UN Report on the Central African Republic: Is the Glass Reflecting the International Community's Efforts Half-Empty or Half-Full?

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JURIST Guest Columnist Chris Jenks of Southern Methodist University Dedman School of Law, evaluates the progress in adherence to human rights and international law in Central African Republic and claims that notwithstanding efforts of global community, it is hard to be optimistic ...

As JURIST noted last month, the UN published the final report [PDF] of the International Commission of Inquiry (COI) on the Central African Republic (CAR). The report is significant on a number of levels. The report documents the wrongful killing of thousands and furthers the discussion on whether the crime of genocide should be expanded to include cultural genocide based on ethnic cleansing. Without understanding the nature and history of the armed conflict(s) in CAR one cannot understand the difficulties the COI faced in conducting their investigation and the resulting limitations on their report. To that end the report includes helpful annexes on the ethnic groups in CAR and their zones of influence as well as the conflict's impact on causing the displacement of hundreds of thousands of civilians, both within CAR and to nearby countries.

The report presents a snapshot of CAR and the international community's efforts. Peacekeeping missions in CAR have surely prevented a bad situation from devolving to something much worse. Yet CAR remains at a tipping point. As one of the experts on the COI
noted, it is not that genocide definitely has not occurred in CAR, it may have. And genocide may still (or continue to) occur if we do not pay attention. 2015 will provide significant indicators on which direction CAR is headed. Sadly there are a number of factors suggesting that the goal of viable domestic criminal justice accountability mechanisms in CAR ending impunity will remain elusive.

By determining in September 2014 to open another investigation in CAR (Situation in CAR II), the Office of the Prosecutor at the International Criminal Court (ICC) reminded [PDF] the world that "political instability and armed conflict have plagued the [CAR] since 2001." To take a step back, following the killing of civilians and hundreds of acts of sexual violence within the context of an armed conflict between CAR government and rebel forces between 2002-2003, the CAR self-referred to the ICC, claiming its "national justice system was unable to carry out the complex proceedings necessary to investigate and prosecute." Those initial ICC cases are ongoing; so are instability in CAR and the country's continued inability to carry out criminal proceedings. Consequently, there is the possibility of new ICC cases.

In 2003 François Bozizé became president of CAR after ousting the then President, Ange-Félix Patassé, in a military coup. Bozizé was later elected as president in 2005 and again in 2011. Opposition groups viewed the elections as fraudulent and organized violent protests between 2006 and 2011. In 2012 a coalition of militant political and armed groups formed along ethno-religious lines known collectively as the Séléka. In 2013, following a failed power sharing arrangement with the Bozizé government, the Séléka took control of the CAR, appointing its head, Michel Djotodia, as president and first Muslim leader in largely Christian CAR. The Séléka then continued to attack and be attacked by armed groups in regions of CAR associated with former President Bozizé and his ethnic group, including the anti-balaka, Christian and animist militias. In January 2014, Djotodia, unable to quell escalating violence in CAR, resigned. All sides to the conflict agreed on the appointment of Catherine Samba-Panza, then mayor of Bangui, the capital of CAR, to serve as interim president. The efforts of various African, French [French], European and now UN peacekeeping missions in the CAR have certainly aided security efforts but the situation in the CAR remains "volatile and unpredictable."

According to UNHCR, "since December 2013, approximately 25 per cent of CAR's population (over 440,000) has been internally displaced." And the armed conflict in CAR is having a regional impact, generating over 800,000 refugees who have fled to nearby Democratic Republic of the Congo (DRC), Cameroon, Chad and the Republic of the Congo.

Against this backdrop in December 2013, the UN Security Council asked the UN Secretary General (SG) to "rapidly establish an international (COI) to investigate reports of violations of international humanitarian law, international human rights law and abuses of human rights in
CAR by all parties since January 1, 2013, compile information, help identify the perpetrators of such violations and abuses, point to their possible criminal responsibility and help ensure that those responsible are held accountable."

Early in 2014, the SG appointed three experts to the COI: Jorge Castañeda (Mexico), Fatimata M'Baye (Mauritania) and Bernard Acho Muna (Cameroon). Within two months Castañeda resigned for personal reasons. The Commission conducted the bulk of its work with just the two experts, though in August 2014 the SG appointed Philip Alston (Australia) as the third expert.

The Commission's task was challenging, working in a difficult and violent environment which limited the scope of its inquiry. Ultimately their investigation focused on violations and abuses that occurred in Bagui and the western portion of CAR. Traveling to, let alone investigating in, the central portion of CAR proved impossible due to the security threat.

The COI's report identified three parties to the armed conflict in CAR: the members of the CAR armed forces under former President Boizizé and the primary militia groups, the Séléka and the anti-balaka. The COI found all parties were involved in "serious violations of international humanitarian law and gross abuses of human rights including rape and other gender based sexual offenses and violations."

The COI cited estimates of between 3000-6000 killings occurring in CAR during the less than two years the report covers. The COI then said these statistics "must represent a radical under-estimate of the actual number of individuals who have lost their lives." The last annex to the report is two pictures taken at the morgue in Bangui following a 2013 attack which underscores that while the precise number killed in CAR is (and likely will forever be) elusive, we know enough killings occurred to need to focus on justice accountability mechanisms.

The COI also determined that "[t]he Séléka coalition and the anti-balaka are also responsible for war crimes and crimes against humanity. Although the Commission cannot conclude that there was genocide, ethnic cleansing of the Muslim population by the anti-balaka constitutes a crime against humanity." Part IV of the report is devoted to a discussion on genocide and ethnic cleansing and provides a useful survey of how various international tribunals have approached and considered ethnic cleansing versus genocide.

The report makes a number of recommendations in what is styled as "The Road to Accountability." The report notes that the Special Representative of the UN SG and the Minister of Justice of CAR signed a Memorandum of Understanding in August 2014, which committed the CAR government to establishing a Special Criminal Court to try "serious crimes, including among others, serious abuses of human rights and serious violations of
international humanitarian law, including sexual violence related to the conflict and serious violations of children's rights, such as the recruitment and use of children in conflicts, which constitute a threat to the peace, stability and security” in CAR.

Given the longstanding dysfunction of CAR's criminal justice system, establishing and operating a credible Special Criminal Court may well prove too daunting a task. The COI quoted from a 2009 report [PDF] by Philip Alston, then the Special Rapporteur on extrajudicial, summary or arbitrary execution, and now a member of the COI:

The [CAR] justice system is plagued by a lack of resources, severely limiting its capacity to address impunity. Human resources are minimal in the capital, and nearly non-existent in the rest of the country ... In Bangui, the public prosecutor's office has just two prosecutors for criminal cases ... Across the country, there are not enough buildings to house courtrooms and offices of judges and key personnel. Basic equipment is in short supply.

The report recognizes that the Special Criminal Court and the ICC could "effectively and constructively share the responsibility for attacking impunity." But the report is clear that "impunity will not be overcome unless both the Transitional authorities and the international community are prepared to pay for it."

The report also commented about a perceived gap "between the commitments expressed by the UN Security Council and the needs identified by the [UN] SG, on the one hand, and the practical measures contemplated to date, on the other." For example, the UN SG reported as recently as November 2014 that "the key antagonists continue to operate in total impunity" while transitional measures are set to be completed by August 2015. Yet as the COI pointed out "[b]y that time it is highly unlikely that many prosecutions will have been undertaken, let alone completed."

Since the submission of the COI report several events have occurred regarding CAR, none of which suggest optimism. Just since December 2014, some 10,000 additional CAR refugees fled to the DRC [PDF]. In January 2015 the UN Security Council adopted Resolution 2196 [PDF], which extended an arms embargo, asset freeze and travel ban on CAR until 2016. While sanctions, as the COI acknowledged, are "important in a variety of ways, [they] are no substitute for criminal accountability." While preambular language is not substantive, the language in Resolution 2196 speaks to the gap the report referenced. The resolution recalls that CAR "bears the primary responsibility to protect all populations within its territory from genocide, war crimes, ethnic cleansing and crimes against humanity" and that "any sustainable solution to the crisis in the CAR should be CAR-owned..." Those statements are of course correct but CAR does not appear remotely able or willing to bear such responsibilities, and has not been so for more than a decade. And the security conditions in CAR are not set to allow a criminal justice system to effectively operate even if there were such a system. Which
there is not. Indeed in early February 2015, the UN SG asked the UN Security Council for over 1,000 additional peacekeepers for the CAR mission, which would bring the total to almost 13,000 uniformed personnel.

The experts who prepared the COI report briefed the media on January 21, 2015. The experts were more blunt during the press conference than in the report. In terms of the Special Criminal Court, the experts spoke of a "full international tribunal" and that they were "extremely concerned in making sure that a majority of the judges must come from the international community," noting that the CAR government "simply does not have the resources nor the political incentive" to finance viable justice and accountability mechanisms.

To be fair, UN member states contributed over $250 million to fund the UN peacekeeping mission for just the last half of 2014. 2015 will undoubtedly see that number significantly increase. And the presence of thousands of blue helmets and other peacekeepers before them in CAR may well be what prevented either a genocidal killing spree like that in Rwanda or even more wholesale ethnic cleansing like that in the former Yugoslavia.

But it is hard to be optimistic about CAR. As the COI experts recently predicted, "With none of the key countries coming forward to say that they will fund [an internalized criminal tribunal], we are deeply concerned that the UN will stumble in creating a tribunal and will be unable to prosecute effectively."

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