia Alpha – were tried for the killings of 72 people during the 13 May 2017 attack in Bangassou and were found guilty of war crimes and crimes against humanity by the criminal court of Bangui.¹⁹

A few other judicial proceedings have started. In 2018 two other anti-Balaka leaders Alfred Yekatom and Patrice-Edouard Ngaïssona were arrested; they are currently being tried at the ICC for various crimes, including attacks against civilians, killings, displacements, torture, use of child soldiers, persecution and other crimes allegedly committed between September 2013 and December 2014.²⁰ 21 other individuals were also arrested and brought before the SCC in 2019 and 2020, but charges pending against them are unknown (see box below).



Advertising board informing the population about the opening of Said's confirmation of charges hearing before the ICC in the streets of Bangui, October 2021. © Amnesty International

In addition, this year three notable additional arrests took place: ex-Seleka commander Mahamat Said Abdel Kani was handed over to the ICC in January 2021. He is suspected of involvement in crimes of torture, cruel treatment, enforced disappearance and persecution allegedly committed in Bangui in 2013²¹. Eugene Barret Ngaïkosset²² and Hassan Bouba Ali²³ were arrested in September and November 2021 respectively and brought before the SCC on charges of war crimes and crimes against humanity – further details on the charges have not been made public yet.

However, in a highly surprising and disappointing move, Hassan Bouba Ali was released a few days after his arrest, without authorisation from the SCC judges. Indeed, on 19 November he was brought before SCC investigating judges for his first appearance as a suspect in the presence of his lawyer. Upon request from his defence lawyer for additional time, judges ordered his pre-trial detention until 26 November, at which date another hearing would be organized.²⁴ In the morning of 26 November,

¹⁸ ICC, “Bemba case”, [icc-cpi.int/car/bemba](https://www.icc-cpi.int/car/bemba)

¹⁹ Amnesty International, ‘the 2020 report’, Chapter 5, Section 5.2.2. The written judgment was unfortunately still unavailable in October 2021 when Amnesty delegates travelled to Bangui.

²⁰ ICC, “Yekatom and Ngaïssona case”, [icc-cpi.int/car/II/yekatom-nga%C3%AFsso](https://www.icc-cpi.int/car/II/yekatom-nga%C3%AFsso)

²¹ ICC, “Said case”, [icc-cpi.int/car/II/said](https://www.icc-cpi.int/car/II/said)

²² SCC, “Comparution initiale d’Eugène NGAÏKOSSET devant la CPS”, 10 September 2021, [cps-rca.cf/actualites/Comparution-initiale-d-Euga%EF%BF%BDne-NGAÏKOSSET-devant-la-CPS/94/](https://www.cps-rca.cf/actualites/Comparution-initiale-d-Euga%EF%BF%BDne-NGAÏKOSSET-devant-la-CPS/94/)

²³ SCC, “Communiqué de presse officiel relatif à l’arrestation de Monsieur Hassan Bouba Ali », 22 November 2021, [cps-rca.cf/actualites/COMMUNIQUE-DE-PRESSE-OFFICIEL-RELATIF-A-L-ARRESTATION-DE-MONSIEUR-HASSAN-BOUBA-ALI/96/](https://www.cps-rca.cf/actualites/COMMUNIQUE-DE-PRESSE-OFFICIEL-RELATIF-A-L-ARRESTATION-DE-MONSIEUR-HASSAN-BOUBA-ALI/96/); Justice Info.Net, « Hassan Bouba : a rebel minister before the Special Court », 23 November 2021, [justiceinfo.net/en/84610-hassan-bouba-rebel-minister-before-special-court.html](https://www.justiceinfo.net/en/84610-hassan-bouba-rebel-minister-before-special-court.html)

²⁴ SCC, Cabinet d’Instruction No. 1, Ordonnance aux fins d’incarcération, 19 November 2021, On file with Amnesty International; SCC, « Communiqué de presse », 26 November 2021, [cps-rca.cf/documents/COMMUNIQUE_DE_PRESSE_CPS_2611.pdf](https://www.cps-rca.cf/documents/COMMUNIQUE_DE_PRESSE_CPS_2611.pdf)

the SCC unit in charge of bringing Hassan Bouba from the prison to the Court was refused access to the detention center.²⁵ Instead, he was released from prison that same day by CAR security forces (*gendarmerie*) and brought home, and thus also failed to go to his hearing.²⁶

The SCC qualified what happened as the escape of a suspect, constituting an obstacle to the proper functioning of justice. Many people among CAR civil society reacted with disapproval, anger or astonishment.²⁷ CAR bar association published a statement in which it “firmly condemns” what happened and called on all lawyers to go on strike²⁸. Demonstrations in front of the SCC building were also organized by lawyers.



Screenshot of a [tweet](#) posted by JFJustice on 3 December 2021.

²⁵ SCC, « Communiqué de presse », 26 November 2021, cps-rca.cf/documents/COMMUNIQUE_DE_PRESSE_CPS_2611.pdf

²⁶ SCC, « Communiqué de presse officiel relatif à l'évasion du suspect Ali Bouba Hassan », 26 November 2021, first version of the press release on file with Amnesty International, second version cps-rca.cf/actualites/COMMUNIQUE-DE-PRESSE-RELATIF-A-L-EVASION-DU-SUSPECT-ALI-BOUBA-HASSAN/98/

²⁷ Radio Ndeke Luka, « Centrafrique : vague de réactions après l'extraction de Hassan Bouba Ali », 29 November 2021, radiondekeluka.org/actualites/justice/37801-centrafrique-vague-de-reactions-apres-l-extraction-de-hassan-bouba-ali.html ; RFI, “Centrafrique: les réactions indignées se succèdent après la sortie de prison d'Hassan Bouba », 30 November 2021, rfi.fr/fr/afrique/20211128-centrafrique-les-r%C3%A9actions-indign%C3%A9es-se-succ%C3%A8dent-apr%C3%A8s-la-sortie-de-prison-d-hassan-bouba ; Radio Guira FM, interview of lawyer Arnaud Yakili, 2 December 2021, soundcloud.com/minusca/2021-12-02-fr-dr-arnaud-yakili?si=b3a7369bf394484e86af321488f80558&fbclid=IwAR0GkrD8xnAWbYr6C7dcXVGat03YHFRbkwuUEcXonqsO6kNTr1UpZw3VPf4 ; Radio Ndeke Luka, debate with SCC spokesperson Gervais Opportun Bodangai and lawyer Arlette Sombo Dibebe and politicians, 4 December 2021, radiondekeluka.org/debats/patara/37816-quel-avenir-pour-la-justice-centrafricaine-apres-la-liberation-d-hassan-bouba.html

²⁸ CAR bar association (Barreau de la République Centrafricaine), Ordre des Avocats, ‘Communiqué de presse du barreau de Centrafrique’, 30 November 2021, on file with Amnesty International.

In a press release from the Ministry of Justice dated 2 December,²⁹ CAR authorities explained that they released Hassan Bouba Ali on 26 November because the order to detain him was “outdated”. The press release also stated that the Ministry of Justice was not aware of the arrest nor the release of the suspect, and that the Ministry “deplores the lack of communication between the SCC and the ministry”. In fact, the order by the investigating judges was valid until 26 November 10 am, and it became outdated after 10 am only due to the prison’s authorities refusal to hand the suspect over to the SCC unit beforehand. The decision to extend his pre-trial detention or to provisionally release him was in the judges’ hands and should have been made during the hearing to be held on the same day.³⁰ Neither the prison authorities nor the ministry have the authority to order a release. In addition, judges of the SCC are independent, they have no obligation to report to the Ministry of Justice. CAR authorities acted in violation of a judicial decision, violating the law and their commitments to the fight against impunity and disregarding the victims and survivors’ rights and demands for justice.

Finally, the press release concludes by recalling that the proceeding against Hassan Bouba Ali is not suspended nor ended, and that the Ministry “orders all police officers to implement all decisions by the SCC, according to law”. Nevertheless, as of 6 December 2021, Hassan Bouba Ali was not re-arrested yet nor has he yet appeared before the SCC judges again. Information about other past or ongoing proceedings before CAR tribunals is difficult to obtain, due in part to lack of written judgments or lack of public information. To the best of Amnesty International’s knowledge, all other proceedings before ordinary tribunals appear to deal with minor crimes or crimes against the state (such as breach of state security, rebellion against the state, etc), rather than on the serious crimes people suffered in the context of the conflict.³¹

Given the scale and the gravity of crimes committed in the country since 2002 (see background chapter), the above-mentioned proceedings are far from enough to address the needs for justice. The vast majority of victims and survivors are still waiting for truth and justice. One member of CAR civil society told us: “We don’t need the judgments of the second rank persecutors but rather to see the real persecutors being tried, those who may have been heads of the State or state institutions, and the leaders of rebel groups”.³² Many more people suspected to be responsible for perpetrating atrocities in CAR in the past two decades, including those who hold the most responsibility for these atrocities, must be brought to the courts.

The SCC, a UN-sponsored hybrid court based in Bangui, was created to fill this accountability gap, as a complementary mechanism to the ICC and the ordinary criminal courts. The SCC is a hybrid tribunal created in 2015 to investigate and prosecute crimes under international law and other serious human rights violations committed in CAR since January 2003.³³

²⁹ Justice Ministry (Ministère d’Etat chargé de la Justice, de la Promotion des Droits Humains et de la Bonne gouvernance), ‘Communiqué de presse relatif à l’affaire Hassane Ali Bouba’, 2 December 2021, signed by the General Director of Detention services. The press release became known to the public on 5 December, it is for instance available on the media Le Potentiel Centrafricain’s website at lepotentielcentrafricain.com/centrafrique-le-ministere-detat-charge-de-la-justice-se-prononce-sur-laffaire-hassan-ali-bouba-et-rassure-que-la-procedure-suit-son-cours/

³⁰ Loi organique No. 15-003 portant création, organisation et fonctionnement de la Cour Pénale Spéciale (SCC Statute), 3 June 2015, cps-rca.cf/documentation.php?idcategorie=14, articles 72 and 95 ; SCC, Cabinet d’Instruction No. 1, Ordonnance aux fins d’incarcération, 19 November 2021, paras. 16 to 20, On file with Amnesty International.

³¹ For a more comprehensive analysis: Amnesty International, ‘the 2020 report’, Chapter 5, Section 5.2.1.

Since the publication of our latest report, in May 2021, 25 alleged CPC members were arrested but charges only seem to relate to crimes against the state. RadioNdekeLuka, “RCA: une vingtaine d’hommes armés présumés arrêtés puis présentés aux autorités”, 2 May 2021, radiondekeluka.org/actualites/justice/36888-rca-une-vingtaine-d-hommes-armes-presumes-arretes-puis-presentes-aux-autorites.html

In November 2021, an investigating judge from Bangui criminal court ordered that 26 people including the former President Francois Bozizé, Noureddine Adam, Ali Darassa, Alkathim Mahamat, Maxim Mokom to be sent to trial, but again charges only relate to crimes against the state (such as rebellion, breach of state security, etc) except one charge of ‘assassination’, for which it is unclear what it refers to. RFI, “Centrafrique: des poursuites judiciaires entamées contre des chefs de groupes armés », 14 November 2021, rfi.fr/fr/afrique/20211114-centrafrique-des-poursuites-judiciaires-entam%C3%A9es-contre-des-chefs-de-groupes-arm%C3%A9s

³² Interview with a member of a civil society group, Bangui, 21 October 2021

³³ To know more about the SCC: Amnesty International, ‘the 2020 report’, Chapter 4, box pages 17-19



Q/A ON SUSPECTS CURRENTLY BEFORE THE SCC

Who are the suspects already detained for the SCC and what have they done?

22 individuals are currently in pre-trial detention on the order of the SCC.

21 individuals were arrested in 2019 and 2020 whose identities have not yet been disclosed: three individuals were arrested following the killings committed in Paoua in May 2019, nine individuals were arrested on 19 May 2020 in connection to killings perpetrated in Ndele in 2019 and 2020, and nine other individuals were arrested on 25 May in relation to attacks against civilians committed in Bambouti, Obo and Zemio in 2020³⁴.

More recently, Eugene Barret Ngaikosset and Hassan Bouba Ali were arrested in September 2021 and November 2021 respectively³⁵. The SCC informed the public that they were being prosecuted for charges of war crimes and/or crimes against humanity, although the Court did not specify which specific crimes. Hassan Bouba Ali was however released by CAR defence or security forces on 26 November 2021, without any authorisation from the judges, while he was expected to appear at the SCC on the same day (see above).

According to Human Rights Watch, Ngaikosset is allegedly responsible for the killing of dozens of civilians and the burning of thousands of homes in the country's northwest and northeast between 2005 and 2007 as commander in the Presidential Guard, as well as other crimes committed in Bangui in 2015 as a leader of an anti-balaka armed group³⁶.

Hassan Bouba Ali was the Minister of Livestock and Animal Health at the time of the arrest, and is a former leader of the armed group UPC. The NGO The Sentry has alleged that he is responsible for an attack carried out against a camp of displaced people in Alindao in November 2018³⁷, in which more than 70 civilians were killed, including children³⁸.

Under what circumstances were they arrested?

It seems that the 22 individuals detained for the SCC were opportunistic cases, arrested either by CAR security forces or the MINUSCA and then transferred to the SCC.

The arrest of Hassan Bouba Ali in November 2021 was the first time that a person was arrested and brought to the SCC pursuant to the execution of an arrest warrant issued by the SCC. At first, its arrest showed a great step for the fight against impunity, but his release a few days later in contradiction with the judges' decision (see above) sadly demonstrates that CAR authorities are in fact ready to contravene judicial authority and to release people from detention to protect some individuals currently in position of power. As long as the competent police forces refuse to carry out SCC arrest warrants and to execute SCC decisions, the SCC will not be in control of its prosecutorial strategy and will be vulnerable to political interference.

When are they going to trial?

The SCC has recently declared that it will open its first trials in December 2021 or early 2022, but no information is available with regards to which cases and which suspects will be concerned.

Individuals currently in pre-trial detention should be sent to trial in a reasonable delay or be provisionally

³⁴ Amnesty International, 'the 2020 report', Chapter 4, Section 4.2.2.

³⁵ SCC, press releases quoted in footnotes 22 and 23 above

³⁶ Human Rights Watch, *Central African Republic, State of Anarchy, Rebellion and Abuses against Civilians*, September 2007, hrw.org/sites/default/files/reports/car0907webwcover_0.pdf; Human Rights Watch, "Central African Republic: Important Step for Justice, Special Criminal Court Charges Sanctioned Commander", September 2021, hrw.org/news/2021/09/14/central-african-republic-important-step-justice

³⁷ The Sentry, *Cultivating atrocities, French Sugar and Beverage Giant Castel Group Linked to the Funding of Brutal Militias in Central African Republic*, August 2021, thesentry.org/reports/cultivating-atrocities/

³⁸ Amnesty International, *Everything was in flames, The attack on a displaced persons camp in Alindao*, December 2018, amnesty.org/en/documents/afr19/9573/2018/en/

released. Before the SCC, maximum time limits for pre-trial detention are 2 years, 6 months and 9 days³⁹. This raises real concerns about the three individuals detained since 2019, whom legal basis and exact period of detention are unclear in the absence of public judicial decisions, but their period of pre-trial detention is likely to be close or past maximum time limits.

3.2 SCC ARREST WARRANTS NOT EXECUTED

The Court has issued 25 (secret) arrest warrants.⁴⁰ Some of them have been out for over a year.

The Special Police Unit for the SCC⁴¹ is the body primarily tasked with carrying out arrests. It is a police unit composed of CAR police officers and gendarmes who have been seconded to the Court and therefore take their orders from the SCC prosecutor and judges. In addition, and upon request from the SCC, MINUSCA may second UNPOL officers to the Special Police Unit for the SCC too.⁴²

The Court may also request other CAR security forces⁴³ or MINUSCA to assist in the execution of arrest warrants. Paragraph 35(f) of the November 2021 UNSC resolution renewing MINUSCA's mandate enables the UN mission "to support for national and international justice" and expressly includes that the MINUSCA can "provide technical assistance [...] to facilitate the operationalisation and the functioning of the SCC, in particular in the areas of investigations, arrests [...]", and more broadly than just for the SCC, it can "without prejudice to the primary responsibility of the CAR authorities, support [...] through apprehending and handing over to the CAR authorities, those in the country responsible for crimes involving serious human rights violations [...], so that they can be brought to justice."⁴⁴

Specific reasons for the non-execution of each arrest warrant cannot be disclosed, in order to preserve the confidentiality of these warrants. However, challenges may include:

- operational difficulties, including with regards to identifying and localizing suspects, accessing certain geographical areas if they are controlled by armed groups, ensuring the operation would not put lives of civilians in the area at risk, nor the lives of the officers carrying out the operation, whether during the operation or by retaliation;
- jurisdictional barriers in case the individual subject to the arrest warrant has crossed borders and is currently located on the territory of another state;
- CAR authorities and/or UN authorities simply refusing or delaying the execution of an arrest warrant for political reasons.

Indeed, operational difficulties in the current context of the ongoing conflict in CAR and the capacity limitations of both CAR police (including the Special Unit) and MINUSCA forces are not in doubt. However, Amnesty International's research concludes that the lack of political will – whether from CAR authorities and/or UN authorities – is also an obstacle, at least in some of these cases. The execution rate is extremely low (1 out of 25 – although the one carried out was followed by the unwarranted release of the suspect a few days later) and, as the case of Hassan Bouba Ali shows, all these suspects are not located in inaccessible areas or outside the country.

³⁹ SCC Rules, articles 67(G), 97(F) and (G). For more explanation on time limits of pre-trial detention in CAR: Amnesty International, 'the 2020 report', Chapter 4, box page 26.

⁴⁰ SCC, "Audience accordée par le Président de la République Chef de l'Etat, Son Excellence le professeur Faustin Archange Touadéra, Président du Conseil Supérieur de la Magistrature à la CPS", 31 August 2021, cps-rca.cf/actualites/

⁴¹ Loi organique No. 15-003 portant création, organisation et fonctionnement de la Cour Pénale Spéciale (SCC Statute), 3 June 2015, cps-rca.cf/documentation.php?idcategorie=14, articles 28 and 30; Loi No. 18-010 portant règlement de procédure et de preuve devant la Cour Pénale Spéciale de la république centrafricaine (SCC Rules), 2 July 2018, cps-rca.cf/documentation.php?idcategorie=15, articles 60, 61, 67, 72, 92, 95, 96 and 97.

⁴² SCC Statute, article 32; SCC rules, article 60.

⁴³ SCC Statute, articles 38 and 43; Loi No. 10-002 portant code de procédure pénale centrafricaine (CAR criminal procedure code), 6 January 2010, cps-rca.cf/documentation.php?idcategorie=16, articles 11 and 85.

⁴⁴ UN Security Council (UNSC), Resolution 2605 (2021), 12 November 2021, UN Doc. S/RES/2605 (2021), paras 35(f)(iv) and (vii). See also para 35(f)(i) and (iii) for other basis to their power to arrest individuals in CAR.

As far as the UN Mission is concerned, MINUSCA has already carried out several arrests in the past⁴⁵ but it has never carried out an arrest pursuant to a warrant issued by the SCC. The UN advocates for victims' rights to truth, justice and reparations and substantially supports, both financially and technically, the SCC. Yet, MINUSCA seems very slow, if not incapable or unwilling, to assist by arresting the individuals who should be brought to the very same court that they created jointly with CAR authorities, and which they have heavily supported since.

4. SCC READY FOR ITS FIRST TRIALS, BUT GREATER INDEPENDENCE AND TRANSPARENCY NEEDED

4.1 PROGRESS IN THE OPERATIONALISATION OF THE COURT, BUT DELAYS AT THE REGISTRY

Although it was envisaged from the start that the operationalisation of the hybrid court be accomplished gradually, in 2020 Amnesty International concluded that the Court was facing some serious challenges impeding its proper functioning and the start of the first trials.⁴⁶

These challenges included the recruitment of international judges and staff and the establishment of the legal representation system. Significant progress was observed over the past 12 months with regards to these issues. International judges were recruited in all chambers of the Court and deployed to Bangui – except, at the time of writing of this brief, the two international judges for the appeal chamber to be deployed in the following days.⁴⁷ Missing judges at the *Chambre d'Assises* (trial chamber) are therefore no longer an obstacle to the opening of the first trials.

In parallel, the *corps spécial d'avocats* (SCC-admitted list of lawyers) was established in October 2020, with an initial list of 32 Central African lawyers qualified to represent parties in cases before the SCC.⁴⁸ However, international lawyers have not been appointed yet, and the review of their applications appears to be delayed.

The operationalisation of the Registry of the Court has also seen some progress,⁴⁹ but the recruitment of the international deputy Registrar has failed to date. This deputy Registrar has a crucial role to ensure the good governance of the SCC as this person would be responsible, among other things, for managing finances and security aspects at the Court.⁵⁰

In addition, the administrative and financial management of the Court remains entirely in the hands of the United Nations Development Programme (UNDP). As described in its 2020 report, Amnesty International is of the view that this unprecedented and singular arrangement of a hybrid court threatens the independence and the day-to-day good functioning of this judicial institution.⁵¹ Despite the fact that internal recommendations at the UN also stress the need to develop the Court's expertise and autonomy in view of "gradually reducing the international support and ultimately remove it",⁵² it is

⁴⁵ For instance, those arrested during combat in 2020 and who were later transferred to the SCC, or the arrest of Said upon an ICC arrest warrant..

⁴⁶ Amnesty International, 'the 2020 report', Chapter 4, Sections 4.1.1 and 4.1.2.

⁴⁷ Two judges from Switzerland were nominated as investigating judges in October 2020 (Décret No 20.365), three judges from Belgium, Burkina Faso and Madagascar were nominated to the pre-trial chamber, the Office of the Special Prosecutor, and the trial chamber respectively in January 2021 (decree unavailable), and two from France and Germany were nominated to the Appeals Chamber in October 2021 (Décret No 21.203). All chambers have thus the required minimum number of international judges, although the trial chamber will likely need two additional international judges when several cases enter the trial phase.

⁴⁸ Organe paritaire chargé de l'admission des candidats au corps spécial d'avocats près la Cour Pénale Spéciale de la République Centrafricaine (OPCPSRCA), Decision portant admission des avocats nationaux au Corps Spécial d'Avocats près la Cour Pénale Spéciale, Decision No. 001/OPCPS/2020. The head of the *corps spécial* was also nominated by the same body the following month.

⁴⁹ At the time of writing, two units out of the 7 units of the Registry were not operational yet: the unit for the information management, and the unit for the administration of the court (human resources, logistics, etc).

⁵⁰ SCC rules, article 43.

⁵¹ Amnesty International, 'the 2020 report', Chapter 6, Section 6.1.2.

⁵² Rapport d'évaluation des besoins et des services déjà en place au Greffe de la Cour pénale spéciale centrafricaine par Martin Petrov, 2018, paras 148-149, on file with Amnesty International.

clear that no step has been taken over the past 12 months to transfer capacity with regard to, and then full responsibility for, administrative and financial management from the UNDP to the SCC Registry. To ensure the independence of the Court, all partners involved should truly commit and work towards the establishment of a fully operational Registry, with the expertise and the staff needed to become in charge of the full administration of the Court.

4.2 MORE TRANSPARENCY ON THE ONGOING PROCEEDINGS IS STILL NEEDED

The SCC became active over three years ago in October 2018 and has an initial five-years mandate. At the end of October 2021, 12 cases were before the investigating judges, no closing order had been issued yet (*ordonnance de cloture*) and the opening of the first trials were planned to take place in December 2021.⁵³

The Court has made some efforts to improve the transparency of its judicial activities, through some updates given in public events and more information given about the latest arrests, including identities and broad charges pending against the two individuals arrested and brought to the SCC this year (see box in previous section).

Nonetheless, much more effort needs to be made⁵⁴. Updated information with regard to the state of proceedings, as well as what crimes these proceedings relate to, remains very difficult, if not impossible, to find. Not a single judicial decision has been made public to date either, not by the Special Prosecutor, nor the Investigating Judges, nor the Indictment chamber. Some minimum information on ongoing investigations and cases, as well as at least redacted versions of judicial decisions, should be made available to the public.

5. OTHER CAR TRIBUNALS: CRIMINAL SESSIONS DELAYED AND MILITARY TRIBUNALS VIOLATING INTERNATIONAL LAW NORMS

5.1 NO ORDINARY CRIMINAL SESSIONS HELD WITHIN 20 MONTHS

Under the criminal procedure law of the Central African Republic⁵⁵ the Ministry of justice with the general assembly of the Courts of Appeal must organize at a minimum 6 criminal sessions per year in the 3 provinces of the country, namely in Bouar (West zone), Bambari (East zone) and Bangui. But since 7 February 2020, no sessions have been organized in the country. The President of the Republic has said on several occasions⁵⁶ that his second term would prioritize the fight against impunity, and the Minister of Justice has repeated this on several occasions. Yet this apparent political will has not yet materialized.

Several causes could explain the state of lethargy in which the justice sector finds itself. Firstly, the coronavirus pandemic has severely affected the sector.⁵⁷ Several magistrates were infected. Quarantine has been organized in the courts and in the administration. Several people interviewed by Amnesty International also pointed to the political and security situation in the country in December 2020 and the first half of 2021 to explain why no criminal sessions could be organized in the country

⁵³ SCC, "Audience accordée par le Président de la République Chef de l'Etat, Son Excellence le professeur Faustin Archange Touadéra, Président du Conseil Supérieur de la Magistrature à la CPS", 31 August 2021, cps-rca.cf/actualites/ ; interviews with SCC and MINUSCA staff, Bangui, October 2021.

⁵⁴ Amnesty International, 'the 2020 report', Chapter 4, Section 4.2.1.

⁵⁵ Criminal procedure code, article 220

⁵⁶ Discours de son excellence, Professeur Faustin Archange Touadéra Président de la République, Chef de l'Etat à l'occasion de la Rentrée judiciaire 2020-2021, le 16 juillet 2021, on file with Amnesty International.

⁵⁷ Interviews with several people working with ministry of justice, ordinary tribunals, civil society and MINUSCA, Bangui, 21, 22, 25 and 26 October 2021

during that period.⁵⁸ In this context (see Background chapter), judges and prosecutors did not feel protected and were afraid to tackle criminal cases. Moreover, the Minister of Justice was absent for months for illness and was officially replaced only in June 2021.

Despite real challenges created by the pandemic and the security situation in the country, the failure to organize any criminal session in 20 months also shows lack of political will and a dysfunctional criminal justice system.



Bangui appeals court, where criminal sessions should be held. Bangui, October 2021. © Amnesty International

The issue of the budget illustrates this well. The national budget provides for the allocation of 20 million CFA Francs for the organization of the Bangui criminal sessions, 3 million for those of Bouar and 1 million for those of Bambari.⁵⁹ But for the Bouar session relocated to Berberati scheduled for 22 October 2021, which was the only criminal session scheduled this year, the authorities were unable to contribute financially and this led to postponing the session to an unknown date.⁶⁰ It should be noted that the Ministry of Justice receives budgetary support from the European Union, in particular within the framework of the sectoral justice policy. The amounts granted are transferred to the public treasury account and are fungible in the national budget.⁶¹ According to several people met by Amnesty International, the security situation in the country led the authorities to prioritize certain expenses over the budget intended for the Ministry of Justice.⁶²

The failure to hold criminal sessions has an impact on the victim's right to justice but also on people's right to be tried in a reasonable time. Hundreds of individuals are held in pre-trial detention over the time limits set by the law, and sometimes for several years, waiting for their day in court. The Bangui detention centers (Camp de Roux, Bimbo and Ngaragba) are overcrowded. The pre-trial detention rate is said to have reached 92% at some point in 2020, the rate was then reduced after the organization of special hearings to lower this rate as well as measures taken during the Covid 19

⁵⁸ Interviews with several people working with ministry of justice and ordinary tribunals, Bangui, 21, 22 and 26 October 2021

⁵⁹ Loi de finance N°20-025 arrêtant budget de l'Etat pour l'année 2021, finances.gouv.cf/sites/default/files/2021-02/Loi%20de%20Finances%202021.pdf

⁶⁰ Interview with Ministry of justice staff, Bangui, 21 October 2021; interview with criminal court staff, Bangui, 21 October 2021; interview with UN staff, Bangui, 22 October 2021; interview with member of civil society, Bangui, 27 October 2021;

⁶¹ Several millions of euros were planned for support to the implementation of the justice sector policy, therefore including organization of criminal sessions. Information gathered with the EU delegation, on file with Amnesty International.

⁶² Interviews, confidential, Bangui, October 2021

pandemic. As of end of November 2021, 80,5 % of the total number of detainees in CAR are in pre-trial detention.⁶³

During the new judicial year, the President of the Republic had moreover denounced this situation affirming that "Today, due to the cruel lack of follow-up of cases by the investigating judges, we can only offer detainees one meal per day instead of two, [...] we can only spend an average of 299 FCFA per day and per inmate, which is unacceptable." He also added that "With 75% of detainees in preventive detention, we are not honoring our national and international commitments."⁶⁴

5.2 CAR MILITARY COURTS SHOULD NOT BE PROSECUTING CRIMES AGAINST CIVILIANS

On 24 March 2017, a new military justice code was adopted by the National Assembly and promulgated by the President⁶⁵. On 9 July 2020, judges for the military courts were appointed for the first time by the President. In September 2021, the Bangui military court sessions were opened. These are composed of a magistrate of the ordinary judicial system, assisted by four assessors from the ranks of the army or the gendarmerie. Nine cases were examined concerning cases of desertion, sales of weapons and military equipment but also crimes against civilians, in particular assassinations.⁶⁶

In the previous report in 2020,⁶⁷ Amnesty International recalled that in accordance with international law, military courts should not have jurisdiction to try soldiers who have allegedly committed violations of international humanitarian law or acts targeting civilians. These cases must fall under ordinary courts.⁶⁸ ACHPR's principles and guidelines on the right to a fair trial read: "The only purpose of military courts shall be to determine offences of a purely military nature committed by military personnel."⁶⁹

However, there were no step towards amending the law for that purpose and, on the contrary, the holding of these sessions was presented as a success in the fight against impunity within the armed forces,⁷⁰ suggesting that there is currently no intention to remove jurisdiction of military courts over crimes committed against civilians, even possibly crimes under international law.

⁶³ MINUSCA, Section des affaires judiciaires et pénitentiaires, Unité des affaires pénitentiaires, « Statistiques pénitentiaires », November 2021, On file with Amnesty International.

⁶⁴ Discours de son excellence, Professeur Faustin Archange Touadera Président de la République, Chef de l'Etat à l'occasion de la Rentrée judiciaire 2020-2021, le 16 juillet 2021, on file with Amnesty International.

⁶⁵ Loi No. 17.012 du 24 Mars 2017 portant code de justice militaire centrafricain (military justice code), 24 March 2017, ihldatabases.icrc.org/applic/ihl/ihl.nat.nsf/ImplementingLaws.xsp?documentId=46E93838DB5EA948C12582E300530080&action=openDocument&xp_countrySelected=CF&xp_topicSelected=GVAL-992BU6&from=state

⁶⁶ Deutch Welle, " "Non" à l'impunité au sein de l'armée en Centrafrique », 1 October 2021, [dw.com/fr/centrafrique-justice-forces-de-s%C3%A9curit%C3%A9/a-59373867](https://www.dw.com/fr/centrafrique-justice-forces-de-s%C3%A9curit%C3%A9/a-59373867); RJDH, « Centrafrique : Neuf personnes condamnées par la Cour Martiale au cours de son à Bangui », 10 October 2021, rjdhrca.org/centrafrique-neuf-personnes-condamnees-par-la-cour-martiale-au-cours-de-son-a-bangui/

⁶⁷ Amnesty International, 'the 2020 report', Chapter 5, Section 5.3.

⁶⁸ See for examples: HRC, Concluding observations: Democratic Republic of Congo, UN Doc CCPR/C/COD/CO/3 (2006), para. 21; CAT Concluding Observations: Guatemala, UN Doc.CAT/C/GTM/CO/4 (2006) para 14; ACHPR, *Wetsh'okonda Koso and others vs Democratic Republic of the Congo* (Communication 281/2003), 26th annual report (2008), paras 85-87.

⁶⁹ ACHPR, Principles and guidelines on the right to a fair trial and legal assistance in Africa, 2003, section L.

⁷⁰ Radio Ndeke Luka, Centrafrique/Justice: 10 ans de prison pour un sous-officier de l'armée nationale, 28 September 2021, radiondekekuluka.org/actualites/justice/37491-centrafrique-justice-10-ans-de-prison-pour-un-sous-officier-de-l-armee-nationale.html ; confirmed by several people we interviewed in Bangui in October 2021.

6. RECOMMENDATIONS

In addition to recommendations of Amnesty International's latest report on justice in the Central African Republic,⁷¹ we have a few updated recommendations below:

TO CAR AUTHORITIES

- Ensure all alleged perpetrators of crimes under international law and other serious violations or abuses committed since 2002, from all sides of the conflict, are investigated and prosecuted in fair trials with no recourse to the death penalty, including by taking the following measures:
 - Take all possible measures to ensure the execution of SCC arrest warrants.
 - Organize a minimum of six criminal sessions per year as required under CAR criminal procedure code, in Bangui, Bouar and Bambari or moved to another location when the security situation does not make it possible, and until a permanent criminal justice system is eventually put in place.
 - Amend the military justice code, in particular article 21, to ensure that the jurisdiction of military courts is limited to purely military offenses committed by military personnel and explicitly excludes jurisdiction over crimes committed against civilians, in particular crimes under international law.

TO THE SPECIAL CRIMINAL COURT

- Ensure investigations and prosecutions by the SCC focus on crimes under international law showing a certain degree of gravity, including against those most responsible for these crimes, as per the Court's own statute and prosecutorial strategy.
- Ensure that all steps are taken to enable the execution of arrest warrants, including transmitting the warrants to the special police unit, CAR security forces and MINUSCA and making extradition requests to other States when relevant.
- Improve the transparency of the judicial activities of the Court, including but not limited to:
 - Providing statistics on the website as well as to the public in CAR via regular outreach activities: number of cases, number of complaints received, number of suspects charged, number of suspects detained, number of victims constituted civil parties and so forth;
 - Providing a minimum of information on each case on the website as well as to the public in CAR regularly, including identities of individuals who have been indicted and their lawyers (or at least reasons why the identities cannot be disclosed), the stage of the proceedings in a given case, conduct of hearings;
 - Giving access to judicial decisions, in full or in redacted versions.
- Speed up, in coordination with the *organe paritaire*, the nomination of international lawyers qualified to represent defendants and civil parties before the Court.

TO THE UN AND OTHER PARTNERS

- Upon request, States and the UN should take all feasible steps to assist in the execution of arrest warrants issued by the SCC.
- States, in particular African and other Francophone states, should urgently respond to the call for secondment of the Deputy Registrar and other international staff to the Registry of the SCC.
- Ensure that all necessary measures are taken to enable the transition towards an administrative and financially autonomous SCC in order to strengthen the independence of the Court.

⁷¹ Amnesty International, 'the 2020 report', Chapter 7.

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