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Central African Republic:
New Court Should Step Up Effort
Donors, Government Should Increase Support

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Central African Republic: New Court Should Step Up Effort Donors, Government Should Increase Support

Summary.....	1
Why Justice Is Critically Important	4
Investigations	6
Legal Representation and Assistance	8
Witness and Victim Protection and Support	9
Victim Engagement: Civil Parties.....	10
Security.....	11
Outreach	12
Administration	13
Financing	14

Summary

The Special Criminal Court is a new court in the Central African Republic's court system with the authority to try grave crimes committed during the country's armed conflicts since 2005. Central Africans have long waited to see justice for the many killings, rapes, and other atrocities committed in their country.

The Special Criminal Court holds promise but it's had a slow start and needs to intensify investigations so trials can be initiated based on strong, compelling evidence. It should also urgently recruit additional staff to deliver on its mandate. The new court is operating in a tremendously difficult setting after years of brutal conflict and insecurity in the country and needs greater government and international support.

The Special Criminal Court is staffed by both international and national judges and prosecutors, and benefits from international assistance. The law to establish the court was adopted in 2015, but the court had to wait to start investigations until parliament adopted its rules of procedure and evidence in May 2018. The court held its first official session in October, and investigations are now pending in the prosecutor's office and before the court's investigative judges.

Following up on its May 2018 report on the Special Criminal Court, Human Rights Watch conducted research in the country's capital, Bangui, from April 10 to 14, 2019 on the court's progress and the challenges it faces.

Researchers interviewed 25 people, including court staff, United Nations staff, court consultants, human rights defenders, lawyers, and donors, and conducted two group interviews, one with human rights defenders and one with victims who are working with associations of victims of the crimes. Human Rights Watch sought to meet with government officials who work on the Special Criminal Court, but they were not available. Human Rights Watch also conducted interviews by phone and in person in New York in May, June, and July, in addition to reviewing relevant documents on the court's activities. "Justice must be at the forefront of a state that promotes good governance and democracy," one human rights defender told Human Rights Watch in April. "Without justice, everything else will be wrecked."

Human rights defenders and victims expressed strong concerns that vague provisions on justice in a peace accord signed in February could limit the government's cooperation and support to the Special Criminal Court. They criticized the integration of people implicated in crimes into the government as a result of the recent peace deal. "We are seeing at this moment that our persecutors rule over us," said a woman who leads a victims' group. "They have entered the government."

Human Rights Watch identified key elements needed to bring the court to full operations:

- **Staffing:** The level of court staff overseeing investigations is very limited. Existing staff should work to intensify investigative activity, but an additional panel of investigative judges and more prosecutors would help boost investigative capacity. Many of the staff needed for the court's administration are also not in place and should be recruited without further delay.
- **Services:** The court needs programs that have yet to exist in the country's domestic system, including witness and victim protection and support, legal assistance for accused and victims, and outreach to affected communities. International experts are assisting in developing these areas, but further progress is needed and the experience gained should be leveraged to benefit the country's national justice system over time. The government should also move ahead with providing secure accommodation for the Special Criminal Court's domestic judges.
- **Coordination:** The court remains highly dependent on the UN, which can limit the court's capacity to make decisions and move its work forward. Efforts to regularly bring together court principals, UN partners, and donors to resolve outstanding questions more efficiently are underway and should be continued. A unified comprehensive budget that identifies all court costs and funding sources should also be prepared to better clarify the court's needs.
- **Funding:** As of July 10, the court had a funding gap of approximately US\$1 million for 2019 operations, and no funds pledged for future years of operations, which are anticipated to annually cost approximately \$12.4 million. Existing donors – the United States, France, the Netherlands, and the European Union – should increase their support. Other justice-supporting states that have yet to make a financial contribution,

such as Canada, Germany, Japan, Switzerland, Norway, Denmark, and Sweden should consider stepping forward. UN oversight in the handling of funds remains advisable to insulate the court from actual or perceived concerns of financial impropriety.

The Special Criminal Court emerged out of the strong, unequivocal desire on the part of Central Africans to break cycles of violence and impunity in the country. The government and international partners should protect their investment by being vigilant on the need for justice and giving the court essential resources to get its difficult job done.

Why Justice Is Critically Important

During the conflict in the Central African Republic, which began in 2012, armed groups violated the laws of war with impunity, attacking civilians and civilian infrastructure, and leaving trails of death, displacement, and destitution. The predominantly Muslim Seleka and the largely Christian and animist militia known as “anti-balaka,” two main parties to the conflict, also committed sexual slavery and rape across the country.

National consultations in May 2015, known as the Bangui Forum, prioritized justice for past crimes and stated that “no amnesty” would be tolerated. The forum brought together more than 800 representatives of community and other nongovernmental organizations, political parties, and armed groups.

In April, one human rights defender told Human Rights Watch that the court “comes from the will of the population expressed during the Bangui Forum.” “Justice counteracts this culture of violence; it can change the behavior, not only of criminals, but also of the state,” said another defender. “The population has a lot of hope,” said a third defender. “The court needs to accelerate its activities.”

One victim working with a victims’ association explained the value in having a war crimes court based in the Central African Republic: “We trust in the Special Criminal Court because it is the national justice, it is based here and knows the perpetrators.” A lawyer also noted that there is a benefit to the court’s location in the country as victims do not have to travel far to participate.

The Special Criminal Court operates alongside two investigations by the International Criminal Court (ICC), one on crimes committed in 2002 and 2003, and one on crimes committed in the conflict since 2012. The ICC appeals chamber in June 2018 overturned a conviction in the first investigation’s only case, against Jean-Pierre Bemba, a former vice-president of the Democratic Republic of Congo, increasing the stakes for the Special Criminal Court. The ICC took two anti-balaka leaders, Patrice-Edouard Ngaïssona and Alfred Yékatom, into custody on charges of war crimes and crimes against humanity committed in the country’s recent conflict toward the end of 2018.

The Special Criminal Court has a five-year renewable mandate, and human rights defenders called for the court to act more quickly to deliver justice. In December, the Special Criminal Court made public a prosecutorial strategy, and a roadmap for the

strategy's implementation has been developed. In the first quarter of 2019, the Special Criminal Court moved into its permanent premises, although construction to renovate parts of the building continues.

One human rights defender told Human Rights Watch in April, "The population has trust so far but awaits the court's first cases with impatience." "The population is waiting for justice to be done in their name, and for their suffering to be acknowledged," said another defender. "All this must yield results," said a third defender.

Investigations

The Special Criminal Court's investigation process, which is consistent with the Central African Republic's civil law legal system, provides for two phases of investigation prior to cases going to trial. The first is conducted by the prosecutor's office, to be completed within a six-month period, unless the judges approve an extension. The second is by a two-judge panel (cabinet d'instruction) consisting of one national judge and one international judge, which can last up to two years. International and domestic prosecutors and judges were recruited, and they are now installed in Bangui, save one judge whose arrival is pending.

Seven investigations are underway. The special prosecutor has opened 4 investigations from 22 priority cases he has identified, and the judges also conducting investigations of 3 cases, which were transferred from the ordinary courts. The special prosecutor also is examining 27 complaints submitted by individuals to the Special Criminal Court.

The three-year delay before the Special Criminal Court could officially commence investigations makes it all the more pressing for existing prosecutors and investigative judges to identify ways to intensify investigations. But additional staff is also needed. The prosecutor's office has only four prosecutors: the special prosecutor, a deputy, and two substitute special prosecutors. In addition, although the court's founding law allows for three panels of investigative judges, only two have been established.

The court should recruit additional prosecutors and a third panel of investigative judges. While that involves additional costs, it should increase the number and pace of investigations, helping to maximize the overall investment in the court.

A team of 20 domestic judicial police officers conducts investigations directed by the prosecutors and investigative judges. The members lack experience with international criminal law and practice, but the police officers have received specialized training. International advisers also are working with them to strengthen their skills, although the advisers are constrained as they have lacked access to confidential material since they are not court staff. The court is working with the UN to address this challenge.

Advisers from the UN peacekeeping force also provide research and analysis to the court on request, and the court is trying to recruit a legal adviser to support the prosecutor's office and an adviser to support the investigative judges.

Given insecurity in the country, investigators need to rely on UN peacekeepers for security. This can make it difficult to operate discreetly, which can be important to minimize risks to potential witnesses. The investigators can prioritize working in more secure areas and may need to develop other strategies to move investigations forward.

Legal Representation and Assistance

A team of approximately 20 lawyers from the Central African Republic are to provide legal assistance to suspects and victims at the Special Criminal Court. International lawyers may also be appointed to assist suspects in the most sensitive cases and may work as a team with national lawyers if requested by a suspect, accused, or victim.

A committee of representatives from the Central African Republic bar association, human rights nongovernmental organizations, and the UN are to select the lawyers, but they have yet to be selected. The committee should proceed without delay as immediate access to counsel will be needed once suspects are charged, although the court's rules allow for temporary appointments as necessary. The UN Office on Drugs and Crime is assisting the court with the process.

Training in international criminal law and practice has already been made available for lawyers who may be under consideration for this team. Given the complex, specialized nature of cases involving international crimes, ongoing access to training opportunities will be valuable.

Witness and Victim Protection and Support

Witness and victim protection and support should be at the forefront of any court proceedings, and the plans initially drafted for the court needed to be more concrete and specific. The court now has a unit in place to provide concrete protection and support for witnesses and victims, drawing from international experience.

The unit is implementing steps to maximize confidential interaction between witnesses and court staff and to ensure minimum risk to potential witnesses and victims during investigations. But the unit needs additional staffing to be able to provide risk assessments, transport and logistical assistance, and psychosocial support.

Assuring adequate measures early in the process is critical given that access by defense counsel and accused to information about witnesses and victims may be available during investigations.

One human rights defender told Human Rights Watch: “The major difficulty is that the victims and the tormentors live in the same neighborhood. It takes tremendous courage for the victims to dare to bring a complaint and turn to justice. We must have the protection of witnesses so that they can testify without fearing for their lives.”

Victim Engagement: Civil Parties

In addition to serving as potential witnesses, victims can join the criminal proceedings as civil parties (parties civiles). A feature of civil law systems, civil parties serve as a formal party to the proceedings, alongside the prosecutor and the defendant. Civil parties may request an investigation, make submissions to the case file, examine witnesses, request steps to advance the investigation, and appeal the court's decisions.

Victims have yet to become civil parties at the court, and victims and human rights defenders asked Human Rights Watch questions about how the court will manage requests from different victims' associations to be civil parties on the same case. One human rights defender said that their organization needs to better understand protections available to victims and witnesses before they provide information to the court about cases or seek to become civil parties.

The court will need to continue to make information available to affected communities about the opportunity to be civil parties, and to develop procedures for handling questions and concerns that may be raised about the process.

Security

Security remains one of the most significant problems as much of the country remains under the control of armed groups. Insulating the court premises and staff, witnesses, and victims from risk to the greatest extent possible is crucial, albeit difficult.

In line with the recent peace accord, three armed group leaders were named special military advisers to the prime minister's office. Fighters under one of those advisers, Sidiki Abass (also known as Bi Sidi Souleymane), commander of the group called Return, Reclamation, Rehabilitation, or 3R, allegedly killed over 50 civilians in May in the northwestern part of the country.

The court premises benefits from protection by peacekeepers and joint patrols with domestic security units. Judges generally are provided with full-time personal security. One court staff member said that protecting judges who live outside the peacekeepers' security perimeter remains a problem. The government promised to provide the judges with housing within the peacekeeping zone but has not provided it yet.

Another anticipated problem is making arrests. One observer suggested that the suspects may be the people who are in control of an area. Peacekeepers will need to play a central role in making arrests, in close collaboration with court staff.

Detaining suspects will be another problem since the country has limited facilities for high-risk suspects. Initiatives to establish a facility for high-risk individuals in the country are in the initial stages, but lack funding. In the meantime, UN personnel are supporting national authorities in identifying the most secure locations within current overcrowded detention facilities for Special Criminal Court suspects.

Outreach

The Special Criminal Court now has a functioning outreach and public affairs department and is undertaking an array of initiatives to ensure that communities most affected by the crimes have adequate information about the court. Such initiatives are important to ensure that the court's operations have maximum impact and resonance with the population. National authorities can also draw from the court's experience in developing initiatives to inform the population on access to justice in the country more generally.

The outreach team has prepared radio programs about the court that have been broadcast more than 80 times. With much of the population illiterate, radio is a primary way people get information and radio can reach a far larger audience than meetings. The outreach team also has written and performed a play about the court in parts of the country and has prepared written materials, including in picture formats.

Local nongovernmental groups are partnering with the court on outreach. While that is no substitute for paid outreach staff who can develop proper responses to questions and concerns that are raised, it can help to bolster court initiatives. Representatives of nongovernmental groups said that the court's outreach activities are positive and progressing well. "Outreach is very important in explaining the crimes covered by the court and explaining how the population can access it," one human rights defender said. "People know about the court now, even those who live outside the capital."

Administration

The administration of the court includes a far-reaching set of responsibilities handled by the court's registry, including case management, legal assistance, detention, human resources, security, witness and victim protection and support, budgeting and finances, and outreach and public information.

A major problem has been finding a suitable deputy registrar. The post – which is to be filled by an international expert – has responsibility for the aspects of the court's administration that are largely novel for the Central African Republic's justice system, but that are important for courts trying international crimes. UN staff say a person has been selected, but the court has not announced the appointment.

Many of the staff required to carry out administrative activities also are not in place. The peacekeeping force has secured an international expert to advise on staffing arrangements for the registry. In the meantime, the UN Development Program (UNDP) and peacekeeping force have assisted with some administrative functions, including by subcontracting some staff to the court. Because they are not staff members, subcontracted staff do not have full access to confidential materials, but the UN and the court have been working to address that issue. Training in some areas of administration, such as case management, also is underway.

Much of the court's staffing, organization, and support are developed through a joint project between the UN Development Program, the peacekeeping force, and the government. The project will be updated at the end of 2019, which will be an opportunity to better incorporate the full range of needed staffing and equipment.

Financing

The Special Criminal Court has a complex funding situation. It has a patchwork of support comprised of voluntary contributions from foreign governments and the UN, and support from the Central African Republic government. Support includes general assistance and earmarked and in-kind assistance. Governments that provide international magistrates through secondments help to minimize costs, but links to governments could risk compromising the court's perceived or actual independence.

Despite its important mandate, the Special Criminal Court has a relatively limited budget compared to similar judicial institutions trying international crimes. In addition to the funding gap for 2019 of approximately \$1 million of its \$13.4 million budget, no funding has been pledged for operations in future years, which are expected to cost \$12.4 million annually.

The United States, the Netherlands, France, and the European Union have made direct financial contributions, and the governments of Benin, Burkina Faso, Canada, Democratic Republic of Congo, France, and Togo have seconded magistrates.

A positive development was the first contribution by the European Union of \$2.3 million, and EU plans to consider funding for future years, in addition to continued support from UNDP and the UN peacekeeping force. However, the Netherlands and France have yet to renew previous contributions, beyond funding through the EU, and the United States also has yet to renew its funding.

States that appreciate the importance of justice for grave crimes in building respect for rule of law should step forward to provide greater funding. The court also should receive support from the Central African Republic government and international donors that can be deployed for its greatest needs, as opposed to funding allocated for certain programs or equipment, wherever possible.

A group of countries interested in the court's work and relevant UN agencies operates in New York, chaired by the government of Morocco. This group can be valuable in mobilizing greater resources for the court. The group should consider identifying a focal point on the court's resources to capitalize on fundraising opportunities.