



# **Situation in the Central African Republic II**

## **Article 53(1) Report**

**24 September 2014**

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## List of Abbreviations

A2R	<i>Alliance pour la renaissance et la refondation</i> , Alliance for Rebirth and Rebuilding
AI	Amnesty International
AU	African Union
BINUCA	United Nations Integrated Peacebuilding Office in the Central African Republic
BSS	<i>Bataillon de soutien et des services</i> , Support Services Battalion
CAR	Central African Republic
CNT	<i>Conseil National de Transition</i> , National Transitional Council
CPJP	<i>Convention des patriotes pour la justice et la paix</i> , Convention of Patriots for Justice and Peace
CPSK	<i>Convention patriotique du salut du kodro</i> , Patriotic Convention for National Salvation
CSEI	<i>Cellule spéciale d'enquêtes et d'instruction</i> , Special Inquiry and Judicial Investigation Unit
DDR	Disarmament, Demobilisation and Reintegration
DSPJ	<i>Direction des services de la police judiciaire</i> , Directorate of the Judicial Police
ECCAS	Economic Community of Central African States
EU	European Union
FACA	<i>Forces armées centrafricaines</i> , Central African Armed Forces
FDPC	<i>Forces démocratiques du peuple centrafricain</i> , Democratic Forces of the Central African People
FIDH	<i>Fédération internationale des ligues des droits de l'homme</i> , International Federation for Human Rights
FPRC	<i>Front populaire pour la renaissance de la Centrafrique</i> , Popular Front for the Rebirth of Central Africa
FROCCA	<i>Front pour le retour à l'Ordre Constitutionnel en Centrafrique</i> , Front for the return to Constitutional Order in Central Africa
HRW	Human Rights Watch
ICC	International Criminal Court
ICG	International Crisis Group
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
INGO	International Non-Governmental Organization
MICOPAX	<i>Mission pour la consolidation de la Paix en Centrafrique</i> , Mission for the Consolidation of Peace in the Central African Republic
MINUSCA	United Nations Multidimensional Integrated Stabilisation Mission in the Central African Republic

MISCA	Mission internationale de soutien à la République Centrafricaine, International Support Mission for the Central African Republic
MLCJ	<i>Mouvement de libération centrafricaine pour la justice</i> , Central African Liberation Movement for Justice
MSF	<i>Médecins sans frontières</i> , Doctors without Borders
NGO	Non-Governmental organization
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the United Nations High Commissioner for Human Rights
OTP	Office of the Prosecutor
RJ	<i>Révolution et justice</i> , Revolution and Justice
SRI	<i>Section de recherches et des investigations</i> , Analysis and Investigation Section
TGI	<i>Tribunal de Grande Instance</i> , District Court
UFDR	<i>Union des forces démocratiques pour le rassemblement</i> , Union of Democratic Forces for Unity
UFR	<i>Union des forces républicaines</i> , Union of Republican Forces
UFRF	<i>Union des forces républicques fondamentales</i> , Union of Fundamentalist Republican Forces
UN	United Nations
UNDP	United Nations Development Program
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNSC	United Nations Security Council

## EXECUTIVE SUMMARY

### *Article 53 criteria*

1. In determining whether there is a reasonable basis to proceed with an investigation, the Rome Statute (“Statute”) of the International Criminal Court (“ICC”) provides that the Prosecutor shall consider the factors set out in article 53(1)(a)-(c), namely in relation to: jurisdiction (temporal, material, and either territorial or personal jurisdiction); admissibility (complementarity and gravity); and the interests of justice. The standard of proof for proceeding with an investigation into a situation under the Statute is ‘reasonable basis’. Although the Office is not required to publicise its report when acting pursuant to a referral under article 53(1), it has decided to do so in the interests of promoting clarity with respect to its statutory activities and decisions. This report on the Situation in the Central African Republic (“CAR”) II is based on information gathered by the Office from December 2012 to August 2014.

### *Procedural history*

2. The Office has been analysing the recent situation in the CAR since the end of 2012. During the course of 2013, the Office issued three statements in relation to the situation in the CAR.
3. On 9 December 2013, the Prosecutor expressed her concerns over the unfolding events in the CAR, in particular over reports of serious on-going crimes. The Prosecutor called upon all parties involved in the conflict (including Séléka elements and other militia groups, such as anti-balaka) to stop attacking civilians and committing crimes or to risk being investigated and prosecuted by the Office.<sup>1</sup>
4. On 7 February 2014, the Prosecutor announced that the incidents and serious allegations of crimes potentially falling within the jurisdiction of the ICC constituted a new situation unrelated to the situation previously referred to the ICC by the CAR authorities in December 2004. The Prosecutor therefore decided to open a preliminary examination into this new situation.<sup>2</sup>
5. On 30 May 2014, the transitional government of the CAR referred to the Prosecutor, pursuant to article 14 of the Statute, *“la situation qui prévaut sur le*

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<sup>1</sup> ICC OTP, “Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, in relation to the escalating violence in the Central African Republic”, 9 December 2013.

<sup>2</sup> ICC OTP, “Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on opening a new Preliminary Examination in Central African Republic”, 7 February 2014.

*territoire de la République Centrafricaine depuis le 1er août 2012* (“the situation on the territory of the Central African Republic since 1 August 2012”).<sup>3</sup>

6. On 13 June 2014, the Prosecutor formally notified the Presidency of the referral pursuant to Regulation 45 of the Regulations of the Court.
7. On 18 June 2014, the Presidency assigned the Situation in the Central African Republic II to Pre-Trial Chamber II.<sup>4</sup>

### *Contextual background*

8. The Central African Republic is a landlocked country in central Africa sharing borders with Chad, Sudan, South Sudan, the Democratic Republic of the Congo, the Republic of Congo and Cameroon. It is one of the poorest countries in the world. Several different ethnic groups make up the population (estimated at 5,277,959), the largest being the Gbaya (33%), residing mainly in the north-east, and the Banda (27%), residing throughout the country. Sango and French are the most commonly spoken languages, with Arabic also spoken in the north. Prior to the conflict 15% of the population was reportedly Muslim, 25% Roman Catholic, 25% Protestant and 35% followers of indigenous beliefs.
9. Political instability and armed conflict have plagued the country since 2001. President François BOZIZÉ, who ousted President PATASSÉ from power in 2003, dominated the political landscape for several years. In August 2012, the armed, organized rebel movement Séléka (meaning “alliance” in Sango) emerged as a coalition of militant political and armed groups representing Muslims in the north-east and other groups dissatisfied with President BOZIZÉ, including some of his former close associates. A number of Sudanese and Chadian nationals also joined Séléka.
10. Séléka launched a major military offensive on 10 December 2012. Facing little resistance from the Central African Armed Forces (“FACA”), the group advanced quickly until they were stopped close to Bangui by forces from Chad and from the Mission for the Consolidation of Peace in the CAR (“MICOPAX”) of the Economic Community of Central African States (“ECCAS”). ECCAS-facilitated negotiations resulting in the Libreville

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<sup>3</sup> See referral of the Central African Republic, [annexed](#) to the Decision Assigning the Situation in the Central African Republic II to Pre-Trial Chamber II, ICC-01/14-1-Anx1, 18 June 2014. See also ICC OTP, Statement by the ICC Prosecutor, Fatou Bensouda, on the referral of the situation since 1 August 2012 in the Central African Republic, 12 June 2014).

<sup>4</sup> Decision Assigning the Situation in the Central African Republic II to Pre-Trial Chamber II, ICC-01/14, 18 June 2014.

Agreements of 11 January 2013 prevented an imminent coup but ultimately failed to bring lasting peace. Séléka resumed its offensive, took Bangui, and seized power on 24 March 2013, forcing President BOZIZÉ into exile. Séléka leader Michel DJOTODIA was appointed as President.

11. Following the *coup d'état*, Séléka forces continued to expand their control over the CAR territory and sought to suppress resistance, in particular in regions associated with former President BOZIZÉ and his (Gbaya) ethnic group. Civilians in those regions were reportedly frequently subjected to attacks by Séléka fighters involving mass looting, destruction of property, killings, wounding and sexual violence. In the face of criticism over the conduct of the group, President DJOTODIA declared in September 2013 the dissolution of Séléka, while several thousand “former-Séléka” members were integrated into the FACA by decree. However, Séléka continued to exist *de facto*, and allegedly continued to commit crimes, particularly as “anti-balaka” groups started to generate armed resistance to Séléka’s rule.
12. Anti-balaka began to engage Séléka forces militarily from June 2013 but became more organized over the following weeks and months, apparently with the integration of numerous former-FACA members.
13. As the conflict between Séléka and anti-balaka escalated, the violence also became more sectarian. Anti-balaka attacks allegedly targeted Muslim civilians, associating them with Séléka on the basis of their religion, while Séléka targeted non-Muslims in return, in particular those of the Gbaya ethnic group or those associated with former President BOZIZÉ.
14. On 5 December 2013, as a new African Union-mandated peacekeeping force (“MISCA”) was preparing to take over from the smaller ECCAS-mandated force in the CAR, and on the eve of the deployment of the French troops mandated to support the African Union (“AU”) forces, anti-balaka launched an apparently well-coordinated attack on Bangui which first targeted Séléka positions before beginning retaliatory attacks on Muslims throughout the city. In the ensuing violence, which continued for several weeks, both Séléka and anti-balaka reportedly targeted civilians on the basis of their religion, carrying out deliberate killings, wounding and rapes.
15. The majority of the (minority) Muslim population of Bangui fled, either towards neighbouring countries, or perceived safe areas such as Bangui airport, mosques, and the bases of international forces. Some non-Muslims also sought safety in displacement sites. Similar attacks and counter-attacks by both armed groups spread throughout the country. Séléka forces largely



retreated from Bangui towards the east of the country, leaving Muslim civilians in Bangui and western the CAR vulnerable to anti-balaka attacks which included rapes, killings, and the mutilation of victims' bodies. The country broadly became divided in two, with some on the Séléka side reportedly calling for a permanent partition. Anti-Muslim hate speech by some anti-balaka elements was reported, with some describing anti-balaka attacks against Muslim civilians as "cleansing" operations.

### *Jurisdiction*

16. *Jurisdiction ratione temporis*: The CAR deposited its instrument of ratification on 3 October 2001. The ICC therefore has jurisdiction over Rome Statute crimes committed on the territory of the CAR or by its nationals since 1 July 2002. On 30 May 2014, the CAR authorities referred the situation in the CAR to the ICC with respect to alleged crimes committed "since 1 August 2012" with no end-date. The Office may therefore investigate on the basis of the referral any alleged crimes within the jurisdiction of the Court committed in the context of the situation in the CAR since 1 August 2012.<sup>5</sup>
17. *Jurisdiction ratione loci/jurisdiction ratione personae*: The CAR authorities referred to the Court "the situation on the territory of the Central African Republic since 1 August 2012" with no limitations on the scope of the territorial jurisdiction of the Court.<sup>6</sup> The Court may therefore exercise jurisdiction with respect to any crimes committed anywhere on the territory of the CAR in the context of this situation if warranted. It may also exercise its jurisdiction if the person accused of the crime committed in the context of this situation is a national of a State Party or a State accepting jurisdiction of the Court under article 12(3).
18. *Jurisdiction ratione materiae*: The information available provides a reasonable basis to believe that since at least December 2012 an armed conflict of a non-international character has been taking place in the CAR between Government forces and organized armed groups and between such groups, considering that: (i) Séléka, and anti-balaka exhibit a sufficient degree of

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<sup>5</sup> Situation in the Democratic Republic of the Congo, *The Prosecutor v. Callixte Mbarushimana*, "Decision on the Prosecutor's Application for a Warrant of Arrest against Callixte Mbarushimana", ICC-01/04-01/10-1, 11 October 2010, para. 6 ("Mbarushimana Arrest Warrant Decision"); Situation in the Republic of Côte d'Ivoire, "Corrigendum to 'Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire'", ICC-02/11-14-Corr, 15 November 2011, paras. 178–179 ("Côte D'Ivoire Article 15 Decision").

<sup>6</sup> Referral of the Central African Republic, [annexed](#) to the Decision Assigning the Situation in the Central African Republic II to Pre-Trial Chamber II, ICC-01/14-1-Anx1, 18 June 2014.

organization; and (ii) the violence is of sufficient intensity to justify the application of international, as opposed to national, law.

19. Accordingly, conduct that took place in the context of and was associated with this armed conflict may qualify as war crimes under the jurisdiction of the Court.
20. The information available provides a reasonable basis to believe that both Séléka and anti-balaka members have committed crimes against humanity within the territory of the CAR. Information available provides a reasonable basis to conclude that from February 2013 at the latest to the time of writing of the present report, Séléka forces conducted a widespread and systematic attack against the civilian population as they expanded their control of the territory of the CAR, targeting perceived opponents in the civilian population. In late 2013 these attacks allegedly became more notably targeted at non-Muslim civilians, who were perceived as supporters of anti-balaka.
21. The information available provides a reasonable basis to believe that from September 2013 at the latest, anti-balaka carried out a widespread and systematic attack against the Muslim civilian population, whom they perceived to be supportive of Séléka. The attack was reportedly concentrated in Bangui and the west of the country, and forced a massive displacement of Muslim civilians to other parts of the country or out of the country.
22. The information available provides a reasonable basis to believe that Séléka has committed the following war crimes (at the latest from December 2012 onwards) and crimes against humanity (at the latest from February 2013 onward): murder as a war crime under article 8(2)(c)(i) and as a crime against humanity under article 7(1)(a); mutilation, cruel treatment and torture as war crimes under article 8(2)(c)(i) and torture and/or other inhumane acts as crimes against humanity under articles 7(1)(f) and (k); intentionally directing attacks against the civilian population as such under article 8(2)(e)(i); attacking personnel or objects involved in a humanitarian assistance mission under article 8(2)(e)(iii); intentionally directing attacks against protected objects under article 8(2)(e)(iv); pillaging under article 8(2)(e)(v); rape as a war crime under article 8(2)(e)(vi) and as a crime against humanity under article 7(1)(g); conscripting or enlisting children under the age of fifteen years into armed groups or using them to participate actively in hostilities under article 8(2)(e)(vii); and persecution in connection with the

above-mentioned alleged crimes of murder, rape, torture and/or other inhumane acts under article 7(1)(h).

23. The information available also provides a reasonable basis to believe that anti-balaka have committed the following war crimes (at the latest from June 2013 onwards) and crimes against humanity (at the latest from September 2013 onwards): murder as a war crime under article 8(2)(c)(i) and as a crime against humanity under article 7(1)(a); committing outrages upon personal dignity under article 8(2)(c)(ii); intentionally directing attacks against the civilian population as such under article 8(2)(e)(i); attacking personnel or objects involved in a humanitarian assistance mission under article 8(2)(e)(iii); intentionally directing attacks against protected objects under article 8(2)(e)(iv); pillaging under article 8(2)(e)(v); rape as a war crime under article 8(2)(e)(vi) and as a crime against humanity under article 7(1)(g); conscripting or enlisting children under the age of fifteen years into armed groups or using them to participate actively in hostilities under article 8(2)(e)(vii); deportation or forcible transfer of population under article 7(1)(d); and persecution in connection with the above-mentioned alleged crimes of murder, rape and deportation or forcible transfer of population under article 7(1)(h).
24. While there is some information about alleged crimes committed by members of the FACA, in particular the Presidential Guard of former President BOZIZÉ, between at least 1 January and 23 March 2013, there is insufficient information at this stage to reach a determination on whether such alleged crimes constitute war crimes under article 8 of the Statute.

### *Admissibility*

25. Complementarity: To date, a limited number of proceedings have been launched in the CAR in relation to crimes within the jurisdiction of the ICC. Some of these proceedings relate to groups of persons and conduct which could potentially be the subject of investigations by the Office. Existing proceedings remain, however, at the preliminary stage and the Office understands that the prosecutors and police generally lack the capacity and security to conduct investigations and apprehend and detain suspects.

26. Furthermore, the referral from the CAR authorities indicated that the national judicial system is not able to conduct the necessary investigations and prosecutions successfully.<sup>7</sup>
27. The information currently available indicates that no other State with jurisdiction is conducting or has conducted national proceedings in relation to crimes allegedly committed in the context of the Situation in the CAR II.
28. This assessment of complementarity is based on the underlying facts as they exist at the time of writing and is preliminary in nature. It is subject to revision based on change in circumstances and is not binding for the purpose of possible future admissibility determinations.<sup>8</sup> The Office may revisit this assessment following the receipt of any information from States pursuant to the article 18 notification procedure.
29. *Gravity*: On the basis of the information available, the allegations identified in this report indicate that potential cases identified for investigation by the Office would be of sufficient gravity to justify further action by the Court, based on an assessment of the scale, nature, manner of commission and impact of the alleged crimes.
30. Accordingly, the potential cases that would likely arise from an investigation of the situation would be admissible pursuant to article 53(1)(b).

### *Interests of Justice*

31. Based on the available information, there are no substantial reasons to believe that an investigation into the Situation in the CAR II would not serve the interests of justice.

### *Conclusion*

32. This report concludes that there is a reasonable basis to proceed with an investigation into the Situation in the CAR II.

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<sup>7</sup> "Les juridictions centrafricaines [...] ne sont pas en mesure de mener à bien les enquêtes et les poursuites nécessaires sur ces crimes". See referral of the Central African Republic, [annexed](#) to the Decision Assigning the Situation in the Central African Republic II to Pre-Trial Chamber II, ICC-01/14-1-Anx1, 18 June 2014.

<sup>8</sup> Regulation 29(4), Regulations of the Office of the Prosecutor; Situation in the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ICC-01/09-19-Corr, 31 March 2010, para. 50 ("Kenya Article 15 Decision"); Situation in the Democratic Republic of the Congo, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Judgment on the Appeal of Mr Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, ICC-01/04-01/07-1497, 25 September 2009, para. 56 ("Judgment on Appeal of Katanga against Admissibility Decision").

## I. INTRODUCTION

1. The Office of the Prosecutor (“Office”) of the International Criminal Court (“Court” or “ICC”) is responsible for determining whether a situation meets the legal criteria established by the Rome Statute (“Statute”) to warrant investigation by the Court. For this purpose, the Office conducts a preliminary examination of all situations that come to its attention based on statutory criteria and the information available. Once a situation is thus identified, article 53(1)(a)-(c) of the Statute establishes the legal framework for a preliminary examination. It provides that, in order to determine whether there is a reasonable basis to proceed with an investigation into the situation, the Prosecutor shall consider: jurisdiction (temporal, territorial or personal, and material); admissibility (complementarity and gravity); and the interests of justice.
2. The Central African Republic (“CAR”) is a State Party to the ICC. On 7 February 2014, the Prosecutor announced the opening of a preliminary examination of crimes allegedly committed in the CAR since September 2012. Following analysis of the jurisdictional parameters regarding the situation in the CAR since September 2012, the Office concluded that these incidents and the serious allegations of crimes potentially falling within the jurisdiction of the ICC constituted a new situation, unrelated to the situation previously referred to the ICC by the CAR authorities in December 2004.<sup>9</sup>
3. On 30 May 2014, the Central African transitional authorities referred “the situation on the territory of the Central African Republic since 1 August 2012” to the ICC.<sup>10</sup>
4. This report is based on open and other reliable sources, which the Office has subjected to independent, impartial and thorough analysis between December 2012 and August 2014. It should be recalled that the Office does not enjoy investigative powers at the preliminary examination stage. Its findings are therefore preliminary in nature and may be reconsidered in the light of new facts or evidence. The preliminary examination process is conducted on the basis of the facts and information available. The goal of

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<sup>9</sup> ICC OTP, “Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on opening a new Preliminary Examination in Central African Republic”, 7 February 2014.

<sup>10</sup> In the original: “*la situation qui prévaut sur le territoire de la République Centrafricaine depuis le 1er août 2012*”. See referral of the Central African Republic, [annexed](#) to the Decision Assigning the Situation in the Central African Republic II to Pre-Trial Chamber II, ICC-01/14-1-Anx1, 18 June 2014. See also ICC OTP, “Statement by the ICC Prosecutor, Fatou Bensouda, on the referral of the situation since 1 August 2012 in the Central African Republic”, 12 June 2014.

this process is to reach a fully informed threshold determination of whether there is a reasonable basis to proceed with an investigation.

5. The 'reasonable basis' standard has been interpreted by Pre-Trial Chamber II (PTC II) to require that "there exists a sensible or reasonable justification for a belief that a crime falling within the jurisdiction of the Court 'has been or is being committed'".<sup>11</sup> In this context, PTC II has indicated that all of the information need not necessarily "point towards only one conclusion".<sup>12</sup> This reflects the fact that the reasonable basis standard under article 53(1)(a) "has a different object, a more limited scope, and serves a different purpose" than other, higher evidentiary standards provided for in the Statute.<sup>13</sup> In particular, at the preliminary examination stage, "the Prosecutor has limited powers which are not comparable to those provided for in article 54 of the Statute at the investigative stage" and the information available at such an early stage is "neither expected to be 'comprehensive' nor 'conclusive'".<sup>14</sup> Furthermore, it should be noted that findings at the preliminary examination phase are not binding for the purpose of future investigations.<sup>15</sup>

## II. PROCEDURAL HISTORY

6. The Office has been analysing the recent situation in the CAR since the end of 2012.
7. During the course of 2013, the Office issued three statements in relation to the situation in the CAR. On 22 April 2013, the Office issued a public statement referring to allegations of crimes under the Court's jurisdiction and warning that the Office would not hesitate to prosecute those responsible for these crimes.<sup>16</sup> On 7 August 2013, the Office issued a public statement noting the deterioration of the situation in the CAR and calling upon those responsible for committing crimes to desist. The Office further

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<sup>11</sup> Kenya Article 15 Decision, para. 35.

<sup>12</sup> Kenya Article 15 Decision, para. 34. In this respect, it is further noted that even the higher "reasonable grounds" standard for arrest warrant applications under article 58 does not require that the conclusion reached on the facts be the only possible or reasonable one. Nor does it require that the Prosecutor disprove any other reasonable conclusions. Rather, it is sufficient to prove that there is a reasonable conclusion alongside others (not necessarily supporting the same finding), which can be supported on the basis of the evidence and information available. Situation in Darfur, Sudan, Judgment on the appeal of the Prosecutor against the 'Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir', ICC-02/05-01/09-OA, 3 February 2010, para. 33.

<sup>13</sup> Kenya Article 15 Decision, para. 32.

<sup>14</sup> Kenya Article 15 Decision, para. 27.

<sup>15</sup> Kenya Article 15 Decision, paras. 50, 75.

<sup>16</sup> ICC OTP, "Prosecutor's statement in relation to situation in Central African Republic", 22 April 2013.

declared that it would do its part in investigating and prosecuting those responsible if necessary and that it would continue to monitor the situation.<sup>17</sup> On 9 December 2013, the Office issued a third public statement denouncing the escalation of violence and calling on all parties to the conflict (including former Séléka elements and anti-balaka) to stop attacking civilians and committing crimes, or to risk being investigated and prosecuted by the ICC. The Office also welcomed international efforts to stabilize the security situation including the establishment of a UN backed international commission of inquiry.<sup>18</sup>

8. On 7 February 2014, the Prosecutor announced the opening of a preliminary examination of crimes allegedly committed in the Central African Republic since September 2012. Following analysis of the jurisdictional parameters regarding the situation in the CAR since September 2012, the Office concluded that these incidents and the serious allegations of crimes potentially falling within the jurisdiction of the ICC constitute a new situation, unrelated to the “situation of crisis” previously referred to the ICC by the CAR authorities in December 2004.<sup>19</sup>
9. Although certain individuals may have played roles in both of these differing situations, a distinction between the two periods is apparent both with regard to the armed groups involved, and the political context of the events. The previous situation in the CAR, which began in 2002, involved armed groups which originated from the north-western region of the country and at least one armed group from the Democratic Republic of the Congo (“DRC”). In contrast, the roots of the recent situation can be traced to the armed groups which emerged in the north-east of the country in 2007, notably the *Union des forces démocratiques pour le rassemblement* (Union of Democratic Forces for Unity, “UFDR”). The emergence of these armed groups can be linked in particular to the weakness of state authority in the north-east. The group included fighters from that region and from the neighbouring states of Chad and Sudan. These groups evolved into the Séléka coalition which from

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<sup>17</sup> ICC OTP, “Prosecutor’s statement in relation to situation in Central African Republic”, 7 August 2013.

<sup>18</sup> ICC OTP, “Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, in relation to the escalating violence in the Central African Republic”, 9 December 2013.

<sup>19</sup> ICC OTP, “Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on opening a new Preliminary Examination in Central African Republic”, 7 February 2014. On the jurisdiction parameters of a situation, see Situation in the Democratic Republic of the Congo, *The Prosecutor v. Callixte Mbarushimana*, “Decision on the ‘Defence Challenge to the Jurisdiction of the Court’”, ICC-01/04-01/10-451, 26 October 2011, para. 21.

2012 onwards progressively gained control of territory and eventually overthrew the Government.

10. The above-mentioned factors contributed to the Office's conclusion that the serious allegations of crimes potentially falling within the jurisdiction of the ICC and committed since August 2012 constituted a new situation.
11. From 6-13 May 2014, a delegation of the Office visited the CAR in the context of the preliminary examination to verify the seriousness of the information in its possession on alleged crimes committed in the CAR since 2012, gather additional information, and establish contacts with the new authorities and national and international partners.
12. On 30 May 2014, the Central African transitional authorities referred to the ICC "*la situation qui prévaut sur le territoire de la République Centrafricaine depuis le 1er août 2012*" ("the situation on the territory of the Central African Republic since 1 August 2012"). The referral of this situation was made public by the CAR authorities on 10 June 2014.<sup>20</sup>
13. On 12 June 2014, the Office issued a public statement confirming receipt of the referral from the CAR authorities.<sup>21</sup>
14. On 13 June 2014, the Prosecutor formally notified the Presidency of the referral pursuant to Regulation 45 of the Regulations of the Court.
15. On 18 June 2014, the Presidency of the ICC assigned the Situation in the Central African Republic II to Pre-Trial Chamber II.<sup>22</sup>

### III. CONTEXTUAL BACKGROUND

#### *Administration and population*

16. The Central African Republic is a landlocked country in Central Africa bordering Chad and Sudan to the north, South Sudan to the east, the DRC and the Republic of Congo to the south and Cameroon to the west. The

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<sup>20</sup> In the original: "*la situation qui prévaut sur le territoire de la République Centrafricaine depuis le 1er août 2012*". See referral of the Central African Republic, [annexed](#) to the Decision Assigning the Situation in the Central African Republic II to Pre-Trial Chamber II, ICC-01/14-1-Anx1, 18 June 2014. See also ICC OTP, "Statement by the ICC Prosecutor, Fatou Bensouda, on the referral of the situation since 1 August 2012 in the Central African Republic", 12 June 2014.

<sup>21</sup> ICC OTP, "Statement by the ICC Prosecutor, Fatou Bensouda, on the referral of the situation since 1 August 2012 in the Central African Republic", 12 June 2014.

<sup>22</sup> Decision Assigning the Situation in the Central African Republic II to PTC II, ICC-01/14-1, 18 June 2014.



country is divided into 16 prefectures and one commune, Bangui, which is also the capital.<sup>23</sup> It is among the poorest and least developed countries in the world, rated 180<sup>th</sup> of 187 countries included in the UNDP human development index of 2013.<sup>24</sup> All neighbouring countries were also rated low on the human development index.<sup>25</sup>

17. The total population of the CAR is estimated at 5,277,959.<sup>26</sup> The main ethnic groups are the Gbaya (or Baya), constituting 33% of the total population, and the Banda, who make up 27%. The Gbaya reside mainly in the north-west of the country whereas the Banda are found throughout the territory. The next largest groups are the Mandjia constituting 13% of the population, the Sara (10%) and the Mboum constituting around 7% of the population. The common national language is Sango alongside French, which is also the official language in the CAR. Arabic is also commonly spoken in the north-east. Prior to the conflict that started towards the end of 2012, 15% of the population was Muslim, 25% Roman Catholic, 25% Protestant and 35% followed indigenous beliefs.<sup>27</sup>

#### *Cycles of conflict*

18. Since 2001, the CAR has been subject to political instability and different cycles of conflict. Attempted and successful *coups d'état*, offensives and counter-offensives carried out by armed groups and the Central African Republic Armed Forces (FACA) have resulted in multiple crimes and human rights abuses being committed.<sup>28</sup> The armed conflict between October 2002 and March 2003 brought Francois BOZIZÉ to power, ousting President PATASSÉ on 15 March 2003.<sup>29</sup> After a two-year transition period, BOZIZÉ was successfully elected President of the CAR in May 2005. By the end of 2005, armed groups began to emerge in the north-west and north-east of the country, unsatisfied with the security and development situation in their respective regions and calling for economic rebuilding and development as well as political participation.<sup>30</sup> Despite the signing of different peace

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<sup>23</sup> See map of the Central African Republic in annex 1.

<sup>24</sup> UNDP, "Human Development Report 2013", p. 146.

<sup>25</sup> Chad 184<sup>th</sup>, Sudan 171<sup>st</sup>, South Sudan (not rated), Democratic Republic of the Congo 186<sup>th</sup>, Republic of the Congo 142<sup>nd</sup>, Cameroon 150<sup>th</sup>. See UNDP, "Human Development Report 2013", pp. 146-147.

<sup>26</sup> CIA World Factbook, Central African Republic, accessed on 26 August 2014.

<sup>27</sup> CIA World Factbook, Central African Republic, accessed on 26 August 2014.

<sup>28</sup> FIDH, "Central African Republic: A country in the hands of Séléka war criminals", 23 September 2013, p. 6; FIDH, "Central African Republic: They must all leave or die", 24 June 2014, p. 63.

<sup>29</sup> Crimes committed in the conflict of October 2002 to March 2003 have been investigated by the ICC and led to the prosecution of Jean-Pierre BEMBA. See *The Prosecutor v. Jean-Pierre Bemba Gombo*.

<sup>30</sup> J. Graf, "Conflict Analysis – Central African Republic – 2011", p. 6.

agreements between 2007 and 2008, change in northern the CAR did not come fast enough for those who felt neglected in terms of development and assistance from Bangui.<sup>31</sup> Most of the key provisions of the peace agreements were not implemented. In January 2011, BOZIZÉ was re-elected President in the first round of the presidential elections.<sup>32</sup>

*Emergence of the Séléka<sup>33</sup> rebel movement (2012)*

19. Séléka (which means “alliance” in the main national language of Sango) emerged in August 2012 as a coalition of already existing militant political movements and armed groups under a joint leadership.<sup>34</sup> Some former close supporters of BOZIZÉ, including members of his Presidential Guard, voiced their dissatisfaction with the regime and also joined the rebellion.<sup>35</sup> In addition many Sudanese nationals, mainly from Darfur, and Chadians reportedly joined Séléka.<sup>36</sup> The rise of Séléka was favoured by the absence of a solution to the continued presence of armed groups in the north-eastern region of the CAR, the lack of a successful program of disarmament, demobilization and reintegration (DDR) for these fighters, a crippled security system and weak if not absent state authority in particular in the north of the country.<sup>37</sup>

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<sup>31</sup> HRW, “I can still smell the dead - The forgotten human rights crisis in the Central African Republic”, 18 September 2013, p. 32.

<sup>32</sup> AU, “Report of the Chairperson for the Commission on the Situation in the Central African Republic”, PSC/PR/2.(CCCXLV), 6 December 2012, p. 1.

<sup>33</sup> The name “Séléka” is used throughout this report to mean the armed group that has also been known as “ex-Séléka” after September 2013, and later as the *Front populaire pour la renaissance de la centrafrique* (Popular Front for the Rebirth of Central Africa).

<sup>34</sup> At the beginning of the rebellion, most combatants and military commanders were members of or loyal to the *Union des forces démocratiques pour le rassemblement* (Union of Democratic Forces for Unity, UFDR) representing Muslims in the northeast, and under the leadership of Michel DJOTODIA. Other groups that joined Séléka include the *Convention des Patriotes pour la Justice et la Paix* (CPJP) and the *Convention Patriotique du salut du Kodro* (CPSK), as well as the *Forces démocratiques pour le peuple centrafricain* (FDPC). The *Union des forces républicaines* (UFR) associated itself with Séléka but maintained a limited role. Furthermore a hitherto unknown organization, the *Alliance pour la renaissance et la refondation* (A2R) joined the coalition. FIDH, “Central African Republic: A country in the hands of Séléka war criminals”, 23 September 2013, pp. 8-9.

<sup>35</sup> Disgruntled FACA officers formed the alliance pour la Renaissance et la Refondation (A2R) in October 2012 and sought connections with Séléka, from which it has distanced itself since the start of the hostilities. See HRW, “I can still smell the dead - The forgotten human rights crisis in the Central African Republic”, 18 September 2013, p. 30; ICG, “CAR - Priorities of the Transition”, 11 June 2013, p. 7.

<sup>36</sup> JA, “L’Union africain suspend la Centrafrique et prend des sanctions contre Michel Djotodia”, 25 March 2013; FIDH, “Central African Republic: They must all leave or die’”, 24 June 2014, pp. 63-70. ; Enough, “Central African Republic - Behind the Headlines - Drivers of Violence in the Central African Republic”, 1 May 2014, pp. 11-12.

<sup>37</sup> ICG, “Failure has many fathers: The Coup in the Central African Republic”, 27 March 2013.

20. Encouraged by initial victories in the field<sup>38</sup> Séléka launched a major military offensive on 10 December 2012 with an attack on Ndélé (in the northern prefecture of Bamingui-Bangoran) and aimed to overthrow President BOZIZÉ.<sup>39</sup> The movement gathered support as it advanced on Bangui. Its ranks filled with people from the centre of the country and were further swelled by the alleged massive recruitment of young people in the capital, including minors.<sup>40</sup>

*Séléka advance, Libreville 2 and the fall of BOZIZÉ (2013)*

21. The Séléka rebellion that started in the northeast advanced quickly. By the end of December 2012 the rebel forces were just outside Bangui, where they were stopped by the intervention of forces from Chad and from the Economic Community of Central African States (ECCAS) Mission for the Consolidation of Peace in the CAR (MICOPAX).<sup>41</sup>
22. The 11 January 2013 Libreville Agreements, negotiated by ECCAS, temporarily prevented a coup and initiated a three-year power-sharing arrangement.<sup>42</sup> However, this transition plan failed and eventually Séléka seized power in Bangui on 24 March 2013, forcing BOZIZÉ into exile.<sup>43</sup>
23. On 25 March 2013, as a consequence of the coup, the AU suspended the CAR's membership of the Union and imposed sanctions on seven Séléka leaders, including travel bans and the freezing of their assets.<sup>44</sup>
24. After two extraordinary summits held in the Chadian capital N'Djamena on 3 and 18 April 2013, the ECCAS decided that the new Government would be recognized *de facto* within the framework of the 11 January 2013 Libreville Agreements supervised by the international community.<sup>45</sup> Several transitional institutions were established, including the National Transitional

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<sup>38</sup> The *CPJP fondamentale*, a splinter group of the *Convention des Patriotes pour la Justice et la Paix* (CPJP), reportedly started to launch attacks on government forces as early as 16 September 2012 with attacks on the localities of Sibut and Damara (180km and 75km north of Bangui), announcing it wanted to overthrow BOZIZÉ. See ICG, "CAR - Priorities of the Transition", 11 June 2013, pp. 4 and 7.

<sup>39</sup> FIDH, "Central African Republic: 'They must all leave or die'", 24 June 2014, p. 7.

<sup>40</sup> ICG, "CAR - Priorities of the Transition", 11 June 2013, p. 7.

<sup>41</sup> ICG, "CAR - Priorities of the Transition", 11 June 2013, p. i.

<sup>42</sup> ICG, "CAR - Priorities of the Transition", 11 June 2013, p. 13.

<sup>43</sup> ICG, "CAR - Priorities of the Transition", 11 June 2013, p. i.

<sup>44</sup> The seven Séléka leaders are Michel DJOTODIA, Mohamed Moussa DHAFFANE, Christophe Gazam BETTY, Amalas Amias AROUNE and André Ruingi LE GAILLARD, all Séléka ministers under the new transitional government formed after the 11 January 2013 Libreville agreements, as well as Nouredine ADAM, leader of the CPJP, and Éric MASSI, Séléka spokesperson, residing in Paris. See AU, "PSC communiqué - PSC-PR-COMM - (CCCLXIII)", 25 March 2013.

<sup>45</sup> ICG, "CAR - Priorities of the Transition", 11 June 2013, p. 16.

Council, which acts as a parliament, the Constitutional Charter, and the Constitutional Court.<sup>46</sup> Michel DJOTODIA was sworn in as interim President on 18 August 2013. He and Prime-Minister Nicolas TIANGAYE were to jointly rule the country during an 18-month transition period.<sup>47</sup>

25. On 13 September 2013, interim President DJOTODIA officially dissolved Séléka.<sup>48</sup> Some of the rebels were integrated into the CAR Armed Forces and police forces; others refused integration.<sup>49</sup>
26. In October 2013 the UN Security Council (“UNSC”) stated that the situation in the CAR was characterized by a “total breakdown in law and order, the absence of the rule of law”<sup>50</sup>, a wording used in all subsequent UNSC resolutions on the CAR.<sup>51</sup>

#### *Sectarian violence*

27. By the end of 2013, the violence took on a sectarian character, in particular in the western and central regions.<sup>52</sup> In its October 2013 resolution, the UNSC raised its particular concern at reports of targeted violence against representatives of ethnic and religious groups. By December 2013, the Council noted a “continuing deterioration of the security situation in the Central African Republic” and expressed its particular concern “at the new dynamic of violence and retaliation and the risk of it degenerating into a countrywide religious and ethnic divide, with the potential to spiral into an uncontrollable situation including serious crimes under international law in particular war crimes and crimes against humanity”.<sup>53</sup>
28. Atrocities allegedly committed by Séléka combatants, who were mainly Muslim, and targeted mainly at non-Muslims, outraged the population and led to the creation of groups such as the “anti-balaka” (meaning “anti-machete” in Sango<sup>54</sup> or according to other sources “anti-balles AK”<sup>55</sup>). These

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<sup>46</sup> ICG, “Central African Republic: Better late than never”, 2 December 2013, p. 5.

<sup>47</sup> TIANGAYE had already been PM under the rule of BOZIZÉ. ICG, “CAR - Priorities of the Transition”, 11 June 2013, p. 17.

<sup>48</sup> The rebel force was dissolved by decree no 13.334. See UN Human Rights Council, “Report of the OHCHR on the situation of human rights in CAR”, A-HRC-25-43, 19 February 2014, para. 7.

<sup>49</sup> ICG, “Central African Republic: Better late than never”, 2 December 2013, p. 3.

<sup>50</sup> UN Security Council Resolution 2121 (2013), 10 October 2013, preamble.

<sup>51</sup> Until and including UN Security Council Resolution 2134 (2014), 28 January 2014.

<sup>52</sup> ICG, “Central African Republic: Better late than never”, 2 December 2013, p. 4.

<sup>53</sup> UN Security Council Resolution 2127 (2013), 5 December 2013, preamble.

<sup>54</sup> HRW, They came to kill – Escalating atrocities in the CAR, 19 December 2013, p. 5.

<sup>55</sup> AU, 1er Rapport Intérimaire de la Commission de l’Union Africaine sur la situation en République Centrafricaine et les activités de la Mission Internationale de Soutien à la Centrafrique sous conduite Africaine, 7 March 2014, para. 4.

groups have in turn allegedly targeted Muslim communities, fuelling a spiral of violence and revenge attacks.

#### *Resignation of President DJOTODIA and Prime Minister TIANGAYE*

29. On 9 and 10 January 2014, leaders of ECCAS held a crisis summit in N'Djamena, Chad, and invited the 135 members of the Central African national transitional council (CNT).<sup>56</sup> During the ECCAS summit, the CNT reached an agreement excluding the Séléka leader from the Presidency, with a view to facilitate the end of the crisis. On 10 January 2014, President DJOTODIA and Prime Minister TIANGAYE resigned.<sup>57</sup> On 14 January 2014, the CNT fixed the criteria as well as the election calendar for the presidential election. The Mayor of Bangui, Catherine SAMBA-PANZA, was elected interim President of the CAR and Head of the transition Government on 20 January 2014.<sup>58</sup>
30. Retaliatory violence by anti-balaka against Muslim civilians however continued to increase after the resignation of DJOTODIA, causing further internal displacement and a new wave of refugees, in particular into Chad. On 20 January 2014, the UN Secretary-General BAN KI-MOON described the situation in the CAR as “a crisis of epic proportions”.<sup>59</sup>

#### *Transition challenges*

31. The security environment raised serious challenges to the transitional authorities, who struggled to govern the country with inadequate security forces and financial means, depending almost entirely on international support.<sup>60</sup> The UN observed a high level of political and social antagonism and distrust among political actors and between communities.<sup>61</sup> By August 2014, State authority remained largely absent outside Bangui and Séléka

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<sup>56</sup> ECCAS, “Communiqué final de la 6ème Session Extraordinaire de la Conférence des Chefs d’Etat et de Gouvernement de la Communauté Economique des Etats de l’Afrique Centrale (CEEAC)”, N’Djamena, 9 et 10 janvier 2014, 11 January 2014.

<sup>57</sup> RFI, “RCA: la démission de Djotodia officialisée à Ndjamena”, 10 January 2014.

<sup>58</sup> JA, “Catherine Samba Panza élue présidente de la transition”, 20 January 2014.

<sup>59</sup> UN News, “Brutality against children in Central African Republic reaches unprecedented levels – UN”, 22 January 2013.

<sup>60</sup> UN Security Council, “Report of the Secretary-General on the situation in the Central African Republic”, S/2014/562, 1 August 2014, para. 21.

<sup>61</sup> UN Security Council, “Report of the Secretary-General on the situation in the Central African Republic”, S/2014/562, 1 August 2014, para. 21.

remained in control of, and exercised State functions in, eight of the 16 prefectures.<sup>62</sup>

32. In her address to the nation on 4 July 2014, President SAMBA-PANZA presented a threefold approach to address the crisis, involving political dialogue, reconciliation at the grass-roots level and justice.<sup>63</sup> Referring to lessons learned from the past, the Head of State stressed the need to ensure that the political dialogue did not reward those who had taken up arms and that it did not forget about the victims.<sup>64</sup>

#### *Reorganization of Séléka and anti-balaka*

33. Following a two-day congress, held on 9-10 May 2014 in Ndélé and attended by approximately 1,200 participants, Séléka announced the composition of a new military structure led by General Joseph ZOUNDEIKO as Chief of Staff and called for the partition of the country.<sup>65</sup> This was followed by a meeting of Séléka leaders in Birao from 6 to 10 July 2014. The transformation of the movement into the *Front populaire pour la renaissance de la Centrafrique* (Popular Front for the Rebirth of Central Africa, "FPRC") was announced after this meeting and former President Michel DJOTODIA was named head of the Political Bureau of the group.<sup>66</sup>
34. Similarly, anti-balaka unified their movement in June 2014 and created a new organization and command structure under the leadership of Patrice Edouard NGAISSONA and Sébastien WENEZOUÏ.<sup>67</sup>

#### *Brazzaville agreement*

35. On 21-23 July 2014, a forum on national reconciliation and political dialogue was held in Brazzaville, Republic of Congo chaired by the ECCAS mediator, President Denis Sassou NGUËSSO. The forum was attended by President SAMBA-PANZA and a number of transitional authority representatives, senior representatives of ECCAS member States, international partners

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<sup>62</sup> UN Security Council, "Report of the Secretary-General on the situation in the Central African Republic", S/2014/562, 1 August 2014, para. 28.

<sup>63</sup> UN Security Council, "Report of the Secretary-General on the situation in the Central African Republic", S/2014/562, 1 August 2014, para. 24.

<sup>64</sup> UN Security Council, "Report of the Secretary-General on the situation in the Central African Republic", S/2014/562, 1 August 2014, para. 24.

<sup>65</sup> UN Security Council, "Report of the Secretary-General on the situation in the Central African Republic", S/2014/562, 1 August 2014, para. 29.

<sup>66</sup> UN Security Council, "Report of the Secretary-General on the situation in the Central African Republic", S/2014/562, 1 August 2014, para. 30.

<sup>67</sup> UN Security Council, "Report of the Secretary-General on the situation in the Central African Republic", S/2014/562, 1 August 2014, para. 31.

including ECCAS, the AU, the UN and the European Union (EU). Representatives of Central African armed groups including Séléka and anti-balaka<sup>68</sup>, civil society, political parties and religious groups also took part.<sup>69</sup> On 23 July 2014, a cessation of hostilities agreement was signed, committing the parties to the agreement to establishing a follow-up monitoring mechanism.

36. Shortly after the signing of the agreement, however, Séléka's military and political leadership disassociated itself from their delegation, indicating that it did not have the mandate to sign the accords.<sup>70</sup> Hostilities between anti-balaka and Séléka resumed in parts of the country leading to further killings.<sup>71</sup>

#### *International support*

37. Since the beginning of the conflict, regional and international actors including ECCAS, the African Union, the United Nations and the European Union have been working towards bringing an end to the hostilities. An international contact group, co-chaired by the AU and the Republic of Congo, as the chief mediator for the CAR, was established and holds regular meetings to coordinate the international efforts with respect to the CAR.<sup>72</sup>
38. ECCAS has been present in the CAR for years and in 2008 established the Mission for the Consolidation of Peace in the CAR (MICOPAX). This mission consisted of approximately 700 troops and was replaced by the AU's African-led International Support Mission for the CAR (MISCA) on 19 December 2013.<sup>73</sup> MISCA was established on 19 July 2013 with a total strength of 3,652 persons including 3,500 uniformed personnel and 152 civilians.<sup>74</sup>

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<sup>68</sup> Other armed groups present included the *Front Démocratique du Peuple Centrafricain* (FDPC), the *Révolution et Justice* (RJ), the *Mouvement de Libération Centrafricaine pour la Justice* and the *Union des Forces Républicaine* (UFRF). See "Accord de cessation des hostilités en République Centrafricaine", 23 July 2014, p. 6.

<sup>69</sup> UN Security Council, "Report of the Secretary-General on the situation in the Central African Republic", S/2014/562, 1 August 2014, para. 32.

<sup>70</sup> Afrik.com, "Centrafrique: le chef militaire de la Séléka refuse l'accord de Brazzaville", 4 August 2014.

<sup>71</sup> Afrik.com, "Centrafrique: 22 morts dans des combats entre anti-balaka et ex-séléka", 1 August 2014.

<sup>72</sup> Participants of the International Contact Group include, South Africa, Algeria, Angola, Brazil, Burundi, Cameroon, China, Republic of Congo, DRC, USA, France, Gabon, Equatorial Guinea, India, Japan, Luxemburg, Mozambique, Uganda, UK, Rwanda, ICRC, ECCAS, the International Conference of the Great Lakes Region, the International Monetary Fund, Organization of Islamic Cooperation, International Organization of La Francophonie, the African Union and the European Union.

<sup>73</sup> AU, "PSC communiqué de presse - Transfer d'autorité entre la MICOPAX et la MISCA", 19 December 2013.

<sup>74</sup> AU, "PSC communiqué de presse, PSC/PR/COMM.2(CCCLXXXV)", 19 July 2013, p. 1.

39. On 5 December 2013, the UN approved a French military intervention in the CAR. 1,600 French troops were initially deployed to the CAR under the name of *Opération Sangaris*, in support of the African peacekeepers deployed under MISCA.<sup>75</sup>
40. On 28 January 2014, the UN Security Council also approved an EU military operation in the CAR.<sup>76</sup> EUFOR-RCA was subsequently established by the EU Council on 10 February 2014 and deployed to the CAR on 1 April 2014, comprising of around 700 soldiers and gendarmes.<sup>77</sup>
41. The United Nations are present in the CAR through the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), established by the UN Security Council on 10 April 2014.<sup>78</sup> MINUSCA subsumed the UN Integrated Peacebuilding Office in the CAR (BINUCA) and took over military and security authority as well as large parts of the personnel from MISCA on 15 September 2014.<sup>79</sup> According to its contingency plans, the mission will comprise up to 10,000 military personnel, including 240 military observers and 1,800 police personnel.<sup>80</sup>
42. Lastly, the UN Security Council established an International Commission of Inquiry on the Central African Republic, mandated to investigate reports of violations of international humanitarian law, international human rights law and abuses of human rights in the CAR by all parties since 1 January 2013.<sup>81</sup>

#### IV. PRECONDITIONS TO JURISDICTION

43. Article 53(1) of the Statute requires that the Prosecutor “shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute”.
44. For a crime to fall within the Court’s jurisdiction the following requirements must be met: (i) the crime must have been committed within the timeframe specified in article 11 of the Statute; and (ii) the crime must be committed on the territory or by a national of a State that has ratified the Rome Statute or

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<sup>75</sup> UN Security Council Resolution 2127 (2013), 5 December 2013, para. 50.

<sup>76</sup> UN Security Council Resolution 2134 (2014), 28 January 2014.

<sup>77</sup> EU, “EU Military Operation in the Central African Republic Established”, 10 February 2014.

<sup>78</sup> UN Security Council Resolution 2149 (2014), 10 April 2014.

<sup>79</sup> UN Security Council Resolution 2149 (2014), 10 April 2014, paras. 19 and 21.

<sup>80</sup> UN Security Council Resolution 2149 (2014), 10 April 2014, para. 20.

<sup>81</sup> UN Security Council Resolution 2127 (5 December 2013), para. 24. The Commission has since published a preliminary report, see UN Security Council, S/2014/373, 26 June 2014.



accepted the jurisdiction of the ICC by lodging a declaration pursuant to article 12(3) of the Statute.<sup>82</sup>

45. *Jurisdiction ratione temporis*: The CAR deposited its instrument of ratification on 3 October 2001. The ICC therefore has jurisdiction over Rome Statute crimes committed on the territory of the CAR or by its nationals since 1 July 2002. The Office analysed the jurisdictional parameters regarding the situation in the CAR since September 2012, and concluded that the situation characterized by the emergence of the Séléka coalition (around September 2012), the overthrowing of President BOZIZÉ, the attacks of anti-Séléka militias such as the anti-balaka, and attacks on civilians by both sides, constituted a new situation, unrelated to the situation previously referred to the ICC by the CAR authorities in December 2004. The Prosecutor therefore decided on 7 February 2014 to open a preliminary examination into this new situation.
46. On 30 May 2014, the CAR authorities referred the situation in the CAR to the ICC with respect to alleged crimes committed “since the month of August 2012” with no end-date. The Office may therefore investigate alleged crimes committed in the context of the situation in the CAR since August 2012.<sup>83</sup>
47. *Jurisdiction ratione loci/jurisdiction ratione personae*: The Court has jurisdiction *ratione loci* under article 12(2)(a). The CAR government referred “*la situation qui prévaut sur le territoire de la République Centrafricaine depuis le 1er août 2012*” (“the situation on the territory of the Central African Republic since 1 August 2012”) to the Court with no limitations on the scope of territorial jurisdiction of the Court.<sup>84</sup> The Office may therefore investigate alleged crimes committed in the context of this situation within the entire territory of the CAR by any persons irrespective of their nationality.

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<sup>82</sup> Rome Statute, Article 12.

<sup>83</sup> Mbarushimana Arrest Warrant Decision, para. 6; Côte D’Ivoire Article 15 Decision, paras. 178–179.

<sup>84</sup> Referral of the Central African Republic, [annexed](#) to the Decision Assigning the Situation in the Central African Republic II to Pre-Trial Chamber II, ICC-01/14-1-Anx1, 18 June 2014.

## V. SUBJECT-MATTER JURISDICTION

48. For a crime to fall within the Court's jurisdiction it must constitute one of the crimes set out in article 5 of the Statute.

### A. Alleged crimes

49. The section below provides an overview of alleged crimes committed in the CAR since August 2012. Although the provisions of Regulation 49 of the Regulations of the Court do not apply to referrals, the Office has used them as a guide in this analysis as a matter of policy.<sup>85</sup>

#### (a) Places of the alleged commission of the crimes

50. A large percentage of the alleged crimes were committed in Bangui and central and western the CAR including the prefectures of Kémo, Ombella-M'Poko, Nana-Grébizi, Ouham, Ouham-Pendé, Nana-Mambéré and Mambéré-Kadéï with some alleged crimes also committed in eastern the CAR in the early stages of the Séléka rebellion and in 2014.

#### (b) Time period of the alleged commission of the crimes

51. The ongoing armed conflict in the CAR is characterized by four different phases with varying levels of intensity:

- The first phase is marked by the offensive that Séléka launched against the FACA on 10 December 2012 and resulted in the *coup d'état* on 24 March 2013. During this phase, crimes were reportedly committed by both sides.
- The second phase, between 24 March 2013 and June 2013, is marked by Séléka's continued consolidation of power by force, and the absence of organized, armed resistance to Séléka. The group's attacks continued however, and were concentrated mainly in the north-west of the country, the region associated with former-President BOZIZÉ's (Gbaya) ethnic group, and in the neighbourhoods of Bangui associated with the former President. These attacks allegedly predominantly targeted non-Muslim civilians, but did not always spare Muslim civilians.
- The third phase began with the emergence of more organized anti-balaka armed groups around June 2013 and subsequent hostilities between Séléka forces and anti-balaka forces, which grew in intensity. From November 2013 onwards, Séléka attacks became more notably targeted at

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<sup>85</sup> ICC OTP, Policy Paper on Preliminary Examinations, November 2013, p. 20, fn. 53.

non-Muslim civilians. In return, one of the most prominent anti-balaka attacks was the attack on Bangui on 5 December 2013. Séléka reportedly retaliated by targeting non-Muslim civilians, which also led to direct violence between Muslim and non-Muslim civilians. The violence, including direct clashes between anti-balaka and Séléka led to 500-1,000 persons being killed within five days in Bangui alone.<sup>86</sup>

- The fourth phase began following DJOTODIA's resignation and the withdrawal of most Séléka elements from Bangui (early January 2014). Both groups allegedly continued to commit crimes within the jurisdiction of the Court, including ethnically or religiously-targeted attacks on civilians, with varying degrees of intensity, up until the writing of the present report. In particular, anti-balaka attacks against Muslim civilian populations forced thousands of Muslim civilians to flee to neighbouring countries.

*(c) Persons or groups involved*

52. The alleged crimes committed in the context of the situation in the CAR since August 2012 are mostly attributed to armed groups such as Séléka and anti-balaka.
53. Séléka (which means "alliance" in the main national language of Sango) was initially a loose alliance established around August 2012 by different armed groups from areas in the north-east of the CAR. It reportedly also included a significant number of Chadian and Sudanese nationals. Séléka seized control of almost half of the territory of the CAR by December 2012, captured Bangui in March 2013 and appointed its leader, Michel DJOTODIA, as the new interim President. Séléka was officially disbanded in September 2013, but continued to be present in Bangui until late January 2014. The group renamed itself the *Front populaire pour la renaissance de la centrafrique* (Popular Front for the Rebirth of Central Africa) in July 2014, largely maintaining the same leadership and composition.
54. By June 2014, in several prefectures of the CAR local residents created militias to oppose Séléka, known as "anti-balaka" or "anti-machete". Many members of the former government army (FACA) and other BOZIZÉ supporters reportedly joined anti-balaka.

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<sup>86</sup> Earlier estimates ranged around 500 persons killed, however Amnesty International reported that over 1,000 persons were killed during the attack on Bangui and in particular in retaliatory attacks by ex-Séléka. Al Jazeera, "Red Cross says CAR death toll exceeds 500", 11 December 2013 and AI, "None of us are safe": War crimes and crimes against humanity in the Central African Republic, 19 December 2013.

55. The Office is aware of information on alleged crimes attributed to the FACA and the Presidential Guard of former President BOZIZÉ as well as to foreign armed forces in the CAR. Further information is required, however, to make determination on whether these alleged crimes may fall under the jurisdiction of the ICC.

## **B. Legal analysis**

### **1. War crimes**

56. The information available suggests that at least since 10 December 2012 a non-international armed conflict has taken place on the territory of the CAR involving government forces, the organized armed rebel coalition known as Séléka, and anti-balaka forces.<sup>87</sup> Government forces were at times supported by other States and international forces. According to the available information, Séléka and anti-balaka fulfil the necessary requirements to be considered organized armed groups.

#### **(a) Contextual elements of war crimes**

57. Under the Rome Statute, a war crime involves any of the specified crimes listed under article 8(2) when such conduct took place in the context of and was associated with an armed conflict. Accordingly, the application of article 8 of the Rome Statute requires the existence of an armed conflict.<sup>88</sup> Trial Chamber I ("TC I") in the *Lubanga* case recalled with approval the following definition of armed conflict provided by the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia ("ICTY"): "[a]n armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State."<sup>89</sup>

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<sup>87</sup> Hostilities between armed groups that would later constitute Séléka and FACA were already taking place prior to the launch of the military offensive. On 15 September, the *CPJP fondamentale*, a splinter group of the *Convention des Patriotes pour la Justice et la Paix* (CPJP) which forms part of Séléka and includes former members of the Armed Forces and of the Presidential Guard, attacked the towns of Damara (approximately 90km north of Bangui), Sibut (160km north of Bangui) and Dékoa (230km north of Bangui). The group, estimated at 100 elements, targeted the gendarmerie and the bases of the armed forces, where they collected weapons, as well as the hospital, a gas station and a commercial bank. See UN Security Council, Report of the Secretary-General on the situation in the Central African Republic, S/2012/956, 21 December 2012, para. 61.

<sup>88</sup> Elements of Crimes, second to the last element of each crime under article 8.

<sup>89</sup> Situation in the Democratic Republic of Congo, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/06-2842, 14 March 2012, para. 533 ("Lubanga Judgment pursuant to Article 74") (quoting ICTY, *Prosecutor v. Tadić*, Case No. IT-94-1-AR72, "Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction", 2 October 1995, para. 70).

58. A non-international armed conflict is characterised “by the outbreak of armed hostilities to a certain level of intensity, exceeding that of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature, and which takes place within the confines of a State territory. The hostilities may break out (i) between government authorities and organized dissident armed groups or (ii) between such groups.”<sup>90</sup>
59. Thus, in order to distinguish an armed conflict from less serious forms of violence, such as internal disturbances and tensions, riots or acts of banditry, the armed confrontation must reach a minimum level of intensity<sup>91</sup> and the parties involved in the conflict must show a minimum degree of organization.<sup>92</sup>

**i. Level of organization**

60. There is no statutory definition of the term “organized armed group”. TC I required that organized armed groups “have a sufficient degree of organisation, in order to enable them to carry out protracted armed violence” but held that it is “unnecessary for the prosecution to establish that the relevant armed groups exercised control over part of the territory of the State.”<sup>93</sup>
61. Trial Chamber I offered a non-exhaustive list of factors to determine whether an armed group is “organized”: the force or group’s internal hierarchy; the command structure and rules; the extent to which military equipment, including firearms, are available; the force or group’s ability to plan military

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See also Situation in the Central African Republic, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”, ICC-01/05-01/08-424, 15 June 2009, para. 229 (“Bemba Confirmation of Charges Decision”).

<sup>90</sup> Lubanga Judgment pursuant to Article 74, para. 533. See also Bemba Confirmation of Charges Decision, para. 231; Côte D’Ivoire Article 15 Decision, para. 119 (agreeing with this definition).

<sup>91</sup> The Pre-Trial Chamber in the *Bemba* case raised an issue of difference in wording of article 8(2)(f) of the Statute, “which requires the existence of a ‘protracted armed conflict’ and thus may be seen to require a higher or additional threshold to be met - a necessity which is not set out in article (8)(2)(d) of the Statute.” The duration of any relevant confrontation is to be considered when assessing whether there was a protracted armed conflict, Bemba Confirmation of Charges Decision, para. 235. See also Côte D’Ivoire Article 15 Decision, para. 121 (indicating that the “duration of any relevant confrontation is to be considered when assessing whether there is a protracted armed conflict”).

<sup>92</sup> See Situation in the Democratic Republic of Congo, *The Prosecutor v. Gemain Katanga*, Jugement rendu en application de l’article 74 du Statut, ICC-01/04-01/07-3436, 7 March 2014, paras. 1183, 1185-1187 (“Katanga Jugement rendu en application de l’article 74”); Lubanga Judgment pursuant to Article 74, paras. 534-538.

<sup>93</sup> Lubanga Judgment pursuant to Article 74, para. 536. See also Bemba Confirmation of Charges Decision, para. 236.

operations and put them into effect; and the extent, seriousness, and intensity of any military involvement.<sup>94</sup> TC I further noted that “[n]one of these factors are individually determinative.”<sup>95</sup>

*Level of organization of the FACA and the former Presidential Guard*

62. Although there is no need to establish the requisite level of organization of the FACA and the former Presidential Guard, because they are State forces and not an organized armed group, the evidence confirms nevertheless the satisfaction of many of the indices of organization. The Armed Forces of the Central African Republic, or FACA, constituted a conventional army with clear lines of command and control, prior to their defeat by the Séléka coalition in March 2013. Even though the FACA were considered a small and poorly equipped army, it employed 5,000 people, 1,500 of whom were operational soldiers.<sup>96</sup>
63. Within the army, the Presidential Guard of former President BOZIZÉ was considered the most operational unit, comprising approximately 1,000 members.<sup>97</sup> Beyond their immediate mandate of providing close protection for former President BOZIZÉ, sub-units of the Presidential Guard, the “Territorial Battalions”, were responsible for securing several prisons throughout the country. Other members of the Presidential Guard were also involved in crime-fighting police missions. According to information from 2009, the Presidential Guard was the only branch of the FACA possessing armoured vehicles equipped with machine guns. Almost every military operation launched by the FACA was therefore accompanied by a unit of the Presidential Guard.<sup>98</sup>

*Level of organization of Séléka*

64. The requirement for the level of organization of Séléka as an armed group is fulfilled based on several of the above-mentioned factors identified by Trial Chambers.

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<sup>94</sup> Lubanga Judgment pursuant to Article 74, para. 537. See also Katanga Jugement rendu en application de l’article 74, paras. 1186, 1207-1211 (concluding that the UPC, APC, and Ngiti militia each had a sufficient degree of organisation as evidenced by their structure, mode of operation, and their participation in military operations as well as political negotiations).

<sup>95</sup> Lubanga Judgment pursuant to Article 74, para. 537.

<sup>96</sup> International Peace and Information Service, “Mapping conflict motives: Central African Republic”, 17 February 2009, p. 9.

<sup>97</sup> ICG, “Central African Republic - Priorities of the Transition”, 11 June 2013, p. 2.

<sup>98</sup> International Peace and Information Service, “Mapping conflict motives: Central African Republic”, 17 February 2009, p. 9.

65. While several armed groups or factions make up the coalition, Séléka forces as a whole possess a clear hierarchical military command structure, including geographical command responsibilities.<sup>99</sup> The group has access to military equipment, including firearms, and demonstrated the ability to plan and carry out sustained military operations for a prolonged period of time, and to coordinate and execute the 24 March 2013 *coup d'état* which ousted President BOZIZÉ from power. The information available indicates continuity in Séléka's organizational structure throughout the evolution of the movement from armed opposition group, to a state power, and back to an armed opposition group.
66. At the time of Séléka's attack on Bangui, the coalition claimed to have some 5,000 fighters.<sup>100</sup> Following their military success in Bangui, those numbers apparently swelled considerably as others reportedly sought to profit from the group's military success.<sup>101</sup> Despite their official dissolution in September 2013, Séléka fighters were not effectively disarmed or demobilised and the different factions that constituted the group remained intact. Many of the leaders of these factions remained in positions of power within the transitional government, in particular within the security services.<sup>102</sup> In November 2013, the UN estimated the number of "ex-Séléka" between 15,000 and 20,000.<sup>103</sup> The senior command of Séléka remained in place even after they changed their name to the *Front populaire pour la renaissance de la Centrafrique* (Popular Front for the Renaissance of Central Africa, "FPRC") and eventually entered into peace negotiations on behalf of the movement as a whole.<sup>104</sup> Although the group has been referred to as "ex-Séléka" by some sources from September 2013 onwards, Amnesty International, for example, has stated that the official dismantling of Séléka had "no impact on their

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<sup>99</sup> Research carried out by NGOs indicates that Séléka's military structure divided the territory into "com-zones", meaning command zones. See FIDH, "Central African Republic: A country in the hands of Séléka war criminals", 23 September 2013, p. 16.

<sup>100</sup> AI, "Central African Republic: Human rights crisis spiralling out of control", 29 October 2013, p. 12.

<sup>101</sup> Some sources suggest that a significant number of Séléka fighters may be nationals of Chad or Sudan – see, for example, FIDH, "Central African Republic: 'They must all leave or die'", 24 June 2014, p. 67.

<sup>102</sup> FIDH, "Central African Republic: 'They must all leave or die'", 24 June 2014, pp. 63-71.

<sup>103</sup> UN Security Council, "Report of the Secretary-General on the Central African Republic submitted pursuant to paragraph 22 of Security Council resolution 2121 (2013)", 15 November 2013, S/2013/677, para. 5.

<sup>104</sup> The Brazzaville peace accords were signed in July 2014 by Mohamed Dhaffane, who is reported to be a founding member of the CPJP, was appointed as a minister in the Séléka government, fell out of favour with Michel Djotodia and was imprisoned for several months, then following his release, he reportedly took over as head of Séléka when Djotodia resigned and left the country. See FIDH "Central African Republic: 'They must all leave or die'", 24 June 2014, pp. 66-67.

activities.”<sup>105</sup> Similarly the humanitarian news and analysis service of the UN Office for the Coordination of Humanitarian Affairs (OCHA) refers to the Séléka alliance being “officially, but not effectively, disbanded”.<sup>106</sup>

*Level of organization of anti-balaka*

67. The United Nations, amongst other sources, has characterised anti-balaka as having a “highly fluid” or “unclear” structure.<sup>107</sup> However, research carried out by journalists, the UN Panel of Experts and non-governmental organizations has provided considerable insight into the origins and evolution of anti-balaka movement, including the various components that make up the movement as a whole.<sup>108</sup>
68. According to the information available, anti-balaka militias first began to attack Séléka in June 2013, and since that time, the group has become increasingly more organized both in its structure and in the nature of its attacks. Having evolved from civilian militias (created in the mid-2000s) and originating in particular in the prefectures of Ouham and Ouham-Pendé, their original purpose was to provide defence for civilian populations confronted with highway bandits and cattle thieves. Following Séléka’s *coup d’état*, however, the group reportedly grew rapidly in strength and capability and incorporated many elements of the former FACA.<sup>109</sup> According to the UN Panel of Experts, following the Séléka coup, former members of the military and *Gendarmes* loyal to former President BOZIZÉ began recruiting youths, many of whom were already members of the aforementioned militia, and used these recruits to carry out coordinated attacks in the Bossangoa area (Ouham) in early September 2013.<sup>110</sup>

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<sup>105</sup> AI, “Time for accountability”, July 2014, p. 48, endnote 3.

<sup>106</sup> IRIN, “Public killings highlight power shift in CAR”, 21 January 2014.

<sup>107</sup> UN Security Council, “Report of the United Nations Secretary General on the Situation in the Central African Republic”, 1 August 2014 (S/2014/562), para. 5 and “Report of the United Nations Secretary General on the situation in the Central African Republic”, 3 March 2014 (S/2014/142), para. 31.

<sup>108</sup> See FIDH, “Central African Republic: They must all leave or die”, 24 June 2014, pp. 57-63; and IRIN, “Who are the anti-balaka”, 12 February 2014; and UN Security Council, “Report of the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013)”, S/2014/452, 1 July 2014, Annexe 5.

<sup>109</sup> UN Security Council, “Report of the UN Secretary-General on the Central African Republic pursuant to paragraph 48 of Security Council resolution 2127 (2013)”, S/2014/142, 3 March 2014, para. 5.

<sup>110</sup> See UN Security Council, “Report of the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013)”, S/2014/452, 1 July 2014, Annexe 5, para. 2.



69. Further, it has been noted that, similar to Séléka forces, anti-balaka swelled its ranks considerably when its forces entered Bangui on 5 December 2013.<sup>111</sup> Many of those who joined the movement, prior to but particularly following 5 December, are believed to be former FACA members.<sup>112</sup> As a result of the integration of ex-FACA into the anti-balaka, the group has, according to at least one source, taken on a structure similar to the FACA.<sup>113</sup> The same source indicates that a majority of anti-balaka commanders are former FACA members.<sup>114</sup> Anti-balaka forces in Lobaye province for example, were observed wearing FACA uniform, identified themselves as FACA and were led by a former FACA *Caporal-chef*.<sup>115</sup>
70. The information available indicates that anti-balaka is organized geographically with “zone commanders” for different regions of the country.<sup>116</sup> Fighters within several zones reportedly clearly identified their leaders when asked to do so by representatives of human rights organizations, indicating a clear command structure at the regional level.<sup>117</sup> Further, the group has publicly named its Secretary General, Chief of Staff and Spokesperson.<sup>118</sup> Members of the UN Panel of Experts were reportedly shown photo-identity cards carried by anti-balaka members, which included their functions (such as “combatant”), and also obtained copies of mission order documents relating to the movement of troops.<sup>119</sup>
71. The different factions or groups within the anti-balaka movement have been identified somewhat differently by different analysts. The UN Secretary General in his March 2014 report on the situation in the Central African Republic, described anti-balaka as comprising “local defence groups, rogue elements of the armed forces of the Central African Republic and criminal elements”, whilst confirming that they “are becoming increasingly organized in Bangui and other parts of the country and have access to firearms and

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<sup>111</sup> FIDH, “Central African Republic: ‘They must all leave or die’”, 24 June 2014, p. 59.

<sup>112</sup> FIDH, “Central African Republic: They must all leave or die”, 24 June 2014, p. 59.

<sup>113</sup> FIDH, “Central African Republic: They must all leave or die”, 24 June 2014, p. 58.

<sup>114</sup> FIDH “Central African Republic: They must all leave or die”, 24 June 2014, pp. 58 and 61; and IRIN, “Who are the anti-Balaka”, 12 February 2014, which cites residents of Lobaye prefecture saying that “all anti-Balaka commanders there came from FACA”.

<sup>115</sup> UN Security Council, “Report of the Panel of Experts on the Central African Republic established pursuant to paragraph 48 of Security Council resolution 2127 (2013)”, S/2014/452, 1 July 2014, Annex 5.4.

<sup>116</sup> FIDH, “Central African Republic: They must all leave or die”, 24 June 2014, p. 61.

<sup>117</sup> HRW, “Central African Republic: Muslims forced to flee”, 12 February 2014.

<sup>118</sup> HRW, “Central African Republic: Muslims forced to flee”, 12 February 2014.

<sup>119</sup> UN Security Council, “Report of the Panel of Experts on the Central African Republic established pursuant to paragraph 48 of Security Council resolution 2127 (2013)”, S/2014/452, 1 July 2014, Annexes 5.2 and 5.3.

heavy weapons.”<sup>120</sup> Another source has provided a description of four groups they have identified as constituting anti-balaka, which is summarised below.<sup>121</sup>

72. The first group, the *Coordination nationale des Libérateurs du Peuple Centrafricain* (National Coordination of the Liberators of the Central African People, CLPC) reportedly operates in the north of Bangui, up to the town of Damara. The second group, known as “the group of anti-balakas from the south” allegedly operates primarily in the south-western part of Bangui and the southern prefecture of Lobaye. The third category within anti-balaka has been identified as constituted of local armed militias, operating principally in the south-western prefectures of Mambéré-Kadei, Sanga Mbaéré and Lobaye provinces, but also in some neighbourhoods of Bangui. These groups are believed to be under the control of local commanders. However, the information available indicates that senior anti-balaka members from the first group mentioned above exercise effective control over these local armed militias. The fourth group, reportedly mainly composed of FACA and *Gendarmes* of Gbaya ethnic origin, reportedly controlled significant territory in western the CAR as of July 2014, including the towns of Bouar, Bozoum, Bossangoa and Bossembele and several checkpoints between Boali and Bangui.
73. It is acknowledged that at this stage, there is limited information available on the command structure and organisation of anti-balaka. However, the Office considers that anti-balaka’s level of organisation can nevertheless be inferred from its ability to plan and carry out prolonged hostilities. In this respect, the Office notes, for example, the coordinated attacks carried out by anti-balaka against Séléka troops in various locations in the Ouham prefecture in September 2013 as well as its armed clashes with Séléka in July and August 2014 when anti-balaka sought to reinforce its positions in the areas in the western and central parts of the country. Such incidents illustrate the group’s ability to plan and implement military operations. Additionally, the attack carried out in Bangui on 5 December 2013, in particular, exhibited a significant level of planning, resources, and coordination on the part of anti-balaka forces. The anti-balaka Chief of Staff, with the rank of Lieutenant,

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<sup>120</sup> UN Security Council, “Report of the UN Secretary-General on the Central African Republic pursuant to paragraph 48 of Security Council resolution 2127 (2013)”, S/2014/142, 3 March 2014, para. 5.

<sup>121</sup> Information on these groups is provided in the UN Security Council, “Report of the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013)”, S/2014/452, 1 July 2014, Annex 5.

directly claimed responsibility for having coordinated the 5 December and 25 December 2013 attacks.<sup>122</sup>

74. Further, the strategic military coordination capabilities of anti-balaka were illustrated by its decision to attack Bangui on 5 December, when French troops were to be deployed imminently and the UN Security Council was to vote (that day) on Resolution 2127. This enabled the group “to achieve a foothold in the capital before the deployment of French troops, thereby securing a *fait accompli* policy”.<sup>123</sup> Some 1,000 armed militia members allegedly carried out the 5 December attack on Bangui, entering the city from at least three different directions.<sup>124</sup> In contrast to the early days of anti-balaka activity, when they reportedly made their own weapons,<sup>125</sup> the UN has reported that during the 5 December attacks on Bangui it became apparent that anti-balaka had acquired access to firearms and “heavy weapons”.<sup>126</sup>
75. To conclude, the information available, which illustrates the group’s ability to plan and carry out prolonged hostilities, provides a reasonable basis to believe that anti-balaka and/or the factions or armed groups that constitute the movement as a whole, fulfil the requirements of an organized armed group for the purposes of article 8 of the Statute.

### *Conclusion*

76. Based on the considerations outlined above, there is a reasonable basis to believe that Séléka and anti-balaka each constitute an organized armed force or group for the purpose of article 8.

### **ii. Level of intensity of the armed conflict**

77. Trial Chamber I considered the following factors as relevant for the assessment of the intensity of the conflict: “the seriousness of attacks and potential increase in armed clashes, their spread over territory and over a

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<sup>122</sup> FIDH, “Central African Republic: They must all leave or die”, 24 June 2014, p. 61.

<sup>123</sup> FIDH, “Central African Republic: They must all leave or die”, 24 June 2014, p. 32.

<sup>124</sup> UN Security Council, “Report of the Panel of Experts on the Central African Republic established pursuant to paragraph 48 of Security Council resolution 2127 (2013)”, S/2014/452, 1 July 2014, Annexe 5, para. 3.

<sup>125</sup> HRW interview with an anti-balaka member in Wikamo, near Bossangoa, Ouham prefecture, 2 November 2013, in HRW, “They came to kill: escalating atrocities in the Central African Republic”, 19 December 2013.

<sup>126</sup> UN Security Council, “Report of the UN Secretary-General on the Central African Republic pursuant to paragraph 48 of Security Council resolution 2127 (2013)”, S/2014/142, 3 March 2014, para. 3. The type of “heavy weapons” used by the group is not specified by the source.

period of time, the increase in the number of government forces, the mobilisation and the distribution of weapons among both parties to the conflict, as well as whether the conflict has attracted the attention of the United Nations Security Council, and, if so, whether any resolutions on the matter have been passed.”<sup>127</sup> The ICTY Trial Chamber in *Haradinaj* also referred to the numbers of casualties and the extent of material destruction as indicators for intensity, as well as the number of civilians fleeing combat zones, displacement and civil disruption.<sup>128</sup> In addition, the ICTY Trial Chamber in *Boškoski* examined the existence of cease-fire orders or attempts to broker cease fire agreements as an indicator for intensity of the armed conflict.<sup>129</sup> Similarly, PTC II considered relevant in this respect “the repeated diplomatic efforts undertaken by the parties with a view to ending the hostilities”.<sup>130</sup>

*Seriousness of attacks and potential increase in armed clashes, their spread over territory and time*

78. The seriousness of the attacks during the military campaign launched by Séléka on 10 December 2013 is marked by Séléka’s rapid occupation of nearly half of the physical territory of the CAR in a very short time span. During the military campaign, Séléka took control of a number of towns, without much resistance from the national army.<sup>131</sup> The level of seriousness in the military tactics employed is exemplified by the attack on and taking control of a major FACA base in Bria, a town of some 30,000 inhabitants in the main diamond-mining region of the country.<sup>132</sup> By 29 December 2012, the prefectures of Vakaga, Bamingui-Bangoran, Haute-Kotto, Ouaka, Nana-Grébizi and parts of Ouham, Kémo and Ombella-M’Poko, constituting

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<sup>127</sup> Lubanga Judgment pursuant to Article 74, para. 538. See also Katanga Jugement rendu en application de l’article 74, para. 1217.

<sup>128</sup> ICTY, *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-T, Judgement, 3 April 2008, para. 49.

<sup>129</sup> ICTY, *Prosecutor v. Boškoski and Tarčulovski*, Case No. IT-04-82-T, Judgement, 10 July 2008, para. 177, citing *Hadžihasanović and Kubura* Trial Judgement, para. 23; *Martić* Trial Judgement, para. 345.

<sup>130</sup> Situation in the Democratic Republic of Congo, *The Prosecutor v. Bosco Ntaganda*, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda”, ICC-01/04-02/06-309, 9 June 2014, para. 34 (“Ntaganda Confirmation of Charges Decision”).

<sup>131</sup> Séléka took control of Ndélé (Vakaga), Sam Ouandja (Vakaga) and Ouadda (Haute-kotto) on 10 December 2012, see Jeune Afrique, “L’attaque de Ndélé œuvre d’une faction rebelle d’un mouvement centrafricain”, 11 December 2012. On 18 December 2012, Séléka took control of Bria (Haute-kotto) and Bamingui (Bamingui-Bangoran) and on 19 December 2012, Kabo (Ouham), see Jeune Afrique, “Le régime de Bozizé ébranlé par les rebelles du Séléka”, 19 December 2012. On 23 December 2012 Séléka controlled the towns of Ippy (Ouaka) and Bambari (Ouaka), see Bloomberg, “CAR rebels seize ninth town – African leaders urge end to clashes”, 24 December 2012.

<sup>132</sup> Jeune Afrique, “Le régime de Bozizé ébranlé par les rebelles du Séléka”, 19 December 2012.

almost half of the territory of the CAR, had come under rebel control.<sup>133</sup> Despite the signing of a cease fire agreement on 11 January 2013, Séléka resumed hostilities on 22 March 2013.<sup>134</sup> The following day, the group entered Bangui and took control of the Government.

79. In the period following the coup, Séléka did not encounter any organized armed resistance until the emergence of organized anti-balaka groups around June 2013. Thereafter these two groups engaged militarily at several locations in Ouham prefecture, with attacks and clashes that increased in frequency and intensity over time.<sup>135</sup>
80. According to the UN Panel of Experts, on 6 and 7 September 2013, anti-balaka forces carried out “coordinated attacks” on the outskirts of Bossangoa (Ouham). The Panel referred to anti-balaka operations as an “armed insurgency against Séléka troops” which spread to the districts of Bouca (Ouham), Bossemptélé (Ouham-Pendé), Bossembélé and Boali (Ombella-M’Poko).<sup>136</sup> Around this time, former FACA and *Gendarmes* personnel loyal to President Francois BOZIZÉ joined anti-balaka and started to recruit youths from local communities.<sup>137</sup>
81. In Ouham prefecture hostilities between anti-balaka and Séléka reached an “unprecedented level” according to a UN report covering the period 5 August to 31 December 2013.<sup>138</sup> Attacks were particularly violent in Bossangoa, the capital of Ouham prefecture.<sup>139</sup>
82. During the night of 4-5 December 2013, in what the International Federation for Human Rights (“FIDH”) described as a “well-coordinated action of surprising scope and preparation”, hundreds of anti-balaka fighters

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<sup>133</sup> UN Security Council, “Briefing of the Special Representative of the Secretary-General and Head on the situation in CAR”, S/PV.6899, 11 January 2013, p. 3.

<sup>134</sup> UN Human Rights Council, “Situation of Human Rights in the Central African Republic”, A/HRC/24/59, 12 September 2013, para. 9.

<sup>135</sup> FIDH, “Central African Republic: They must all leave or die”, 2014 pp. 18 and 58. FIDH reports that groups of self-defence militia attacked isolated Séléka troops in the Bossangoa and Bocaranga region as of May-June 2013.

<sup>136</sup> UN Security Council, “Report of the Panel of Experts on the Central African Republic established pursuant to paragraph 48 of Security Council resolution 2127 (2013)”, S/2014/452, 1 July 2014, Annex 5, para. 1.

<sup>137</sup> UN Security Council, “Report of the Panel of Experts on the Central African Republic established pursuant to paragraph 48 of Security Council resolution 2127 (2013)”, S/2014/452, 1 July 2014, Annex 14, para. 2.

<sup>138</sup> UN Security Council, “Report of the Secretary-General on the Situation in the Central African Republic”, S/2013/787, 31 December 2013, para. 30.

<sup>139</sup> UN Security Council, “Report of the Secretary-General on the Situation in the Central African Republic”, S/2013/787”, 31 December 2013, para. 30.

launched an attack on Bangui, “armed with machetes, rockets, grenades and heavy weaponry”.<sup>140</sup> Séléka and anti-balaka engaged in serious hostilities, followed by attacks on civilians associated with the enemy side respectively. Although hostilities between Séléka and anti-balaka may have decreased in intensity from this point on until the date of writing this report, a general conclusion of peace was not reached. Meanwhile, in the same period, an escalating pattern of “tit for tat” attacks on civilians developed.<sup>141</sup> The increased presence of MISCA and Sangaris in Bangui and the provinces, as well as EUFOR in Bangui, seems to have further contributed to the decrease in direct hostilities between Séléka and anti-balaka forces.<sup>142</sup>

83. After the resignation of interim President DJOTODIA on 10 January 2014, Séléka mostly retreated from Bangui and the western parts of the CAR and regrouped in locations in the northern and north-eastern parts of the country, including Kaga Bandoro, Ndélé, Bangassou and Bambari where Séléka established its military headquarters in May 2014.<sup>143</sup> The areas left by Séléka were soon taken over by anti-balaka forces. In regions under their respective control, Séléka and anti-balaka operated as the *de facto* authorities, assuming state responsibilities such as law and order and tax collection, although in many cases their actions reportedly amounted to arbitrary rule and extortion.<sup>144</sup> In July and August 2014, Séléka again became increasingly present in western and central parts of the country, prompting anti-balaka to reinforce their positions in these areas, which led to a number of direct hostilities between anti-balaka and Séléka.<sup>145</sup>

#### *Distribution of weapons among the parties to the conflict*

84. The FACA had at their disposal the entire military equipment of the armed forces in the CAR until their defeat in March 2013. According to research conducted by the UN Panel of Experts, Séléka equipped most of its ranks

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<sup>140</sup> FIDH, “Central African Republic: ‘They must all leave or die’”, 24 June 2014, p. 8.

<sup>141</sup> FIDH, “Central African Republic: ‘They must all leave or die’”, 24 June 2014, p. 19.

<sup>142</sup> UN Security Council, “Report of the Secretary-General on the Situation in the Central African Republic”, 3 March 2014, S/201/142, paras. 42 and 49.

<sup>143</sup> UN Security Council, “Report of the Secretary-General on the Situation in the Central African Republic”, 3 March 2014, S/201/142, paras. 8 and 9; UN Security Council, “Report of the Secretary-General on the Situation in the Central African Republic”, S/2014/562, 1 August 2014, para. 12.

<sup>144</sup> UN Security Council, “Report of the Secretary-General on the Situation in the Central African Republic”, S/2014/1423, 3 March 2014, para. 24.

<sup>145</sup> UN Security Council, “Report of the Secretary-General on the Situation in the Central African Republic”, S/2014/562, 1 August 2014, para. 9.

from government weapon stockpiles during its march on Bangui.<sup>146</sup> Anti-balaka forces are reportedly equipped with military arms including assault rifles, light machine guns and rocket-propelled grenades as well as hunting rifles, grenades and machetes.<sup>147</sup>

#### *Number of Government forces and forces supporting the Government*

85. At the request of the CAR Government, a Chadian contingent was deployed in the border region of Ouham prefecture on 17 December 2012 to support the FACA counteroffensive.<sup>148</sup> In light of the continued Séléka advance on Bangui and the incapacity of the FACA to hold positions, the ECCAS reinforced MICOPAX on 1 January 2013 with troops from Cameroon, the Congo, Gabon and a new Chadian contingent to help defend the capital.<sup>149</sup> At the same time, 400 South African troops deployed in the Bangui region at the request of the Government while French forces increased their presence in Bangui to 600 personnel.<sup>150</sup>

86. With the takeover of government by Séléka, the FACA as such ceased to exist and Séléka forces became the *de facto* State forces.<sup>151</sup>

#### *Extent of material destruction*

87. The Office registered 72 incidents of wanton destruction during the period under consideration, of which 21 could be attributed to anti-balaka forces, 34 to Séléka and 17 could not be attributed due to the lack of information on the alleged perpetrators. Some of these incidents include the destruction of whole villages or towns. Satellite imagery and eye-witness testimony

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<sup>146</sup> UN Security Council, "Report of the Panel of Experts on the Central African Republic established pursuant to paragraph 48 of Security Council resolution 2127 (2013)", S/2014/452, 1 July 2014, para. 84.

<sup>147</sup> UN Security Council, "Report of the Panel of Experts on the Central African Republic established pursuant to paragraph 48 of Security Council resolution 2127 (2013)", S/2014/452, 1 July 2014, Annex 14, para. 2. Other UN sources have referred to "heavy weapons" in the possession of anti-balaka fighters but it is unclear what type of weaponry these reports refer to. See, for example, UN Security Council, "Report of the UN Secretary-General on the Central African Republic pursuant to paragraph 48 of Security Council resolution 2127 (2013)", S/2014/142, 3 March 2014, para. 3.

<sup>148</sup> UN Security Council, "Report of the Secretary-General on the situation in CAR", 21 December 2012, S/2012/956, 21 December 2012, para. 9; Reuters, "Rebels seize CAR town, push closer to capital", 19 December 2012.

<sup>149</sup> UN, "Briefing of the Special Representative of the Secretary-General and Head on the situation in CAR", S/PV.6899, 11 January 2013, p. 3.

<sup>150</sup> UN, "Briefing of the Special Representative of the Secretary-General and Head on the situation in CAR", S/PV.6899, 11 January 2013, p. 3.

<sup>151</sup> Many members of FACA sought refuge in neighbouring countries (Cameroon, Congo and Democratic Republic of the Congo) with their weapons. See UN Security Council, "Report of the Secretary-General on the Situation in the Central African Republic", S/2013/470, 5 August 2013, para. 19.

collected by Human Rights Watch (“HRW”), for example, documents the alleged destruction by Séléka forces of more than 1,000 homes in at least 34 villages between March and June 2013.<sup>152</sup>

#### *Displacement of civilian population*

88. Large parts of the Central African population have been affected by the armed conflict, which has caused internal displacement and refugees, both of which have increased in number over time. On 3 May 2013, the UN reported that prior to the take-over of Bangui by Séléka, 173,000 people had been displaced in the north and north-east of the country and another 45,000 people fled the country to neighbouring states from December 2012 to April 2013.<sup>153</sup> The emergence of anti-balaka and the subsequent hostilities between Séléka and anti-balaka as well as the attacks on civilians by both groups have further increased displacement. In March 2014, the UN reported that 2.5 million people, over half of the population, were in need of humanitarian assistance. By that time, more than 700,000 Central Africans had been displaced within the country. More than 288,000 were refugees in neighbouring countries and more than 65,000 third-country nationals had been evacuated.<sup>154</sup> By August 2014, more than 1 million persons were displaced by the conflict and 400,000 had sought refuge in neighbouring states.<sup>155</sup>

#### *Reactions of the UN Security Council*

89. Since December 2012, the UN Security Council has passed five resolutions addressing the situation in the CAR, recognizing the existence of an armed conflict in the CAR.<sup>156</sup> All of the resolutions make reference to the “armed groups” operating in the CAR and condemn the “continued violations of international, humanitarian and human rights law.” They similarly make reference to the different ceasefire agreements signed between armed groups and the CAR Government. Resolutions 2121 (2013)<sup>157</sup>, 2127 (2013)<sup>158</sup> 2134

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<sup>152</sup> HRW, “I can still smell the dead - The forgotten human rights crisis in the Central African Republic”, 18 September 2013, pp. 4-21.

<sup>153</sup> UN Security Council, “Report of the Secretary-General on the Situation in the Central African Republic”, S/2013/261, 3 May 2013, para. 49.

<sup>154</sup> UN Security Council, “Report of the Secretary-General on the Situation in the Central African Republic”, S/2014/1423, 3 March 2014, para. 16.

<sup>155</sup> See Report of the Secretary-General on the Situation in the Central African Republic, S/2014/562, 1 August 2014, para. 18.

<sup>156</sup> UN Security Council Resolutions S/RES/2088 (2013), 24 January 2013; S/RES/2121 (2013), 10 October 2013; S/RES/2127 (2013), 5 December 2013; S/RES/2134 (2014), 28 January 2014; S/RES/2149 (2014), 10 April 2014.

<sup>157</sup> UN Security Council, S/RES/2121 (2013), 15 November 2013, preamble.



(2014)<sup>159</sup> and 2149 (2014)<sup>160</sup> reiterate that violations of international and humanitarian law may amount to crimes under the Rome Statute and that the “armed conflict and crisis in the Central African Republic pose a serious threat to the stability of the Central African Republic and the central African region” or that the “situation in the Central African Republic constitutes a threat to international peace and security” in the region. The Security Council authorized foreign military interventions by MISCA<sup>161</sup>, France<sup>162</sup> and the EU<sup>163</sup> under Chapter VII of the UN Charter to contribute to, among others, protection of civilians, stabilization of the country and restoration of State authority in the CAR.

#### *Cease-fire agreements*

90. The period of the armed conflict was also marked by the signing of two cease-fire agreements between the parties to the conflict which serves as another indicator of the intensity of the armed conflict. On 11 January 2011, the Libreville agreements, including a declaration of principles to resolve the political and security crisis in the CAR, a ceasefire agreement and a political agreement were signed by the BOZIZÉ Government and Séléka.<sup>164</sup> On 23 July 2014, anti-balaka and Séléka, among other armed groups, signed a ceasefire agreement.<sup>165</sup> All of the ceasefire agreements were breached following their signature and to date no further peace agreement has been concluded to formally end the armed conflict that started in December 2012 at the latest.
91. Based on the indicators discussed above, it can be concluded that the violence in the CAR that started with the military campaign launched by Séléka in December 2012, and further escalated with the emergence of anti-balaka as a party to the conflict, is of sufficient intensity to qualify as an armed conflict. Although the situation has been characterised by fluctuating levels of violence, it should be noted that an armed conflict does not end simply with a lull in hostilities or with each particular ceasefire but instead continues “until a general conclusion of peace is reached [...] or a peaceful

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<sup>158</sup> UN Security Council, S/RES/2127 (2013), 5 December 2013, preamble.

<sup>159</sup> UN Security Council, S/RES/2134 (2014), 28 January 2014, preamble and para. 21.

<sup>160</sup> UN Security Council, S/RES/2149 (2014), 10 April 2014, preamble.

<sup>161</sup> UN Security Council, S/RES/2127 (2013), 5 December 2013, para. 28.

<sup>162</sup> UN Security Council, S/RES/2127 (2013), 5 December 2013, para. 50.

<sup>163</sup> UN Security Council, S/RES/2134 (2014), 28 January 2014, para. 43.

<sup>164</sup> UN Security Council, “Report of the Secretary-General on the Situation in the Central African Republic”, S/2013/261, 3 May 2013, para. 3.

<sup>165</sup> UN Security Council, “Report of the Secretary-General on the Situation in the Central African Republic”, S/2014/562, 1 August 2014, para. 32.

settlement is achieved”<sup>166</sup> or, in the absence of an agreement, there is at least a decisive close of military operations.<sup>167</sup>

**iii. Existence, and geographical and temporal scope, of the armed conflict**

92. Based on the foregoing, there is a reasonable basis to believe that at least since December 2012 an armed conflict of non-international character has been taking place in the CAR between Government forces and organized armed groups and between such groups, considering that: (i) Séléka, and anti-balaka exhibit a sufficient degree of organization; and (ii) the violence is of sufficient intensity to justify the application of international, as opposed to national, law.
93. Even though the armed hostilities between the parties to the conflict took place in particular parts of the Central African Republic, the geographical scope of the armed conflict extends to the entire territory of the CAR.
94. The armed conflict started on 10 December 2012 at the latest, with the launching of a major military offensive by Séléka, and is ongoing, since no peace settlement has been reached at the time of writing, and military operations have not been closed.

**(b) Alleged war crimes**

95. In light of the extended period of the armed conflict and multiple parties to the conflict, the Office has reviewed information regarding a high number of alleged crimes. In line with the Office’s policy, this report focuses on the most serious alleged crimes. Depending on the context in which they were committed, a number of the alleged crimes may constitute war crimes as well as crimes against humanity under the Rome Statute. This section focuses specifically on conduct that may only constitute war crimes. The acts listed herein are merely examples and are not to be understood as comprehensive or conclusive.

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<sup>166</sup> ICTY, *Prosecutor v Tadić*, Case No. IT-94-1-AR72, “Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction”, 2 October 1995, para 70. The ICTY Appeals Chamber further stated in this regard that “[u]ntil that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under control of a party, whether or not actual combat takes place there”. *Ibid.*

<sup>167</sup> Article 6, Geneva Convention IV.

**i. War crimes allegedly committed by FACA**

96. The Office has analysed information about alleged crimes committed by members of the FACA, in particular by the Presidential Guard of former President BOZIZÉ between at least 1 January and 23 March 2013 that may constitute war crimes under article 8 of the Rome Statute, including murder, cruel treatment and torture under article 8(2)(c)(i) and pillaging under article 8(2)(e)(v). However, further detailed information is required to reach a determination on these allegations and their nexus to the armed conflict.

*8(2)(c)(i) Murder, cruel treatment and torture*

97. According to information collected by the UN Office of the High Commissioner for Human Rights (“OHCHR”), several persons perceived to be supporters of Séléka were killed by the Presidential Guard and other members of FACA while President BOZIZÉ was still in power. Mass graves of opponents to the former regime were reportedly discovered in Bossembélé (Ombella-M’Poko) but could not be accessed by the OHCHR.<sup>168</sup> Amnesty International independently received reports of numerous bodies that had been found within the Bossembélé military training centre.<sup>169</sup> The training centre was reportedly run by President BOZIZÉ’s Presidential Guard unit and was under President BOZIZÉ’s direct control. The former President reportedly visited the training centre every other week and also maintained a private villa at the centre, where he stayed during his visits.<sup>170</sup>
98. Amnesty International reports that on 23 March 2013, up to 17 persons were summarily executed by military personnel at Ndres cemetery in Bangui.<sup>171</sup>
99. The OHCHR reportedly received testimonies and reports of torture and ill-treatment perpetrated by forces of the former regime against detainees suspected of being supporters of Séléka, from December 2012 until the fall of the BOZIZÉ regime in March 2013.<sup>172</sup>

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<sup>168</sup> UN Human Rights Council, “Situation of Human Rights in the Central African Republic”, A/HRC/24/59, 12 September 2013, para. 27.

<sup>169</sup> AI, “Central African Republic: Human rights crisis spiralling out of control”, 29 October 2013, p. 16.

<sup>170</sup> HRW, “I can still smell the dead - The forgotten human rights crisis in the Central African Republic”, 18 September 2013, p. 64.

<sup>171</sup> AI, “Central African Republic: Human rights crisis spiralling out of control”, 29 October 2013, p. 16.

<sup>172</sup> UN Human Rights Council, “Situation of Human Rights in the Central African Republic”, A/HRC/24/59, 12 September 2013, para. 29.

100. Human Rights Watch has interviewed former detainees who had allegedly witnessed members of the Presidential Guard force two men to dig their own graves before shooting and killing them at the Bossembélé military training centre, in early 2013.<sup>173</sup> According to these testimonies, most of the detainees at Bossembélé were Muslims from the north who were accused by the FACA of supporting Séléka.<sup>174</sup>
101. Detainees at the Bossembélé training centre were reportedly also subjected to beatings and torture by members of the Presidential Guard. Some of the detainees died as a consequence of this treatment.<sup>175</sup> According to one former detainee interviewed by HRW, the number and intensity of beatings and torture increased after the signing of the Libreville agreements on 11 January 2013, despite a clause in the agreements to provide for the release of political prisoners in the CAR.<sup>176</sup>

*8(2)(e)(v) Pillage*

102. The OHCHR received consistent reports of acts of pillage by members of the former regime forces in Lobaye, Sangha-Mbaéré and Maberé-Kadéï prefectures before the ousting of President BOZIZÉ.<sup>177</sup> In addition, the OHCHR was informed that the premises of a number of humanitarian organizations, including hospitals and medical facilities, and warehouses where the organizations had stored food supplies and non-food items, were reportedly looted by members of the Presidential Guard and FACA.<sup>178</sup>

**ii. War crimes allegedly committed by Séléka**

103. According to the information available, there is a reasonable basis to believe that Séléka has at a minimum committed the following war crimes under article 8 of the Statute: murder, cruel treatment and torture under article

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<sup>173</sup> HRW, "I can still smell the dead - The forgotten human rights crisis in the Central African Republic", 18 September 2013, p. 65.

<sup>174</sup> HRW, "I can still smell the dead - The forgotten human rights crisis in the Central African Republic", 18 September 2013, p. 66.

<sup>175</sup> HRW, "I can still smell the dead - The forgotten human rights crisis in the Central African Republic", 18 September 2013, 13 September 2013, p. 66.

<sup>176</sup> HRW, "I can still smell the dead - The forgotten human rights crisis in the Central African Republic", 18 September 2013, p. 66.

<sup>177</sup> UN Human Rights Council, "Situation of Human Rights in the Central African Republic", A/HRC/24/59, 12 September 2013, para. 32.

<sup>178</sup> UN Human Rights Council, "Situation of Human Rights in the Central African Republic", A/HRC/24/59, 12 September 2013, para. 32. If confirmed and linked to the armed conflict, such acts may also constitute the war crime of intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance under article 8(2)(e)(iii) or intentionally directing attacks against hospitals under article 8(2)(e)(iv).

8(2)(c)(i); rape under article 8(2)(e)(vi); and intentionally directing attacks against the civilian population as such under article 8(2)(e)(i). Examples of these alleged war crimes are included in the sections addressing the respective analogous alleged crimes against humanity.<sup>179</sup>

104. Additionally, the information available provides a reasonable basis to believe that Séléka has committed the following war crimes under article 8 of the Rome Statute: attacking personnel or objects involved in a humanitarian assistance mission under article 8(2)(e)(iii); intentionally directing attacks against protected objects under article 8(2)(e)(iv); pillage under article 8(2)(e)(v); and conscripting or enlisting children under the age of fifteen years into armed groups or using them to participate actively in hostilities under article 8(2)(e)(vii).

*8(2)(e)(iii) Attacking personnel or objects involved in a humanitarian assistance*

105. The UN Panel of Experts reports that between 5 December 2013 and 30 April 2014, a total of 14 humanitarian aid workers were killed in the CAR. The Panel has furthermore documented a total of 103 incidents of obstruction of the delivery of humanitarian assistance during the same period. Séléka is reportedly responsible for approximately 25% of the incidents.<sup>180</sup> Not all of these 103 incidents necessarily constituted attacks under article 8(2)(e)(iii).
106. On 26 April 2014, a group of armed Séléka members allegedly attacked the compound and hospital of a humanitarian NGO in Boguila (Ouham), killing 16 persons including three national staff members working for MSF, and seriously wounding others. Séléka subsequently looted the compound and the hospital.<sup>181</sup> On 8 March 2014, three armed men closely related to Séléka reportedly attacked a Catholic mission in Ndélé (Bamingui-Bangora) and killed an ICRC staff member, prior to pillaging the mission's compound.<sup>182</sup>

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<sup>179</sup> For intentionally directing attacks against the civilian population see for example the incidents of attacks on civilians in a monastery and churches, under the crime against humanity of persecution (allegedly committed by Séléka).

<sup>180</sup> UN Security Council, "Report of the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013)", S/2014/452, 1 July 2014, para. 99.

<sup>181</sup> MSF, "Central African Republic: Three MSF workers among sixteen unarmed civilians killed at Boguila Hospital", 28 April 2014; UN Security Council, "Report of the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013)", S/2014/452, 1 July 2014, Annex 24, entry 98 (the Panel reports 17 persons killed).

<sup>182</sup> ICRC, "News release, Central African Republic: ICRC staff member killed", 08 March 2014; UN Security Council, "Report of the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013)", S/2014/452, 1 July 2014, Annex 22, paras. 14-25. This incident could also constitute the war crime of attacking objects or persons using the distinctive

*8(2)(e)(iv) Intentionally directing attacks against protected objects*

107. According to information available, Séléka has deliberately targeted buildings dedicated to religion and education.
108. On 7 February 2013, Séléka allegedly attacked and pillaged a Catholic mission in Mobaye (Basse-Kotto) among other buildings.<sup>183</sup> On 14 April 2013, Séléka forces allegedly attacked the Cité Jean XXIII Church in the Boy-Rabe neighbourhood of Bangui with a rocket-propelled grenade.<sup>184</sup> On 2 June 2013, Séléka allegedly attacked the villages of Gbi-Gbi and Yangoumara (Ouham) and destroyed the churches in both villages, among other buildings.<sup>185</sup>
109. In Kaga-Bandoro (Nana-Grébizi), Séléka reportedly occupied the primary school between December 2012 and January 2013, and subsequently destroyed it.<sup>186</sup>

*8(2)(e)(v) Pillage*

110. During their march on Bangui, Séléka reportedly pillaged a significant number of offices and warehouses of non-governmental organizations in localities of Ndélé (Bamingui-Bangoran), Batangafo (Ouham), Paoua (Ouham-Pendé), Kaga-Bandoro (Nana-Grébizi), Bambari (Ouaka) and Bria (Haute-Kotto).<sup>187</sup>
111. After Séléka captured Bangui on 23 March 2013, members of the group allegedly systematically looted civilian residences and other property in the capital over an extended period of time. For example, on 28 June 2013, Séléka forces looted shops and houses in the neighbourhood of Gobongo.<sup>188</sup> The Boy Rabe neighbourhood in Bangui, where supporters of former President BOZIZÉ were known to live, was reportedly subjected to several looting operations conducted by Séléka forces. On 21 August 2013, for example,

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emblems of the Geneva Conventions under article 8(2)(e)(ii). Further information with respect to this incident is necessary prior to making a determination.

<sup>183</sup> FIDH, "Central African Republic: 'They must all leave or die'", 24 June 2014, p. 15.

<sup>184</sup> HRW, "I can still smell the dead - The forgotten human rights crisis in the Central African Republic", 18 September 2013, pp. 13 and 57.

<sup>185</sup> HRW, "I can still smell the dead - The forgotten human rights crisis in the Central African Republic", 18 September 2013, pp. 6-7, 45.

<sup>186</sup> UN Human Rights Council, "Situation of Human Rights in the Central African Republic", A/HRC/24/59, 12 September 2013, para. 46.

<sup>187</sup> UN Human Rights Council, "Situation of Human Rights in the Central African Republic", A/HRC/24/59, 12 September 2013, para. 49. These attacks could also qualify as the war crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission pursuant to article 8(2)(e)(iii) of the Statute.

<sup>188</sup> FIDH, "Central African Republic: 'They must all leave or die'", 24 June 2014, p. 26.

about 100 Séléka forces in 20 pick-up trucks arrived in Boy Rabe and allegedly looted shops and residences in the neighbourhood.<sup>189</sup>

112. As an immediate reaction to the anti-balaka attack on Bangui on 5 December 2013, Séléka retaliated against non-Muslim civilians and allegedly systematically looted neighbourhoods known to be predominantly inhabited by non-Muslims.<sup>190</sup>
113. Acts of pillage have also been reported from the provinces. In the night from 30 to 31 January 2014, for example, Séléka forces allegedly systematically looted civilian residences in the city of Carnot (Mambéré-Kadei), including a compound of a humanitarian organization.<sup>191</sup>

*8(2)(e)(vii) Using, conscripting and enlisting children under the age of 15 years*

114. The armed conflict in the CAR reportedly led to a sharp increase in the recruitment of children across the country.
115. In August 2013 Amnesty International reported the presence of 3,500 children within the ranks of Séléka.<sup>192</sup> In January and February 2013, the UN reported 27 new cases of the use of child soldiers (younger than 18 years old) by Séléka, mainly in the prefectures of Ouham, Ombella-M'Poko, and Bamingui-Bangoran. Allegedly, Séléka also recruited children as informants, to identify locations to pillage.<sup>193</sup> On 24 March 2013, Séléka allegedly used child soldiers under the aged of 15 in military operations in Bangui.<sup>194</sup>
116. Since the beginning of the crisis, UNICEF assisted 149 children (134 boys and 15 girls) aged between 12 and 17 years who had been recruited by Séléka.<sup>195</sup> On 30 May 2013, UNICEF successfully negotiated with interim President DJOTODIA the release of 74 children between the ages of 12 and 20 from the ranks of Séléka.<sup>196</sup> Séléka reportedly recruited, among others, children

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<sup>189</sup> FIDH, "Central African Republic: 'They must all leave or die'", 24 June 2014, p. 27.

<sup>190</sup> AI, "Central African Republic: War crimes and crimes against humanity in Bangui", 19 December 2013.

<sup>191</sup> MSF, "Témoignage de Carnot, en République centrafricaine : « des images extrêmement difficiles »", 31 March 2014.

<sup>192</sup> AI, "Central African Republic: Human rights crisis spiralling out of control", 29 October 2013, p. 31.

<sup>193</sup> UN Security Council, "Rapport du Secrétaire General sur la situation en République centrafricaine", S/2013/261, 3 May 2013, p. 41.

<sup>194</sup> TIMES, "We Were Killing Kids", 31 March 2013; AFP, "S. Africa Troops Claim Child Soldiers Killed in C. Africa", 31 March 2013.

<sup>195</sup> OHCHR, "Situation of human rights in the Central African Republic", 12 September 2013, p. 15.

<sup>196</sup> FIDH, "Central African Republic: A country in the hands of Séléka war criminals", 23 September 2013, p. 32.

(younger than 18 years) who had recently been demobilised from other armed groups.<sup>197</sup>

**iii. War crimes allegedly committed by anti-balaka**

117. According to available information, there is a reasonable basis to believe that anti-balaka forces have at a minimum committed the following war crimes under article 8 of the Rome Statute: murder under article 8(2)(c)(i); rape under article 8(2)(e)(vi) and intentionally directing attacks against the civilian population as such under article 8(2)(e)(i). Examples of these alleged war crimes are included in the sections addressing the respective analogous alleged crimes against humanity.<sup>198</sup>

118. Additionally, the information available provides a reasonable basis to believe that anti-balaka forces have committed the following war crimes under article 8 of the Rome Statute: outrages upon personal dignity under article 8(2)(c)(ii); attacking personnel or objects involved in a humanitarian assistance mission under article 8(2)(e)(iii); attacking protected objects under 8(2)(e)(iv); pillage under article 8(2)(e)(v); and conscripting or enlisting children under the age of fifteen years into armed groups or using them to participate actively in hostilities under article 8(2)(e)(vii).

*8(2)(c)(ii) Committing outrages upon personal dignity*

119. Information available indicates that anti-balaka has mutilated the bodies of civilians that they have killed. For example, the OHCHR has reported the alleged mutilation by anti-balaka of the bodies of people killed in Boy-Rabe, Boeing and Fohou neighbourhoods of Bangui on 5 and 6 December 2013.<sup>199</sup>

*8(2)(e)(iii) Attacking personnel or objects involved in a humanitarian assistance mission*

120. Of a total of 103 incidents of obstruction of the delivery of humanitarian assistance during 5 December 2013 and 30 April 2014 recorded by the UN Panel of Experts, anti-balaka is reportedly responsible for 30% of the

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<sup>197</sup> AI, "Briefing on the Human Rights Situation in the Central African Republic", 14 May 2013.

<sup>198</sup> For intentionally directing attacks against the civilian population see incidents of attacks on civilians listed under the crime against humanity of persecution (allegedly committed by anti-balaka).

<sup>199</sup> OHCHR, "Preliminary Findings: OHCHR Monitoring Mission in the Central African Republic (CAR)", 14 January 2014. In this respect, it is noted that, according to the Elements of Crimes, Article 8(2)(c)(ii), para. 1, including footnote 57, the war crime of outrages upon personal dignity involves, amongst other elements, violating the dignity of one or more persons, which can include dead persons.



incidents.<sup>200</sup> Allegedly, in several incidents, anti-balaka specifically targeted Muslim aid workers or humanitarian aid that was directed to areas where the majority of the population is of Muslim faith.<sup>201</sup>

121. The UN Panel of Experts reported that a UN staff member was repeatedly attacked by anti-balaka armed men in Bangui in the month of February 2014. The anti-balaka members reportedly opened fire on the staff member when he fled the scene, causing minor injuries and damages to his vehicle.<sup>202</sup> On 30 April 2014, an INGO convoy composed of four trucks with humanitarian aid for the Ndélé population was held at a checkpoint manned by anti-balaka militias 26km north of Bangui. Three of the trucks were permitted to pass through, but one was reportedly held behind. This truck was allegedly looted, the driver and two assistants, all of Muslim origin, were allegedly killed.<sup>203</sup>

*8(2)(e)(iv) Intentionally directing attacks against protected objects*

122. According to FIDH, anti-balaka allegedly systematically attacked buildings dedicated to religion, specifically mosques and other Muslim places of worship. In Boali (Ombella-M'Poko), for example, all of the mosques were reportedly destroyed and most of the mosques in Bossangoa (Ouham), Bossembélé (Ombella-M'Poko) and Bouar (Nana-Mambéré) were attacked or destroyed.<sup>204</sup>
123. On 6 September 2013, about anti-balaka fighters allegedly destroyed a local mosque in Zéré (Ouham) among other buildings.<sup>205</sup> In Bangui, only four of 23 mosques reportedly remain standing.<sup>206</sup> For example, on 22 January 2014, anti-balaka forces allegedly attacked and burnt down the mosque in PK13 neighbourhood of Bangui.<sup>207</sup> On 29 May 2014, anti-balaka members attacked and destroyed a mosque in Lakouanga neighbourhood in Bangui.<sup>208</sup>

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<sup>200</sup> UN Security Council, "Report of the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013)", S/2014/452, 1 July 2014, para. 99.

<sup>201</sup> UN Security Council, "Report of the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013)", S/2014/452, 1 July 2014, para. 102.

<sup>202</sup> UN Security Council, "Report of the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013)", S/2014/452, 1 July 2014, Annex 24, entry 42.

<sup>203</sup> UN Security Council, "Report of the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013)", S/2014/452, 1 July 2014, Annex 22, para. 12.

<sup>204</sup> FIDH, "Central African Republic: 'They must all leave or die'", 24 June 2014, p. 45.

<sup>205</sup> HRW, "'They came to kill' – Escalating atrocities in the Central African Republic", 19 December 2013, p. 22.

<sup>206</sup> FIDH, "Central African Republic: 'They must all leave or die'", 24 June 2014, p. 45.

<sup>207</sup> HRW, "Central African Republic: 'Muslims forced to flee'", 12 February 2014.

<sup>208</sup> Reuters, "Youths pillage mosque in C. African Republic protest over church attack", 29 May 2014.

*8(2)(e)(v) Pillage*

124. During the 6 September 2013 attack on the village of Zéré (Ouham), anti-balaka forces allegedly also committed acts of pillage. Several civilian residences in the village were looted before they were burnt down.<sup>209</sup> Anti-balaka forces reportedly attacked 21 Muslim-owned cattle camps around Bossangoa (Ouham) throughout September 2013, looting nearly 5,000 heads of cattle.<sup>210</sup> On 8 January 2014, anti-balaka fighters allegedly attacked the village of Boyali (Ouham-Pendé) and pillaged and burned all the houses and the mosque.<sup>211</sup>
125. Widespread pillage was notably committed by anti-balaka forces in Bangui after Séléka forces left the capital in early 2014. As elsewhere, incidents of looting were often committed alongside other alleged crimes. On 6 May 2014, HRW reported on destructions of properties belonging to Muslims in PK5, PK12, Kokoro, Miskine and Bouca neighbourhoods of Bangui since January 2014. HRW identified the skeletal remains of over 4,000 homes, shops and mosques allegedly destroyed during several waves of organized violence, systematic looting and arson during that time.<sup>212</sup>

*8(2)(e)(vii) Using, conscripting and enlisting children under the age of 15 years*

126. As stated above, the total number of children associated with armed forces and groups in the country has risen to at least 3,500 and could be as many as 6,000.<sup>213</sup> The exact number of child soldiers in the ranks of anti-balaka is currently unclear. Despite persistent reports of child recruitment by anti-balaka forces, specific information on the use, conscription and enlisting of children under the age of 15 years by anti-balaka is limited. On 31 December 2013, the UN Secretary General reported on new waves of widespread child recruitment in villages by anti-balaka.<sup>214</sup> Around 7 May 2014, UNICEF confirmed the presence of 53 children (46 boys and 7 girls) aged between 11 and 17 associated with anti-balaka in Bangui's PK10 neighbourhood.<sup>215</sup>

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<sup>209</sup> HRW, "‘They came to kill’ – Escalating atrocities in the Central African Republic", 19 December 2013, p. 22.

<sup>210</sup> HRW, "‘They came to kill’ – Escalating atrocities in the Central African Republic", 19 December 2013, p. 28.

<sup>211</sup> FIDH, "Central African Republic: ‘They must all leave or die’", 24 June 2014, p. 20-21.

<sup>212</sup> HRW, "Dispatches: Satellite Images Reveal Systematic Destruction of Muslim Neighborhoods", 6 May 2014.

<sup>213</sup> UN Security Council, "Report of the Secretary-General on the Situation in the Central African Republic", S/2013/787, 31 December 2013, para. 43.

<sup>214</sup> UN Security Council, "Report of the Secretary-General on the Situation in the Central African Republic", S/2013/787, 31 December 2013, para. 42.

<sup>215</sup> UN OCHA, "Central African Situation Report No. 24", 7 May 2014.

Between January and 3 May, a total of 1,035 children (227 girls and 808 boys) were released by UNICEF from within the ranks of armed groups including anti-balaka in Bangui, Boali (around 1,000 children, including 150 girls aged between 12 and 18)<sup>216</sup>, Ngala Fondo, Sibut and Zemio.<sup>217</sup>

**(c) Nexus between the individual acts and the armed conflict**

127. The Elements of Crimes for war crimes under articles 8(2)(c) and 8(2)(e) require that the relevant conduct took place in the context of and was associated with an armed conflict not of an international character.<sup>218</sup> The acts must be closely related to the hostilities, meaning that the armed conflict must play a substantial role in the perpetrator's decision and his ability to commit the crime, and the manner in which the crime was committed.<sup>219</sup> Nonetheless, "the armed conflict need not be considered the ultimate reason for the conduct and the conduct need not have taken place in the midst of the battle."<sup>220</sup>

128. The information available indicates that the crimes mentioned above occurred in the context of the armed conflict that commenced on 10 December 2012 at the latest, although and not necessarily in the midst of hostilities. Accordingly, the requisite link can be established between the alleged acts committed by Séléka and anti-balaka and the armed conflict in the CAR.

**2. Crimes against humanity**

129. The information available provides a reasonable basis to believe that both Séléka and anti-balaka forces have committed crimes against humanity within the territory of the CAR. Both armed groups have allegedly committed multiple crimes as part of widespread and/or systematic attacks directed against civilian populations, pursuant to or in furtherance of a State

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<sup>216</sup> World Vision, "Children seek escape from violence and sex abuse in the Central African Republic", 09 May 2014.

<sup>217</sup> UN OCHA, "Central African Republic Situation Report No. 24", 7 May 2014; UNICEF, "Over 1,000 children released from armed groups in Central African Republic this year", 16 May 2014.

<sup>218</sup> Elements of Crimes, war crimes under articles 8(2)(c) and (e).

<sup>219</sup> Katanga Jugement rendu en application de l'article 74, para. 1176; Côte D'Ivoire Article 15 Decision, para. 150.

<sup>220</sup> Côte D'Ivoire Article 15 Decision, para. 150. See also Situation in the Democratic Republic of Congo, *The Prosecutor v. Thomas Lubanga Dyilo*, "Decision on the confirmation of charges", ICC-01/04-01/06-803tEN, original in French issued on 29 January 2007, English translation on 14 May 2007, paras. 287-288; Situation in the Democratic Republic of the Congo, *the Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, "Decision on the confirmation of charges", ICC-01/04-01/07-717, 30 September 2008, para. 380 ("Katanga and Ngudjolo Decision on Confirmation of Charges").

or organizational policy to commit such attacks, within the meaning of article 7(1) of the Statute.

130. There is a reasonable basis to believe that from February 2013 at the latest to the time of writing the present report, Séléka forces conducted a widespread and systematic attack against the civilian population as they expanded their control of the territory of the CAR, targeting perceived opponents in the civilian population. In late 2013 these attacks allegedly became more notably targeted at non-Muslim civilians, who were perceived as supporters of anti-balaka.
131. There is also a reasonable basis to believe that anti-balaka forces, which became active around June 2013, carried out a widespread and systematic attack against the Muslim civilian population in the CAR, whom they perceived to be supportive of Séléka. The attack was reportedly concentrated in Bangui and the west of the country, and forced a massive displacement of Muslim civilians to other parts of the country or out of the country.

**(a) Contextual elements of crimes against humanity**

132. Under the Rome Statute, a crime against humanity involves any of the specified crimes listed under article 7(1), when they are committed as part of “a widespread or systematic attack directed against any civilian population, with knowledge of the attack”.
133. Article 7(2)(a) defines an attack directed against any civilian population as “a course of conduct involving the multiple commission of acts referred to in paragraph 1 [of article 7 of the Statute] against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.”<sup>221</sup>
134. The contextual elements of crimes against humanity thus require the following: (i) the acts in question are committed as part of an attack directed against any civilian population; (ii) the attack is carried out pursuant to or in furtherance of a State or organizational policy; (iii) the attack is of a widespread or systematic nature; (iv) a nexus between the individual act and the attack; and (v) the accused’s knowledge of the attack.<sup>222</sup>

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<sup>221</sup> Rome Statute article 7(2)(a). See also Situation in the Republic of Côte D’Ivoire, The Prosecutor v. Laurent Gbagbo, “Decision on the confirmation of charges against Laurent Gbagbo”, ICC-02/11-01/11-656-Red, 12 June 2014, paras. 208-210 (“Gbagbo Confirmation of Charges Decision”).

<sup>222</sup> Côte D’Ivoire Article 15 Decision, para. 29.

135. ICC Chambers have found that an “attack”, within the meaning of Article 7(1) refers to a campaign or operation carried out against the civilian population.<sup>223</sup> It is, notably, not restricted to a “military attack.”<sup>224</sup> The term “civilian population” refers to persons who are civilians, as opposed to members of the armed forces and other combatants.<sup>225</sup> The civilian population must be the primary target of the attack, though the presence of certain non-civilians does not necessarily deprive the population of its civilian character.<sup>226</sup>
136. The terms “widespread” and “systematic” under article 7 are presented in the alternative.<sup>227</sup> Pre-Trial Chambers have found that “[t]he expression ‘widespread or systematic’ [...] excludes random or isolated acts of violence”.<sup>228</sup> The term “widespread” has been found by Pre-Trial Chambers to refer to “both to the large scale nature of the attack and the number of victims”.<sup>229</sup> A widespread attack could be the “cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude.”<sup>230</sup> The term “systematic” refers to the “organised nature of the acts of violence and the improbability of their random occurrence” and can “often be expressed through patterns of crimes, in the sense of non-accidental repetition of similar criminal conduct on a regular basis.”<sup>231</sup>
137. With regard to the term “organizational”, the Pre-Trial Chambers have identified several factors that may be taken into account in determining whether a group qualifies as an ‘organization’ under article 7 of the Statute, including: a) whether the group is under a responsible command, or has an established hierarchy; b) whether the group possesses the resources, means, and sufficient capacity (including to act and coordinate) to carry out a

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<sup>223</sup> Katanga Jugement rendu en application de l’article 74, paras. 1097, 1101; Gbagbo Confirmation of Charges Decision, para. 209; Kenya Article 15 Decision, para. 80.

<sup>224</sup> Elements of Crimes, Article 7, Introduction, para. 3. See also Katanga Jugement rendu en application de l’article 74, para. 1101.

<sup>225</sup> Côte D’Ivoire Article 15 Decision, para. 33; Kenya Article 15 Decision, para. 82.

<sup>226</sup> Katanga Jugement rendu en application de l’article 74, paras. 1104-1105; ICTY, *Prosecutor v. Tadic*, Case No. IT-94-1-T, Trial Judgement, 7 May 1997, para 638.

<sup>227</sup> Bemba Confirmation of Charges Decision, para. 82.

<sup>228</sup> Katanga and Ngudjolo Decision on Confirmation of Charges, para. 394; also see Situation in Dafur, Sudan, *the Prosecutor v. Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman*, “Decision on the Prosecution Application under Article 58(7) of the Statute”, para. 62.

<sup>229</sup> Côte D’Ivoire Article 15 Decision, para. 53, quoting the Kenya Article 15 Decision, para. 95 (footnotes omitted).

<sup>230</sup> Situation in the Republic of Côte d’Ivoire, *the Prosecutor v. Laurent Gbagbo*, “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo”, ICC-02/11-01/11-9-US-Exp, para. 49 (“Gbagbo Arrest Warrant Decision”).

<sup>231</sup> Côte D’Ivoire Article 15 Decision, para. 54, quoting the Kenya Article 15 Decision, para. 96. See also Katanga Jugement rendu en application de l’article 74, paras. 1098, 1113, 1123.

widespread or systematic attack against a civilian population; c) whether the group exercises control over part of the territory of the State; d) whether the group directed its criminal activities against the civilian population as a primary purpose; e) whether the group articulates, explicitly or otherwise, an intention to attack a civilian population; and f) whether the group is part of a larger group, which fulfils some or all of the above-mentioned criteria.<sup>232</sup> However, these factors are not a rigid legal definition, and they do not need to be exhaustively fulfilled.<sup>233</sup> According to TC II, the group does not necessarily have to have an elaborate structure (such as that of a State) nor does it have to have the features of a quasi-State but instead what is essential is that it possesses the capacity to realize its objective of attacking a civilian population.<sup>234</sup>

138. Pre-Trial Chambers have found that the requirement of a State organizational policy under article 7 “implies that the attack follows a regular pattern”.<sup>235</sup> According to the Pre-Trial Chambers, an attack which is planned, directed or organized – as opposed to spontaneous acts of violence – will satisfy this criterion.<sup>236</sup> However, the policy need not be explicitly defined or formalised by the State or organizational group.<sup>237</sup> TC II has expressed that the existence of a State or organizational policy may, in most cases, be inferred from the repetition of acts performed according to the same logic, the existence of preparatory activities or collective mobilization orchestrated or coordinated by the State or organization.<sup>238</sup>
139. This report does not address the contextual element of the accused’s knowledge of the attack for each example given, since individual perpetrators are only definitively identified at the investigation stage.<sup>239</sup>

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<sup>232</sup> Katanga Jugement rendu en application de l’article 74, paras. 1119-1120; Côte D’Ivoire Article 15 Decision, para. 46, quoting the Kenya Article 15 Decision, paras. 90-93. See also Situation in the Republic of Kenya, *the Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and SJoshua Arap Sang*, “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute”, ICC-01/09-01/11-373, 23 January 2012, para. 185 (“Ruto and Sang Confirmation of Charges Decision”).

<sup>233</sup> Côte D’Ivoire Article 15 Decision, para. 46.

<sup>234</sup> Katanga Jugement rendu en application de l’article 74, paras. 1119-1121.

<sup>235</sup> Kenya Article 15 Decision, paras. 85-86; Bemba Confirmation of Charges Decision, para. 81. See also Gbagbo Arrest Warrant Decision, para. 37; Côte D’Ivoire Article 15 Decision, para. 43.

<sup>236</sup> Ruto and Sang Confirmation of Charges Decision, para. 210; Kenya Article 15 Decision, paras. 85-86; Bemba Confirmation of Charges Decision, para. 81.

<sup>237</sup> Situation in the Democratic Republic of the Congo, *The Prosecutor v. Callixte Mbarushimana*, “Decision on the confirmation of charges”, ICC-01/04-01/10-465-Red, 16 December 2011, para. 263; Gbagbo Arrest Warrant Decision, para. 37; Côte D’Ivoire Article 15 Decision, para. 43; Kenya Article 15 Decision, paras. 85-86; Bemba Confirmation of Charges Decision, para. 81.

<sup>238</sup> Katanga Jugement rendu en application de l’article 74, para. 1109.

<sup>239</sup> Côte D’Ivoire Article 15 Decision, para. 29.

**(b) Séléka: alleged crimes against humanity**

*“Attack directed against any civilian population”*

140. According to the information available, from February 2013 onwards, as Séléka forces took progressive control of the territory of the CAR, they deliberately targeted the civilian populations of villages and towns, notably in the north-western and central prefectures, following a pattern of looting and burning civilian property, displacing civilians from their homes and committing violent acts against those who resisted or did not flee in time. The information available indicates that during this period, the civilian population was the primary object of Séléka’s attack, as opposed to just an incidental victim of the attack. In particular, Séléka’s violent acts primarily targeted civilian residents of villages and towns, as distinct from military targets. Deliberate killings, attempted killings, rapes and serious wounding of civilians in the course of such incidents have been recorded by several human rights organizations.<sup>240</sup> Satellite imagery and eye-witness testimony collected by Human Rights Watch, for example, documents the alleged destruction by Séléka forces of more than 1,000 homes in at least 34 villages between March and June 2013.<sup>241</sup> These incidents and acts of violence by Séléka were neither isolated in nature nor directed against only a limited and random group of individuals.

141. Further, in the weeks and months following the 24 March 2013 *coup d’état*, Séléka is reported to have systematically targeted civilians in Bangui.<sup>242</sup> According to information collected by human rights organizations, the tactics used in these attacks involved Séléka fighters going door-to-door, ostensibly searching for weapons, in particular in areas of Bangui considered supportive of (former) President BOZIZÉ.<sup>243</sup> Residents of those areas reported that Séléka fired indiscriminately at civilians in those neighbourhoods, looted property and killed, wounded and raped scores of

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<sup>240</sup> See, for example, HRW, “I can still smell the dead - The forgotten human rights crisis in the Central African Republic”, 18 September 2013; FIDH, “Central African Republic: A country in the hands of Séléka war criminals”, 23 September 2013; AI, “Central African Republic: Human rights crisis spiralling out of control”, 29 October 2013.

<sup>241</sup> HRW, “I can still smell the dead - The forgotten human rights crisis in the Central African Republic”, 18 September 2013, pp. 4-21.)

<sup>242</sup> HRW, “I can still smell the dead - The forgotten human rights crisis in the Central African Republic”, 18 September 2013, p. 6.

<sup>243</sup> For example, Human Rights Watch cites two “high-ranking Séléka commanders” claiming that an April 2013 operation in Boy-Rabe was for “disarmament” purposes: HRW, “Central African Republic: Rampant Abuses after Coup”, 10 May 2013.

civilians.<sup>244</sup> According to reports of witness interviews firearms, including Kalashnikov rifles, and machetes were used to commit crimes in most cases. In at least one incident in Bangui, on 18 April 2013, Séléka forces allegedly also used a rocket-propelled grenade to attack a group of civilians in a funeral procession.<sup>245</sup> The information available furthermore indicates that the vast majority of victims of the alleged violent acts committed during these attacks, including killings, sexual violence and wounding, were civilians.<sup>246</sup>

142. These incidents were not isolated and followed a consistent pattern of violence specifically targeting the civilian population of Bangui and the rest of the country. In the latter part of 2013 and in 2014 non-Muslims, perceived to be anti-balaka supporters, were in particular increasingly targeted by Séléka fighters, apparently solely on the basis of their religious, and/or ethnic identity.<sup>247</sup> These attacks, which included killings, attempted killings and serious wounding, were also characterised by the displacement of non-Muslim populations to “safe” locations including churches and areas close to the bases of international forces, or to other areas of the country or out of the country, and were reportedly often carried out in reprisal for anti-balaka attacks on civilian Muslims or Séléka fighters, feeding a cycle of violence and retribution which escalated over the following weeks.<sup>248</sup>
143. Based on the information available, there is a reasonable basis to believe that from February 2013 onwards, a series of multiple acts of violence (including killings, attempted killings, serious injuries, and rapes) were carried out by Séléka and directed against civilian populations in the CAR perceived to be

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<sup>244</sup> See, for example, HRW, “I can still smell the dead - The forgotten human rights crisis in the Central African Republic”, 18 September 2013; FIDH, “Central African Republic: A country in the hands of Séléka war criminals”, 23 September 2013; AI, “Central African Republic: Human rights crisis spiralling out of control”, 29 October 2013.

<sup>245</sup> HRW, “I can still smell the dead - The forgotten human rights crisis in the Central African Republic”, 18 September 2013, pp. 52-53.

<sup>246</sup> See, for example, HRW, “Central African Republic: Rampant Abuses after Coup”, 10 May 2013.

<sup>247</sup> See, for example: UN Security Council, “Report of the Secretary-General on the situation in the Central African Republic”, S/2014/562, 1 August 2014, paras. 8,13; UN Security Council, “Report of the UN Secretary-General on the Central African Republic pursuant to paragraph 48 of Security Council resolution 2127 (2013)”, S/2014/142, 3 March 2014, para. 3; FIDH, “Central African Republic: ‘They must all leave or die’”, 24 June 2014, pp. 44-45; AI, “New satellite images reveal shocking aftermath of abuses in Central African Republic”, 8 November 2013.

<sup>248</sup> UN Security Council, “Report of the Secretary-General on the situation in the Central African Republic”, S/2014/562, 1 August 2014, paras 8, 13; UN Security Council, “Report of the UN Secretary-General on the Central African Republic pursuant to paragraph 48 of Security Council resolution 2127 (2013)”, S/2014/142, 3 March 2014, para. 3; FIDH, “Central African Republic: ‘They must all leave or die’”, 24 June 2014, pp. 44-45; AI, “New satellite images reveal shocking aftermath of abuses in Central African Republic”, 8 November 2013.



supporters of the former (BOZIZÉ) regime and/or of anti-balaka. The nature of the acts (including the pattern and level of violence) by Séléka forces, the population that was targeted, and the chronology of the relevant events indicate that those multiple acts, viewed collectively, constitute a course of conduct within the meaning of article 7(2)(a) of the Statute. Collectively, these incidents can be characterized as “a campaign or operation carried out against the civilian population” and thus fit the definition of an “attack directed against a civilian population” under article 7(1) of the Statute.<sup>249</sup>

*“Widespread or systematic”*

144. The information available provides a reasonable basis to believe that the attack carried out by Séléka forces against the civilian population was both widespread and systematic. It was large-scale in nature as it involved, in particular, numerous acts, such as killings, serious injuries, looting and burning civilian property, forcible displacement, and rape. The attack also notably extended over a protracted time period, namely from February 2013 at the latest until the time of writing of this report. Additionally, the attack targeted a significant number of individuals and affected a relatively large geographical area, including numerous villages and towns in the north-western and central prefectures and several districts throughout Bangui. Between December 2012 and July 2014 the Office estimates that at least 1,488 civilians were allegedly killed by Séléka.<sup>250</sup>
145. Satellite imagery and eye-witness testimony collected by Human Rights Watch documents the alleged destruction of more than 1,000 homes and the killing of at least 40 civilians by Séléka forces in at least 34 villages along the roads linking Batangafo, Bossangoa (Ouham), and Kaga Bandoro (Nana-Grébizi) between April and June 2013.<sup>251</sup> Other non-governmental organizations have documented similar attacks on villages during the same period. FIDH, for example, also found evidence of six villages that had allegedly been attacked by Séléka on 14 April, on the road between Mbrès and Kaga Bandoro (Nana-Grébizi).<sup>252</sup> It should be noted, however, that

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<sup>249</sup> Gbagbo Confirmation of Charges Decision, para. 209; Kenya Article 15 Decision, para. 80.

<sup>250</sup> This figure, from the OTP crime database, is based on a calculation of the average number of civilian victims reported as killed by Séléka in each incident, collected from open and other sources. It likely represents an underestimate since perpetrators remain unidentified (or insufficiently confirmed) in the cases of another 1,691 victims killed in the same period.

<sup>251</sup> HRW, “I can still smell the dead - The forgotten human rights crisis in the Central African Republic”, 18 September 2013, pp. 4-21; HRW, “Central African Republic: Séléka Forces Kill Scores, Burn Villages”, 27 June 2014.

<sup>252</sup> See, for example FIDH, “Central African Republic: A country in the hands of Séléka war criminals”, 23 September 2013, pp. 33-40.

research carried out to date by the United Nations and non-governmental organizations into these alleged attacks in the provinces has been limited by security concerns and by the displacement of the victim populations of these attacks, which has made it difficult to collect information. It is possible, therefore, that these types of attacks in the prefectures may have been geographically more widespread.

146. With respect to Bangui, statistics collected by the Central African Red Cross and from hospitals in the city indicate a high death toll and a high number of rapes of civilians by Séléka forces, in particular in the month following the Séléka coup. For example, the Red Cross documented 119 people killed and 602 wounded (including 435 by bullets) in Bangui between 23 March and 30 April 2013, the vast majority of whom were civilians, according to the president of the CAR Red Cross.<sup>253</sup> The figures do not represent the total number of killings for that period since in many cases families are believed to have buried their relatives privately. Just one health centre in Bangui reported some 38 cases of reported rape by Séléka fighters between February and the beginning of July 2013.<sup>254</sup> This figure also likely represents only a fraction of actual cases, since it is believed that fear of reprisal and/or stigmatization prevented many victims from reporting rapes.<sup>255</sup> Several sources indicate that rapes were committed by Séléka forces during “disarmament” operations in the Boy Rabe neighbourhood of Bangui, between 13 and 16 April 2013.<sup>256</sup>
147. The systematic nature of the attack carried out by Séléka is demonstrated in the apparent planned and organized character of the acts of violence targeting civilians in the north-western prefectures and Bangui. In addition, the acts of violence (including looting, killing, and rapes) reveal a clear and consistent pattern of violence directed at individuals perceived to be supporters of BOZIZÉ or of anti-balaka or simply non-Muslims. In many

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<sup>253</sup> See UN Security Council, “Report of the Secretary-General on the Situation in the Central African Republic”, S/2013/261, 3 May 2013, p. 7; Also for Red Cross figures of killed and wounded in the immediate post-coup period: FIDH, “Central African Republic: A country in the hands of Séléka war criminals”, 23 September 2013, pp. 22-23.

<sup>254</sup> UN Human Rights Council, “Situation of Human Rights in the Central African Republic”, A/HRC/24/59, 12 September 2013, paras. 64-67.

<sup>255</sup> UN Human Rights Council, “Situation of Human Rights in the Central African Republic”, A/HRC/24/59, 12 September 2013, paras. 64-67. The lack of medical facilities equipped to treat and support rape victims, and the absence of law and order may also have contributed to preventing victims from coming forward (If they could expect neither treatment nor justice, survivors had little incentive to report the rape).

<sup>256</sup> UN Human Rights Council, “Situation of Human Rights in the Central African Republic”, A/HRC/24/59, 12 September 2013, para. 66.

cases whole areas where inhabitants were perceived to be supportive of Séléka's opponents were targeted.

148. For example, the north-western prefectures targeted by Séléka were perceived to be areas of support for BOZIZÉ, since he (and his ethnic group, the Gbaya) originated from there. Attacks by Séléka forces on civilians in Bangui during and following the 24 March 2013 *coup d'état* were similarly reportedly targeted in particular at those believed to be associated with the former regime. According to information collected by the UN and NGOs, from November 2013 at the latest, and up to the time of writing of this report, Séléka attacks on civilians both within Bangui and in the provinces have allegedly been targeted more clearly at non-Muslims, who are perceived by Séléka fighters as supporters of anti-balaka, apparently solely on the basis of their religious and/or ethnic identity.<sup>257</sup>

*"State or organizational policy"*

149. The information available indicates continuity in Séléka's organizational policy throughout the evolution of the movement from armed opposition group, to a state power, and back to an armed opposition group in the period under review in this report.
150. A responsible command, hierarchical structure, and the group's capability to coordinate and carry out a widespread and systematic attack, described above in the discussion of Séléka as an organized armed group for purposes of article 8 of the Statute, also satisfy many of the criteria mentioned above for establishing Séléka as an organization for the purposes of article 7.<sup>258</sup> The Pre-Trial Chambers have also identified a group's control over territory of a State as a factor that may assist in the determination of whether a group qualifies an organization within the meaning of article 7(2)(a) of the Statute.<sup>259</sup> In this regard it is notable that Séléka was already in control of almost half of the territory of the CAR by December 2012, several months prior to the *coup d'état* which brought the group to power, and, further, that

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<sup>257</sup> See, for example, UN Security Council, "Report of the Secretary-General on the situation in the Central African Republic", S/2014/562, 1 August 2014, paras. 8, 13; UN Security Council, "Report of the UN Secretary-General on the Central African Republic pursuant to paragraph 48 of Security Council resolution 2127 (2013)", S/2014/142, 3 March 2014, para. 3; FIDH, "Central African Republic: 'They must all leave or die'", 24 June 2014, pp. 44-45; AI, "New satellite images reveal shocking aftermath of abuses in Central African Republic", 8 November 2013.

<sup>258</sup> See also paragraphs 64-66 above, under War Crimes section for discussion of level of organization of Séléka.

<sup>259</sup> Ruto and Sang Confirmation of Charges Decision, para. 185; Côte D'Ivoire Article 15 Decision, para. 46; Kenya Article 15 Decision, paras. 90-93.

after losing power (in January 2010), Séléka continued to control 8 of the 16 provinces of the country, up until at least August 2014.<sup>260</sup> During the time that senior leaders of Séléka remained in positions of power within the State authorities, including the Presidency, the group's organizational policy may also have met the definition of a State policy. As documented above under the section addressing war crimes, neither the level of organization of Séléka nor its activities appear to have been significantly affected by the official disbanding of the force. Amnesty International, for example, has stated that the official dismantling of Séléka had "no impact on their activities."<sup>261</sup> Similarly the humanitarian news and analysis service of the UN Office for the Coordination of Humanitarian Affairs (OCHA) refers to the Séléka alliance being "officially, but not effectively, disbanded".<sup>262</sup> Information available indicates that there remained a distinct military and political hierarchy and a clear degree of control over Séléka forces via a relatively decentralised structure based on geographical "com-zones" (command zones).<sup>263</sup> There is thus a reasonable basis to believe that Séléka as an organization for the purposes of article 7(2)(a) remained *de facto* in existence after its official disbandment.

151. After losing control of the central government, political divisions appear to have emerged within the leadership of Séléka<sup>264</sup>, however, the group's capabilities as an armed organization do not appear to have been significantly affected; it maintained control of more than half of the territory of the CAR and allegedly continued to carry out coordinated attacks on non-Muslim civilians. In spite of political divisions, Séléka continued to hold meetings as a movement, gave the organization a new name and its leaders participated in peace negotiations and an eventual agreement in 2014.<sup>265</sup>
152. With regard to policy, the alleged attacks on civilians carried out by Séléka forces prior to, during and following the group's period of governance, described in more detail in the following analysis, cannot be characterised as

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<sup>260</sup> UN Security Council, "Report of the UN Secretary-General on the Central African Republic pursuant to paragraph 48 of Security Council resolution 2127 (2013)", S/2014/142, 3 March 2014, paras. 8, 24; UN Security Council, "Report of the Secretary-General on the situation in the Central African Republic", S/2014/562, 1 August 2014, para. 28.

<sup>261</sup> AI, "Time for accountability", July 2014, p. 48, endnote 3.

<sup>262</sup> IRIN, "Public killings highlight power shift in CAR", 21 January 2014.

<sup>263</sup> See FIDH, "Central African Republic: 'They must all leave or die'", 24 June 2014, pp. 63-71 on Séléka structure.

<sup>264</sup> UN Secretary General in August 2014 described "weak" political cohesiveness in Séléka: UN Security Council, "Report of the Secretary-General on the situation in the Central African Republic", S/2014/562, 1 August 2014, para. 30.

<sup>265</sup> UN Security Council, "Report of the Secretary-General on the situation in the Central African Republic", S/2014/562, 1 August 2014, para. 29-32.

spontaneous or isolated acts of violence. Neither can they be described as randomly targeted, either in geographical terms, or in terms of the nature of the targeted populations. In the early months of Séléka's military campaign to take control of the territory of the CAR and impose its authority, these attacks reportedly focused on areas perceived to be loyal to, or simply associated with, former President BOZIZÉ and his Gbaya ethnic group.

153. The Séléka attacks on civilians in the north-west of the country have been described by one witness as part of a "policy of submission".<sup>266</sup> These attacks also allegedly predominantly targeted non-Muslims; the UN reported as early as May 2013 that Séléka attacks were "targeting non-Muslim citizens, while at the same time protecting Muslims during the pillaging and raiding of some neighbourhoods in Bangui and in the regional prefectures."<sup>267</sup> In subsequent periods of the Séléka military campaign, as anti-balaka forces began targeting Muslim civilians in retaliation for perceived Séléka abuses, reports indicate that attacks by Séléka forces began to more clearly target non-Muslim civilians, including the attacking of churches and other sites where non-Muslim civilians had taken refuge.<sup>268</sup>

**i. Crimes against humanity allegedly committed by Séléka**

154. The information available provides a reasonable basis to believe that Séléka at a minimum committed the following crimes against humanity under article 7 of the Rome Statute: murder under article 7(1)(a); torture under article 7(1)(f); rape under article 7(1)(g); persecution under article 7(1)(h); and other inhumane acts under article 7(1)(k).
155. The acts listed herein are merely examples and are not to be understood as comprehensive or conclusive.

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<sup>266</sup> Bishop of Bossangoa, interviewed by FIDH and cited in FIDH "Central African Republic: A country in the hands of Séléka war criminals", 23 September 2013, p. 34.

<sup>267</sup> UN Security Council, "Report of the Secretary-General on the Situation in the Central African Republic", S/2013/261, 3 May 2013, para. 26.

<sup>268</sup> Such attacks are detailed in the following reports: UN Security Council, "Report of the Secretary-General on the situation in the Central African Republic", S/2014/562, 1 August 2014, paras. 8,13; UN Security Council, "Report of the UN Secretary-General on the Central African Republic pursuant to paragraph 48 of Security Council resolution 2127 (2013)", S/2014/142, 3 March 2014, para. 3; FIDH, "Central African Republic: 'They must all leave or die'", 24 June 2014, pp. 44-45; AI, "New satellite images reveal shocking aftermath of abuses in Central African Republic", 8 November 2013.

7(1)(a) *Murder*

156. In addition to the contextual elements described above, pursuant to article 7(1)(a) of the Statute, murder as a crime against humanity requires that the perpetrator killed one or more persons.<sup>269</sup>
157. On 13-14 April 2013 Séléka forces allegedly entered the Boy-Rabe neighbourhood of Bangui in trucks, firing “indiscriminately” at civilians.<sup>270</sup> Human Rights Watch has documented “dozens” of killings of civilians during this operation<sup>271</sup>, including: the shooting dead of a young unarmed man who was fleeing the rebels; the shooting dead of an adult male civilian, a resident of Boy Rabe, who refused to let Séléka enter his home; and the shooting dead of a civilian woman and her 18-month-old child by Séléka fighters who wanted to take her husband’s truck.<sup>272</sup> In addition, the following alleged killings by Séléka involved multiple victims.
158. On 13 April 2013 Séléka forces allegedly killed some 18 unarmed civilians including a priest in a funeral procession in the area of the Ngaragba Bridge in Bangui.<sup>273</sup>
159. On 15 April 2013 in Bangui Séléka forces reportedly stopped nine young men, forced them onto a pickup truck and drove them through the city, stabbing them as they lay in the back of the truck, and accusing them of being former FACA members.<sup>274</sup> They later allegedly shot five of the young men dead, sparing the other four.
160. On 22 April 2013 in Mbres (Nana-Grébizi), Séléka soldiers reportedly killed 27 people, wounded at least 50 others and burned some 500 homes.<sup>275</sup>
161. According to witness accounts documented by Human Rights Watch, in the village of Ouin (Ouham), on 1 May 2013 Séléka forces accompanied by a self-

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<sup>269</sup> Elements of Crimes article 7(1)(a)(1). Note that “killed” is interchangeable with “caused death”, according to footnote to this article of the Elements of Crimes (footnote 7, page 5).

<sup>270</sup> See HRW, “Central African Republic: Rampant Abuses after Coup”, 10 May 2013.

<sup>271</sup> HRW, “I can still smell the dead - The forgotten human rights crisis in the Central African Republic”, 18 September 2013, pp. 54.

<sup>272</sup> HRW, “Central African Republic: Rampant Abuses after Coup”, 10 May 2013.

<sup>273</sup> HRW, “I can still smell the dead - The forgotten human rights crisis in the Central African Republic”, 18 September 2013, pp. 52-53.

<sup>274</sup> HRW, “I can still smell the dead - The forgotten human rights crisis in the Central African Republic”, 18 September 2013, pp. 58-59.

<sup>275</sup> UN OCHA, “Central African Situation Report No. 13”, 26 April 2013; and also AI, “Central African Republic: Human Rights Spiralling out of Control”, 29 October 2013, p. 17.

proclaimed (unarmed) local official, reportedly killed some ten civilians, five of whom were tied up and then summarily executed.<sup>276</sup>

162. FIDH has documented similar killings by Séléka during attacks on villages in the north-west, including the alleged killings of some 25 civilians (21 men and 4 women) during attacks on the villages of Bomissi, Gbadoma, Gayo, Bedoro, Bogone, Gbade, Gola, Bobera and Bodore, in the Ouham-Bac area, on 19 May 2013.<sup>277</sup>
163. The United Nations reported in 2013 that in Bossangoa (Ouham) between 7 and 21 September 2013, “ex-Séléka elements allegedly killed 67 members of the Christian community”.<sup>278</sup> Similar incidents involving killings of civilians during attacks on their villages in the north-western prefectures of the country have been documented by the United Nations, Human Rights Watch, Amnesty International and FIDH.<sup>279</sup>
164. On 13 July 2013, Séléka soldiers allegedly abducted more than a dozen men who were travelling by taxi several kilometres south of Bangui, suspecting them of being supporters of (former) President BOZIZÉ. Bodies of some of the men were reportedly found some days later in the Oubangi River, with their arms and legs tied and showing signs of alleged torture.<sup>280</sup>
165. In the context of the documented large scale attacks on civilians by Séléka forces in the period from November 2013 onwards, as Séléka began to lose its grip on power in the face of anti-balaka resistance, several reported incidents are notable. In the immediate hours following anti-balaka’s attack on Bangui of 5 December, Séléka forces reportedly sought out and killed non-Muslim men in the PK12 and PK23 areas of Bangui as they searched for anti-balaka fighters. Some women were also killed. Overall, some 1,000 people (both non-Muslims and Muslims) were estimated killed from 5-6 December 2013 in

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<sup>276</sup> HRW, “Central African Republic: Séléka Forces Kill Scores, Burn villages”, 27 June 2013.

<sup>277</sup> FIDH, “Central African Republic: A country in the hands of Séléka war criminals”, 23 September 2013, pp. 28-29.

<sup>278</sup> UN Security Council, “Report of the Secretary-General on the Situation in the Central African Republic”, S/2013/787, 31 December 2013, para. 43.

<sup>279</sup> UN OCHA, “Central African Republic: Humanitarian Snapshot”, 31 Aug 2013; AI, “Central African Republic: Human Rights Spiralling out of Control”, 29 October 2013; FIDH, “Central African Republic: ‘They must all leave or die’”, 24 June 2014, pp. 14–18; FIDH, “Central African Republic: A country in the hands of Séléka war criminals”, 23 September 2013, pp. 27-29.

<sup>280</sup> AI “Central African Republic: Human Rights Spiralling out of Control”, 29 October 2013, p. 20; Also reported in Reuters, “‘New Somalia’ risk as warlords rule in Central African Republic” 30 July 2013.

- Bangui.<sup>281</sup> According to witnesses interviewed, Séléka fighters made little distinction between civilians and anti-balaka fighters.<sup>282</sup>
166. On 5 December 2013, Séléka fighters reportedly abducted and summarily executed between 11 and 14 patients from the *Hôpital de l’Amitié* in Bangui.<sup>283</sup>
167. In Bossangoa (Ouham), on 5 December 2013, Séléka fighters allegedly attacked the non-Muslim population in the town, killing dozens of civilians.<sup>284</sup>
168. On 20 December 2013, Séléka fighters allegedly opened fire, killing at least 27 persons at the Saint Jacques monastery in Bangui, where some 20,000 internally displaced persons had sought shelter.<sup>285</sup>
169. On 31 December 2013, in the village of Bata (Ouham-Pendé) Séléka fighters accompanied by armed Muslim civilians are alleged to have killed some 24 non-Muslim civilians including at least five children.<sup>286</sup>
170. Following the resignation of President Michel DJOTODIA on 10 January 2014, a majority of Séléka fighters reportedly withdrew from Bangui and the west of the country.<sup>287</sup> As Séléka retained control of much of the eastern part of the country, the dividing line between the areas controlled by Séléka and those under anti-balaka control became flashpoints for attacks and counter-attacks by both Séléka and anti-balaka, including attacks on civilians.

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<sup>281</sup> See “Preliminary Findings: OHCHR Monitoring Mission in the Central African Republic (CAR)”, 14 January 2014, p. 3; Amnesty International has estimated that Séléka alone killed almost 1,000 non-Muslim men in two days following the 5 December anti-balaka attack on Bangui: AI, “Central African Republic: War crimes and crimes against humanity in Bangui”, 15 December 2013.

<sup>282</sup> AI, “None of us are Safe”, 19 December 2013, public statement.

<sup>283</sup> See “Preliminary Findings: OHCHR Monitoring Mission in the Central African Republic (CAR)”, 14 January 2014; also FIDH, “Central African Republic: “They must all leave or die”, 2014, pp. 32-33. In this incident, Séléka fighters were reportedly looking for injured anti-balaka fighters. In *Martić*, the Appeals Chamber of the ICTY found that “a person *hors de combat* may [...] be a victim of an act amounting a crime against humanity, provided that all other necessary conditions are met, in particular that the act in question is part of a widespread or systematic attack against any civilian population”. *Martić* Appeal Judgement, para. 313. See also *ibid.*, paras. 306-311 (also concluding that this interpretation is consistent with customary international law).

<sup>284</sup> See “Preliminary Findings: OHCHR Monitoring Mission in the Central African Republic (CAR)”, 14 January 2014.

<sup>285</sup> See “Preliminary Findings: OHCHR Monitoring Mission in the Central African Republic (CAR)”, 14 January 2014.

<sup>286</sup> AI, “Ethnic cleansing and sectarian killings in the Central African Republic”, 2014, pp. 22-24.

<sup>287</sup> UN Security Council, “Report of the UN Secretary-General on the Central African Republic pursuant to paragraph 48 of Security Council resolution 2127 (2013)”, S/2014/142, 3 March 2014, para. 8.



171. On 26 February 2014, 8 civilians were reportedly killed and at least 10 injured by some 100 “heavily armed” Séléka fighters, accompanied by Muslim Peuhl cattle herders in the village of Bowai, near Bossangoa (Ouham).<sup>288</sup>
172. On 7 July 2014, Séléka fighters reportedly killed some 27 civilians, including several women and children, amongst a group of up to 6,000 mainly non-Muslims who had taken shelter at the Saint Joseph Cathedral and the Bishop’s residence in Bambari (Ouaka).<sup>289</sup>

*7(1)(f) Torture and/or 7(1)(k) Other inhumane acts*

173. In addition to the contextual elements discussed above, the crime against humanity of torture entails “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused”;<sup>290</sup> other inhumane acts are acts that are “of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”.<sup>291</sup>
174. Reports from alleged victims provide a reasonable basis to believe that Séléka also used torture and/or inhumane acts in the context of its widespread and systematic attack on the civilian population. Incidents reported include the following: the alleged abduction of a man in the Bambari area (Ouaka) on 2 February 2013 by Séléka fighters, followed by five days of torture;<sup>292</sup> the alleged detention and torture of three young men, two of whom died, by Séléka fighters in the Sibut area (Kémo) on 28 January 2014;<sup>293</sup> and the alleged arrest of a man in Bangui on 21 August 2013, followed by 10 days of alleged torture at the *Office centrafricain de répression du banditisme* (“OCRB”, a special unit within the police, alleged to have been involved in torture under the Séléka regime).<sup>294</sup>

*7(1)(g) Rape and other forms of sexual violence*

175. In addition to the contextual elements discussed above, the crime against humanity of rape requires, according to article 7(1)(g)(1) of the Elements of

<sup>288</sup> HRW “Central African Republic: Séléka Fighters Attack Village”, 11 March 2014.

<sup>289</sup> “UN in Central African Republic condemns attack on civilians sheltering in church”, UN News Centre, 9 July 2014.

<sup>290</sup> Article 7(2)(e) of the Statute. The Elements of Crimes, article 7(1)(f)(1) indicate that the torture must have been inflicted upon one or more persons.

<sup>291</sup> Rome Statute, article 7(1)(k).

<sup>292</sup> FIDH “Central African Republic: They must all leave or die”, 2014, p.48-49.

<sup>293</sup> HRW “Central African Republic: Séléka fighters regroup in North”, 5 February 2014.

<sup>294</sup> FIDH “Central African Republic: They must all leave or die”, 2014, p.27.

Crimes, that “(t)he perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ , or of the genital opening of the victim with any object or any other part of the body.” It is also required by the Elements of Crimes that “(t)he invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.”

176. Several sources have indicated the likelihood that the commission of sexual violence, in particular rape, by Séléka forces has been widespread.<sup>295</sup> Insecurity, social stigma attached to sexual violence, which deters victims from reporting or seeking help following rapes, and a lack of medical and psychosocial support to victims are some of the factors that have, to date, severely hindered research on the incidence of rape and other sexual violence crimes. However, statistics for those who have been treated at the limited number of medical facilities that are available, following alleged incidents of sexual violence, indicate that numerous rapes were committed by Séléka forces, notably in the context of the attack on Bangui.
177. One doctor interviewed by FIDH reported that his hospital alone had seen 56 victims of rape, allegedly by Séléka members, between 24 March and 21 April 2013 (the first month of Séléka’s control of Bangui). The vast majority of the victims were reportedly adult women.<sup>296</sup>
178. One survivor reported to Human Rights Watch that on 25 March 2013 two armed Séléka fighters had entered the house she shared with her sister, who was eight months pregnant at the time, forced them both to undress and lie on the ground before raping them both one by one.<sup>297</sup> The pregnant victim reportedly lost her baby the next day. During the attack, the victim reported, other Séléka fighters were in the neighbourhood, shooting in the air, and the men who raped them reportedly verbally insulted them in Sango and Arabic

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<sup>295</sup> See FIDH, “Central African Republic: A country in the hands of Séléka war criminals”, 23 September 2013, pp. 30-31; Also “CAR: Number of sexual violence cases “astronomical”, United Nations Regional Information Centre for Western Europe, 20 January 2014,  citing UNFPA Programme Division Director, who reported 1,186 “confirmed cases” of sexual violence in the past month (to 20 January 2014).

<sup>296</sup> FIDH “Central African Republic: A country in the hands of Séléka war criminals”, 23 September 2013, p. 30.

<sup>297</sup> HRW, “I can still smell the dead - The forgotten human rights crisis in the Central African Republic”, 18 September 2013, p. 62.

during the attack. On 14 April 2013 another survivor was allegedly gang-raped by Séléka fighters in her house during a Séléka operation in Boy-Rabe (the Bangui neighbourhood associated with former President BOZIZÉ's supporters). She and her children were reportedly abandoned by her husband the following day.<sup>298</sup>

179. On 31 March 2013, during Séléka's "disarmament" operations in Boy Rabe, three women were allegedly raped by six male Séléka fighters while a female Séléka fighter stood guard outside the house.<sup>299</sup> Eye witnesses interviewed by Amnesty International indicated that numerous other rapes were committed by Séléka soldiers in the context of their "disarmament" operations in Boy Rabe. This incident, and other rapes committed in the context of attacks on perceived opponents by Séléka may also constitute crimes of persecution under article 7(1)(h) (see below).
180. The limited statistics on sexual violence that are currently available are, in most cases, not disaggregated according to the alleged perpetrator. More information is required to assess the extent of the incidence of rape by both Séléka and anti-balaka forces. However, taking into consideration the factors that discourage victims from reporting rape, the number of cases reported remains high, and may have escalated throughout the conflict. The UN received "credible and corroborated information" of at least 140 rapes allegedly committed by Séléka members between January and June of 2013, in Bangui alone.<sup>300</sup> "Dozens" of other cases were reported in prefectures outside the capital, including Basse-Kotto, Haute-Kotto, Ombella-M'Poko and Nana-Grébizi.<sup>301</sup> MISCA documented 251 cases of rape in January 2014, affecting 224 adult females, one adult male and 26 minors.<sup>302</sup> Since opening two women's centres in Bangui at the beginning of 2014, one NGO reported assisting some 400 women who had allegedly been raped, a majority by

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<sup>298</sup> HRW, "I can still smell the dead - The forgotten human rights crisis in the Central African Republic", 18 September 2013, pp. 62-63.

<sup>299</sup> AI, "Central African Republic, Human rights crisis spiralling out of control", 29 October 2013, p. 26-27.

<sup>300</sup> UN Human Rights Council, "Situation of Human Rights in the Central African Republic", A/HRC/24/59, 12 September 2013, para. 40.

<sup>301</sup> UN Human Rights Council, "Situation of Human Rights in the Central African Republic", A/HRC/24/59, 12 September 2013, para. 41.

<sup>302</sup> AU, "1<sup>st</sup> Progress report of the Commission of the African Union on the situation in the Central African Republic and the Activities of the African-led International Support Mission in the Central African Republic", p.16, para. 64.

multiple attackers. Existing statistics for sexual violence are believed to represent only a fraction of potential cases.<sup>303</sup>

*7(1)(h) Persecution*

181. In addition to the contextual elements mentioned above, the crime against humanity of persecution is defined by article 7(2)(g) of the Statute as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity”. Article 7(1)(h) specifies that it must be committed against “any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined by paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.”
182. Persecution is not a stand-alone crime; it must have been committed in connection with another act of deprivation of a fundamental right, or any crime within the jurisdiction of the Court.
183. As previously addressed, there is a reasonable basis to believe that Séléka members have committed murder, torture, other inhumane acts, and rape as crimes against humanity (pursuant to articles 7(1)(a), 7(1)(k), 7(1)(f) and 7(1)(g)). Further, the information available provides a reasonable basis to believe that in some instances, the victims of these acts were targeted by Séléka by reason of their identity as actual or perceived supporters of (former President) BOZIZÉ and/or their identity as non-Muslims, representing distinctions on political or religious grounds, respectively, within the meaning of article 7(1)(h) of the Statute.
184. As early as May 2013 the UN reported that Séléka attacks were “targeting non-Muslim citizens, while at the same time protecting Muslims during the pillaging and raiding of some neighbourhoods in Bangui and in the regional prefectures.”<sup>304</sup> Particular neighbourhoods, believed to be supportive of former President BOZIZÉ, were allegedly targeted by Séléka forces, sometimes in the guise of “disarmament” operations.<sup>305</sup> Human Rights Watch

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<sup>303</sup> Several sources note an underreporting of sexual violence crimes. For example, UN Security Council, “Report of the UN Secretary General on the situation in the Central African Republic”, S/2013/470, 5 August 2013, para. 45.

<sup>304</sup> UN Security Council, “Report of the Secretary-General on the Situation in the Central African Republic”, S/2013/261, 3 May 2013, para. 26.

<sup>305</sup> HRW interview with Séléka General Noureddine Adam, 1 May 2013, “I can still smell the dead - The forgotten human rights crisis in the Central African Republic”, 18 September 2013, p. 53.

was reportedly told by a Séléka General: “[it was a priority] to disarm Boy-Rabe. Boy-Rabe is a neighborhood of 60 percent of families of elements of the Presidential Guard. They are all there.”<sup>306</sup> Examples of acts that may constitute persecution by Séléka forces are provided below.

185. In the latter part of 2013 and the first half of 2014, several incidents are illustrative of the increasing pattern of acts targeting individuals and communities on the basis of their religious/ethnic/political identity as non-Muslims, members of ethnic groups perceived as opponents, or perceived supporters of (former) President BOZIZÉ or of anti-balaka. Alleged Séléka attacks such as that on the St Jacques monastery in Bangui on 20 December 2013 and on the church and Bishop’s residence in Bambari on 7 July 2014 targeted clearly religious institutions where (mainly) non-Muslim civilians had taken shelter. On 28 May 2014, Séléka members reportedly attacked the Church of Notre Dame de Fatima in Bangui, where non-Muslim civilians had sought shelter, killing eleven people, including the priest, and wounding 24.<sup>307</sup> A further three people later succumbed to injuries they received in the attack.
186. Based on the information available and the circumstances of these attacks, there is a reasonable basis to believe that Séléka targeted these individuals by reason of their perceived political association (with the former regime) and/or their religious or ethnic identity and that the acts committed constitute persecution as a crime against humanity.

**ii. Nexus with the attack**

187. The multiple acts constituting crimes against humanity which were committed as part of the attack against the civilian population by Séléka forces, and their nexus with that attack, are detailed above. The nexus can, in many instances, be deduced in part from the common features of the acts committed (in terms of their characteristics, nature, aims, targets, alleged perpetrators, and times and locations).<sup>308</sup> The following overarching factors can also be considered as assisting in determining a nexus between the individual acts and the attack:<sup>309</sup> the temporal and geographical overlap

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<sup>306</sup> HRW interview with former minister of water and forests and former Séléka general, Mohamed Moussa Dhaffane, on 1 May 2013, HRW, “I can still smell the dead - The forgotten human rights crisis in the Central African Republic”, 18 September 2013, p. 53-54.

<sup>307</sup> UN Security Council, “Report of the Secretary-General on the situation in the Central African Republic”, S/2014/562, 1 August 2014, para. 8. ()

<sup>308</sup> See Ntaganda Confirmation of Charges Decision, para. 212.

<sup>309</sup> “Attack” is defined by article 7(2)(a) of the Statute as “a course of conduct involving the multiple commission of acts referred to in paragraph 1”.

between the attack and the individual criminal acts; the fact that the same group (Séléka) was allegedly responsible for both; the nature of the victims of the individual acts, which fits with the State or organizational policy explained above, and the repetitious nature of the types of crimes allegedly committed within the pattern of conduct that constituted the attack, including the use of firearms and machetes to kill and wound civilians together with sexual violence, accompanied by looting and destruction of property.

**(c) Anti-balaka: alleged crimes against humanity**

188. The information available provides a reasonable basis to believe that anti-balaka forces carried out a widespread and systematic attack against the Muslim population of the CAR whom they identified, primarily on the basis of their ethnic and/or religious identity, as supportive of Séléka. This attack began in mid-September 2013 in the district of Bossangoa but spread to Bangui and elsewhere, in particular the western region of the country.

*“Attack directed against any civilian population”*

189. Multiple acts committed by anti-balaka in the period September 2013 to August 2014, examples of which are given below, constitute a course of conduct that can be characterised as “a campaign or operation carried out against the civilian population.”<sup>310</sup> This campaign was allegedly targeted at the Muslim civilian population in the CAR, whom anti-balaka perceived to be supporters of Séléka.<sup>311</sup>

190. Although the original aim in establishing the anti-balaka may have been to defeat Séléka, the information available indicates that the attacks carried out by the group since September 2013 have primarily targeted Muslim civilians pursuant to an organizational policy.<sup>312</sup> These include sites where Muslim civilians had taken refuge, including religious sites, enclaves where civilians sought refuge from anti-balaka, Muslim neighbourhoods and convoys or vehicles transporting Muslim refugees and displaced persons.<sup>313</sup> Anti-balaka

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<sup>310</sup> Kenya Article 15 Decision, para. 80. See also Gbagbo Arrest Warrant Decision, para. 30; Bemba Confirmation of Charges Decision, para. 75; Ruto and Sang Confirmation of Charges Decision, para. 164.

<sup>311</sup> For example, see: UN Security Council, “Report of the UN Secretary-General on the Central African Republic pursuant to paragraph 48 of Security Council resolution 2127 (2013)”, S/2014/142, 3 March 2014, para. 8.

<sup>312</sup> The UN Secretary-General indicated that anti-balaka represented “the main threat to civilians” in UN Security Council, “Report of the UN Secretary-General on the Central African Republic pursuant to paragraph 48 of Security Council resolution 2127 (2013)”, S/2014/142, 3 March 2014, para. 5.

<sup>313</sup> See below under alleged war crimes for examples of civilian targets of alleged anti-balaka attacks.

attacks have also reportedly targeted the property of Muslim civilians, allegedly with the intention of forcing Muslims from their places of residence and preventing their return to those locations.<sup>314</sup> The UN Secretary General in his March 2014 report on the situation in the Central African Republic described “(d)eliberate and targeted violence forcing Muslim populations to flee (which) may amount to the crimes against humanity of forced displacement and/or persecution.”<sup>315</sup>

*“Widespread or systematic attack”*

191. The information available indicates that the anti-balaka attack against the Muslim population in the CAR was both widespread and systematic. It was large-scale in nature as it involved, in particular, numerous acts, such as killing, sexual violence, and forced displacement. The widespread nature of the attack is also shown by the large numbers of civilians targeted and the fact that Muslim communities were targeted in many locations. Based on analysis of the available information the Office estimates that more than 1,200 civilians have been killed by anti-balaka, between September 2013 and July 2014. In January and February of 2014 alone, more than 700 Muslim civilians were allegedly killed by anti-balaka.<sup>316</sup>
192. The systematic character of anti-balaka’s attack is demonstrated by the consistent pattern of violence targeting Muslim civilians and involving and killings, attempted killings, and rapes as well as the destruction of mosques, homes and businesses of the Muslim community. In this respect, anti-balaka also in particular targeted places where Muslim civilians had taken refuge or were trapped in enclaves, or vehicles in which they were seeking to flee from the attacks. Weapons used included machetes and home-made and manufactured firearms. Additionally, the acts of violence by anti-balaka, such as the 5 December 2013 attack on Bangui, appear to have been planned in advance and carried out in a coordinated manner.

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<sup>314</sup> See, for example, AI, “Ethnic Cleansing and Sectarian Killings in the Central African Republic”, February 2014, p.10.

<sup>315</sup> UN Security Council, “Report of the UN Secretary-General on the Central African Republic pursuant to paragraph 48 of Security Council resolution 2127 (2013)”, S/2014/142, 3 March 2014, para. 4.

<sup>316</sup> These statistics, from the OTP crime database, are based on a calculation of the average number of civilian victims reported as killed by anti-balaka in each incident, collected from open and other sources. It likely represents an underestimate since perpetrators remain unidentified (or insufficiently confirmed) in many incidents.

*“State or organizational policy”*

193. Based on the information available, there is a reasonable basis to believe that anti-balaka qualifies as an organization within the meaning of article 7 of the Statute. In particular, anti-balaka has shown that it possesses the resources, means, and capacity to carry out a widespread and systematic attack against a civilian population, namely targeting Muslim civilians in the CAR.
194. For example, as described previously, anti-balaka’s capability to carry out a coordinated attack was demonstrated in particular by its attack on Bangui on 5 December and other locations including Bossangoa. The UN Panel of Experts and FIDH have both noted the extensive presence of FACA soldiers in anti-balaka ranks, in particular in command positions, in all four “categories” of anti-balaka and these elements are believed to have contributed significantly to the structuring and training of the group.<sup>317</sup>
195. The information available also provides a reasonable basis to believe that in carrying out its acts of violence, the various factions of anti-balaka pursued the common policy of deliberately targeting all Muslims in the CAR, whom they held responsible for the perceived injustices committed by Séléka. The UN Secretary General reported in March 2014 that “Muslim civilian communities (...) are now deliberately and systematically targeted by anti-balaka elements. These attacks involve killings, targeted assassinations, sexual violence, public lynching, looting and the destruction of property”.<sup>318</sup> The same report indicates that “(a)ttacks have been publicly referred to by individuals claiming to represent anti-balaka elements as ‘cleansing operations’” and further reports “incidents of anti-balaka elements using hate speech on the television and radio”.<sup>319</sup>
196. As mentioned above, the additional element of territorial control can be a relevant factor in determining whether a group qualifies as an organization within the meaning of article 7 of the Statute. While anti-balaka have been reported to control certain limited areas of territory, including some towns, and routes between certain towns, establishing check-points on main routes,

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<sup>317</sup> See, for example, Report of the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013), S/2014/452, Annex 5, para. 8; FIDH, “Central African Republic: They must all leave or die”, 2014, p.58.

<sup>318</sup> UN Security Council, “Report of the UN Secretary-General on the Central African Republic pursuant to paragraph 48 of Security Council resolution 2127 (2013)”, S/2014/142, 3 March 2014, para. 8.

<sup>319</sup> For example, see UN Security Council, “Report of the UN Secretary-General on the Central African Republic pursuant to paragraph 48 of Security Council resolution 2127 (2013)”, S/2014/142, 3 March 2014, para. 8.



their control of large areas of territory requires further verification.<sup>320</sup> Nevertheless, available information satisfying other elements of the definition of “organization” under article 7 provide a reasonable basis to believe that anti-balaka and/or the factions that constitute the anti-balaka movement can be characterized as (an) organization(s), within the meaning of article 7(2)(a) of the Statute

**i. Crimes against humanity allegedly committed by anti-balaka**

197. The information available provides a reasonable basis to believe that anti-balaka at a minimum committed the following crimes against humanity under article 7 of the Statute: murder under article 7(1)(a); deportation and/or forcible transfer of population under article 7(1)(d); rape under article 7(1)(g); and persecution under article 7(1)(h).
198. The acts listed herein are merely examples and are not to be understood as comprehensive or conclusive.

*7(1)(a) Murder*

199. On 6 September 2013 anti-balaka reportedly carried out multiple attacks on Muslim areas of several villages in Ouham prefecture.<sup>321</sup> In the village of Zéré alone, a group of some 100 anti-balaka fighters allegedly killed some 56 Muslim civilians and destroyed buildings in the Muslim quarter of the village, including the mosque. The same day, anti-balaka also allegedly attacked the villages of Ouham-Bac and Bodora as well as a cattle camp some 13 kilometres from Bir Zambé, in the same area of Ouham prefecture, killing some 30 more Muslim civilians.<sup>322</sup>
200. On 5-6 December 2013 during the anti-balaka attack on Bangui, the group’s fighters allegedly killed scores of civilians, targeting Muslim areas of the city, looting and destroying Muslim property and raping Muslim civilians. Heavy weapons, assault rifles and machetes were reportedly used by anti-balaka fighters.<sup>323</sup> Information available indicates that anti-balaka fighters went door-to-door looking for Muslim men and boys to kill, as well as killing

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<sup>320</sup> For reports of anti-balaka controlling neighbourhoods, roads and check points, see for example: report of the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013), S/2014/452, Annex 5.

<sup>321</sup> HRW, *They came to kill – Escalating atrocities in the Central African Republic*, 19 December 2013, pp. 18-21; Also reported in FIDH, “Central African Republic: They must all leave or die”, 2014, p.18.

<sup>322</sup> HRW, *They came to kill – Escalating atrocities in the Central African Republic*, 19 December 2013, pp. 18-28.

<sup>323</sup> FIDH “Central African Republic: They Must all Leave or Die”, 2014, p.31.

them in the streets where they found them. The exact number of civilians killed by anti-balaka in the 5-6 December attack on Bangui cannot be accurately ascertained from information available but some 800-1,200 men are estimated to have been killed overall (including civilians and combatants).<sup>324</sup>

201. In the days following the 5 December 2013 attack on Bangui, anti-balaka elements reportedly attacked mosques in the city. One such alleged attack, on a mosque in the Fohu neighbourhood, was reportedly carried out by some 200 anti-balaka and resulted in the killing of several civilians including children, women, elderly and disabled persons.<sup>325</sup>
202. In two attacks, on 1 and 5 February 2014, in the south-western village of Guen, anti-balaka elements reportedly killed more than 50 civilians, targeting men only in the second attack.<sup>326</sup>
203. On 23 June 2014, in a village outside Bambari (Ouaka), some 50 armed anti-balaka allegedly killed at least 17 Muslim civilians, members of the Fulani minority, including three children and one woman, and mutilated some of the victims' bodies.<sup>327</sup>
204. Muslims have also reportedly been targeted by anti-balaka as they attempted to flee to safety. On 16 January 2014 outside the town of Bouar (Nana-Mambéré), in western the CAR, a vehicle carrying Muslims fleeing the country was reportedly attacked by anti-balaka. Some 20 civilians were allegedly shot dead or hacked to death by machete and dozens more were injured.<sup>328</sup>
205. On 13 or 14 of January in the town of Boyali (Ouham-Pendé) anti-balaka forces allegedly stopped a vehicle that was headed for Cameroon, removed eight to ten Muslim passengers from the truck then allowed the vehicle to leave before hacking to death those they had taken captive, in the street in

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<sup>324</sup> AI, "None of us are Safe: War Crimes and Crimes Against Humanity in the Central African Republic", 19 December 2013, p. ???.

<sup>325</sup> OHCHR "Preliminary Findings: OHCHR Monitoring Mission in the Central African Republic (CAR)", 14 January 2014, p.2.

<sup>326</sup> HRW, "Central African Republic: Massacres in Remote Villages", 3 April 2014.

<sup>327</sup> UN Security Council, "Report of the Secretary-General on the situation in the Central African Republic", S/2014/562, 1 August 2014, para. 13; Reliefweb, "17 Muslims killed in C. Africa's latest sectarian strife", 24 June 2014.

<sup>328</sup> AI, "Ethnic Cleansing and Sectarian Killings in the Central African Republic", February 2014, p. 9.

front of the town mosque. The victims included three women and three young children.<sup>329</sup>

*7(1)(d) Deportation or forcible transfer of population*

206. In addition to the contextual elements, the crime against humanity of deportation or forcible transfer of population requires the forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.
207. Information available indicates that anti-balaka forces have forcibly displaced the majority of the Muslim civilian population of the CAR through the use of coercive acts including killings, attempted killings, rape, and mass destruction of the property and religious buildings of the Muslim community. As is explained above and below, Muslim civilians have allegedly been targeted by the commission of multiple violent acts by anti-balaka. Thus the fear of suffering violent acts if they remained in the homes and businesses where they were lawfully present appears to be well-founded.
208. As of 1 August 2014 the UN Secretary General reported that “the large majority of the country’s Muslim population has been displaced or has left the country, while some 20,000 of them are trapped in nine locations in the western and central parts of the country, aware that if they leave their sites they may be attacked before they reach safety.”<sup>330</sup>
209. On 7 March 2014, the UN Under-Secretary-General for Humanitarian Affairs declared that fewer than 1,000 of more than 100,000 Muslims remained in Bangui.<sup>331</sup> By 14 March 2014, the UN Special Adviser on the Prevention of

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<sup>329</sup> AI, “Central African Republic: More than 50 Muslims killed in two attacks”, 24 January 2014; Also FIDH, “Central African Republic: ‘They Must all Leave or Die’”, 2014, p. 21. A 12-year-old boy reportedly managed to escape, and a 7-month old baby was saved as a non-Muslim woman was holding her in the vehicle at the time it was stopped and pretended the baby was hers. The mother reportedly managed to provide contact details of family members to the woman before she was forced off the truck.

<sup>330</sup> UN Security Council, “Report of the Secretary-General on the situation in the Central African Republic”, S/2014/562, 1 August 2014, para. 3.

<sup>331</sup> Reuters, “UN says almost all Muslims have fled Central African Capital”, 7 March 2014.

Genocide reported that only about 20% of the total Muslim population remained in the CAR.<sup>332</sup>

*7(1)(g) Rape and other forms of sexual violence*

210. Statistics provided by humanitarian and medical sources indicate a high level of sexual violence in the period since anti-balaka became active. As mentioned in the section addressing alleged crimes committed by Séléka forces, statistics for rape that are available are rarely disaggregated by alleged perpetrator. This makes it impossible to precisely attribute the number of reported rapes committed by each armed group. Further, the overall statistics available to date appear to represent only a fraction of actual rapes, due to factors including: reluctance of victims to report rapes, due to social stigma attached to rape both in Muslim and non-Muslim communities in the CAR, which entails a very real fear of spousal or familial rejection; fear of reprisal from perpetrators who may still be present due to the climate of impunity; and a lack of appropriate services, including medical, psychosocial and legal support for victims. These factors result in little opportunity or incentive for survivors to report sexual violence. The challenges faced by those involved in collecting information on rapes, in the absence of sufficient security and support services for survivors (in addition to issues related to social stigma), added to the considerations mentioned above, likely explain the few specific cases reported.
211. Further information is necessary to assess more precisely the extent of rapes committed by the group. Nevertheless, the overall statistics for rapes, together with some specific examples of alleged incidents indicate a reasonable basis to believe that anti-balaka, in addition to Séléka, were responsible for committing the crime against humanity of rape in the context of their campaign of violent acts directed at the Muslim civilian population of the CAR. Further, there is a reasonable basis to believe that these acts also constitute other crimes under the Statute including persecution and inhumane acts. An overall increase in reports of rape following the anti-balaka attack on Bangui has been noted by UNICEF, whose partners reported some 781 cases of rape and sexual assault in January and February of 2014, compared with some 300 in the two preceding months (November and

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<sup>332</sup> Meeting of the UN Security Council on Prevention of crimes in Central Africa Republic, Statement of Under Secretary-General/Special Adviser on the Prevention of Genocide Adama DIENG to the Security Council, 14 March 2014.

December 2013).<sup>333</sup> As mentioned above, it is not possible at this stage to determine how many of these were committed by anti-balaka elements.

212. Information available also indicates that a high percentage of reported rapes were gang rapes. For example, one organization providing support to women recovering from violence in Bangui indicated that a majority of some 400 women and girl children survivors of rape whom they had assisted between January and July 2014 were raped by multiple offenders.<sup>334</sup> Another source reported some 1,186 confirmed cases of sexual violence from December to January 2014.<sup>335</sup>
213. Individual reported incidents of rape committed by anti-balaka include the following: (i) on 2 January 2014 in Bossangoa (Ouham), two women were reportedly raped by armed anti-balaka fighters in the Liberté IDP site;<sup>336</sup> (ii) on 6 February 2014, a group of armed anti-balaka fighters allegedly broke into a house in the Kokoro neighbourhood of Bangui and raped a 14-year-old girl and a 19-year-old woman, and looted the house.<sup>337</sup>

#### *7(1)(h) Persecution*

214. In addition to the contextual elements mentioned above, the crime against humanity of persecution is defined by article 7(2)(g) of the Statute as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity”. Article 7(1)(h) specifies that it must be committed against “any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined by paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.”
215. Information available regarding the systematic nature of the anti-balaka attack on Muslim civilians provides a reasonable basis to believe that Muslims were specifically targeted in the alleged commission of acts by anti-balaka detailed above. Mosques and Muslim neighbourhoods were

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<sup>333</sup> IRIN, “Little help for CAR rape survivors”, 16 July 2014.

<sup>334</sup> IRIN, “Little help for CAR rape survivors”, 16 July 2014.

<sup>335</sup> United Nations Regional Information Centre for Western Europe (UNRIC), “CAR: Number of sexual violence cases astronomical”, 20 January 2014.

<sup>336</sup> UN Security Council, “Report of the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013)”, S/2014/452, 1 July 2014, Annex 30.

<sup>337</sup> UN Security Council, “Report of the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013)”, S/2014/452, 1 July 2014, Annex 30.

reportedly deliberately targeted by anti-balaka. Muslim men, in particular, were reportedly targeted for killing and women were allegedly targeted for both rape and killing by anti-balaka on the basis of their religious or ethnic identity, and thus their perceived association with Séléka.

**ii. Nexus with the attack**

216. The multiple acts constituting crimes against humanity which were committed as part of the attack on the civilian population by anti-balaka, and their nexus with that attack are detailed above. The nexus can, in many instances, be deduced in part from the nature of the acts. The following overarching factors can also be considered in determining a nexus between the individual acts and the attack:<sup>338</sup> the temporal and geographical overlap between the attack and the individual criminal acts; the fact that the same perpetrator group (anti-balaka) was allegedly responsible for both; the nature of the victims of the individual acts, which fits with the organizational policy of anti-balaka to attack Muslim civilians explained above, and the repetitious nature of the types of crimes and manner of their alleged commission within the pattern of conduct that constituted the attack (including the use of firearms and machetes to kill and wound civilians together with sexual violence, accompanied by forced displacement, looting and destruction of property).

**3. Genocide**

217. Under article 6 of the Statute, the crime of genocide is defined as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children of the group to another group.

218. As indicated in the Elements of Crimes, such conduct must have taken place in the context of a manifest pattern of similar conduct directed against the

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<sup>338</sup> Kenya Article 15 Decision, para. 80. See also Gbagbo Arrest Warrant Decision, para. 30; Bemba Confirmation of Charges Decision, para. 75; Ruto and Sang Confirmation of Charges Decision, para. 164.

targeted group or was conduct that could itself effect such destruction of the group.<sup>339</sup>

219. The United Nations Under-Secretary-General/Special Adviser on the Prevention of Genocide, Mr Adama DIENG has issued several statements warning of a risk of mass atrocities or genocide in the Central African republic, in the context of his mandate to provide early warning and prevention of genocide.<sup>340</sup> In his statement of March 2014 Mr DIENG assessed that “(s)uch widespread and systematic targeting of civilians based on their religion or ethnicity indicates that crimes against humanity are being committed and that the risk of genocide remains high” in the Central African Republic.
220. The Office considers that the available at this stage is inconclusive on the question of whether the alleged crimes described in this report were committed with the requisite intent to destroy, in whole or in part, a national, ethnical racial or religious group, as such. This conclusion is provisional and not binding for the purpose of any future investigation.

### **C. Conclusion on subject-matter jurisdiction**

221. The information available provides a reasonable basis to believe that Séléka has committed war crimes, at the latest from December 2012 onwards, as well as crimes against humanity, at the latest from February 2013 onwards, namely: murder as war crimes under article 8(2)(c)(i) and as a crime against humanity under article 7(1)(a); mutilation, cruel treatment and torture as a war crime under to article 8(2)(c)(i) and torture or other inhumane acts as a crime against humanity under articles 7(1)(f) and (k); intentionally directing attacks against the civilian population as such under article 8(2)(e)(i); attacking personnel or objects involved in a humanitarian assistance mission under article 8(2)(e)(iii); intentionally directing attacks against protected objects under article 8(2)(e)(iv); pillaging under article 8(2)(e)(v); rape as a

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<sup>339</sup> See also Situation in Darfur, Sudan, *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, “Second Warrant of Arrest for Omar Hassan Ahmad Al Bashir”, ICC-02/05-01/09-95, 12 July 2010, pp. 5-6.

<sup>340</sup> See, for example: Statement by Mr Adama Dieng, United Nations Special Adviser on the Prevention of Genocide, and Ms. Jennifer Welsh, United Nations Special Adviser on the responsibility to Protect, on the situation in the Central African Republic, 1 October 2013; Statement of the Special Adviser on the Prevention of Genocide, Mr Adama Dieng on the human rights and humanitarian situation in the Central African Republic, 1 November 2013; Statement of Under Secretary-General/Special Adviser on the Prevention of Genocide Mr Adama Dieng on the human rights and humanitarian dimensions of the crisis in the Central African Republic, 22 January 2014; Meeting of the UN Security Council on Prevention of crimes in Central Africa Republic, Statement of Under Secretary-General/Special Adviser on the Prevention of Genocide Adama DIENG to the Security Council, 14 March 2014.

war crime under article 8(2)(e)(vi) and as a crime against humanity under article 7(1)(g); conscripting or enlisting children under the age of fifteen year into armed groups or using them to participate actively in hostilities under article 8(2)(e)(vii); and persecution under article 7(1)(h).

222. The information available also provides a reasonable basis to believe that anti-balaka has committed war crimes, at the latest from June 2013 onwards, as well as crimes against humanity, at the latest from September 2013 onwards, namely: murder as a war crime under article 8(2)(c)(i) and as a crime against humanity under article 7(1)(a); outrages upon personal dignity under article 8(2)(c)(ii); intentionally directing attacks against the civilian population as such under article 8(2)(e)(i); attacking personnel or objects involved in a humanitarian assistance mission under article 8(2)(e)(iii); intentionally directing attacks against protected objects under article 8(2)(e)(iv); pillaging under article 8(2)(e)(v); rape as a war crime under article 8(2)(e)(vi) and as a crime against humanity under article 7(1)(g); conscripting or enlisting children under the age of fifteen years into armed groups or using them to participate actively in hostilities under article 8(2)(e)(vii); deportation and/or forcible transfer of population under article 7(1)(d); and persecution under article 7(1)(h).
223. While there is some information about alleged crimes committed by members of the FACA, in particular by the Presidential Guard of former President BOZIZÉ between at least 1 January and 23 March 2013, there is insufficient information at this stage to reach a determination on whether such alleged crimes constitute war crimes under article 8 of the Rome Statute.



## VI. ADMISSIBILITY

224. As set out in article 17(1) of the Statute, admissibility requires an assessment of complementarity and gravity. The Prosecutor must be satisfied as to admissibility on both aspects before proceeding. The Office assesses complementarity and gravity bearing in mind its policy of focusing investigative efforts on those most responsible for the most serious crimes under the Court's jurisdiction.<sup>341</sup>
225. Pre-Trial Chambers have held, in the context of their decisions on the Prosecutor's applications for authorisation to open an investigation into the Situation in the Republic of Kenya and the Situation in the Republic of Côte d'Ivoire, that "admissibility at the situation phase should be assessed against certain criteria defining a 'potential case' such as: (i) the groups of persons involved that are likely to be the focus of an investigation for the purpose of shaping the future case(s); and (ii) the crimes within the jurisdiction of the Court allegedly committed during the incidents that are likely to be the focus of an investigation for the purpose of shaping the future case(s)."<sup>342</sup> Accordingly, based on the information available at this stage, the potential cases likely to arise from an investigation into the situation in the CAR would include case(s) respectively against members of Séléka and anti-balaka, focusing on the crimes within the jurisdiction of the Court as identified above. It is, however, emphasized that these conclusions are based on the underlying facts as they exist at the time of writing and the respective potential cases likely to arise from an investigation into the situation in the CAR as identified above. The assessment is preliminary in nature and subject to revision based on change in circumstances. They are not binding for the purpose of possible future admissibility determinations.<sup>343</sup>

### A. Complementarity

226. The absence of national proceedings is sufficient to render a case admissible. Where relevant national proceedings exist, the case will continue to be

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<sup>341</sup> OTP Policy Paper on Preliminary Examinations, paras. 8, 49. In the light of limitations in investigative possibilities and/or a lack of cooperation and the required evidentiary standards, the Office may first investigate and prosecute a limited number of mid- and high-level perpetrators in order to ultimately have a reasonable chance to convict the most responsible. The Office will also consider prosecuting lower level perpetrators where their conduct has been particularly grave and has acquired extensive notoriety. For more information see ICC OTP, [Strategic Plan June 2012-2015](#).

<sup>342</sup> Kenya Article 15 Decision, para. 50. See also *ibid.*, paras. 182, 188; Côte D'Ivoire Article 15 Decision, paras. 190-191, 202-204.

<sup>343</sup> Regulation 29(4), Regulations of the Office of the Prosecutor; Kenya Article 15 Decision, para. 50; Judgment on Appeal of Katanga against Admissibility Decision, para. 56.

admissible before the Court if the State concerned is unwilling or unable genuinely to carry out the investigation or prosecution.<sup>344</sup> A determination on the State's "willingness" and "ability" must be conducted in relation to the specific domestic proceedings concerning the same potential case that would likely arise from an investigation.

227. On 30 May 2014, interim President SAMBA-PANZA referred the situation in the CAR to the Prosecutor, indicating that the Central African judicial system was not in a position to successfully conduct the necessary investigations and prosecutions.<sup>345</sup>

228. The CAR judicial authorities had nonetheless taken some initial steps against some individuals who appear to bear responsibility for crimes that could fall under the Court's jurisdiction. Special investigative bodies were set up to investigate these crimes. The following provides an overview of the applicable law and existing proceedings, prior to coming to a determination on the admissibility of potential cases that would likely arise from an investigation.

## 1. Applicable law

229. In March 2013, the 2004 Central African Constitution was suspended by then-President Michel DJOTODIA and replaced by the *Charte de la Transition* of 23 July 2013 which, at the time of writing, continues to be in effect.<sup>346</sup> Genocide, crimes against humanity and war crimes are punishable crimes under the 2010 Central African penal code which continues to be applicable in the CAR.<sup>347</sup> Acts that may constitute crimes under the Rome Statute could also be prosecuted as ordinary crimes under the penal code.

## 2. Investigative bodies

### *Tribunal de grande instance in Bangui*

230. The *tribunal de grande instance* (TGI) in Bangui is the only operational tribunal in the CAR. In the absence of any functional tribunal in the provinces, the TGI may also take cases from outside Bangui, however criminal procedural

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<sup>344</sup> Côte D'Ivoire Article 15 Decision, para. 193.

<sup>345</sup> "Les juridictions centrafricaines [...] ne sont pas en mesure de mener à bien les enquêtes et les poursuites nécessaires sur ces crimes." See referral of the Central African Republic, [annexed](#) to the Decision Assigning the Situation in the Central African Republic II to Pre-Trial Chamber II, ICC-01/14-1-Anx1, 18 June 2014.

<sup>346</sup> Central African Republic, Texte intégral de la charte de la transition en centrafrrique valant texte constitutionnel, 23 July 2013.

<sup>347</sup> Central African Republic, Code Pénal Centrafricain, 06 janvier 2010, titre IV, articles 152-162.

law limits the actions of the TGI in Bangui to handle alleged perpetrators arrested outside the court's jurisdiction. In case the international forces operating in the CAR arrest individuals upon the request of the Central African authorities, they are transferred to the TGI in Bangui.

#### *Mixed investigation commission*

231. A decree signed by then-President DJOTODIA (Séléka) established the national *Commission mixte d'enquête* with the mandate to investigate 'blood crimes' (*crimes de sang*) and economic crimes since 2004, identify perpetrators and victims and assess the possibility of reparations.<sup>348</sup> The commission is presided over by a judge of the 'Court of Cassation' (*Cour de cassation*) and is composed of two magistrates, one lawyer, four *gendarmes* and four police officers. According to Central African judicial authorities, the Commission has only an administrative and no judicial mandate, limiting their activities to archiving and reporting. The Commission may be granted judicial powers if and when draft legislation to that effect, submitted to the national transitional council, is adopted.

#### *Special investigation unit*

232. On 9 April 2014, President SAMBA-PANZA signed a decree, creating a special investigation unit, the *Cellule spéciale d'enquêtes et d'instruction* (CSEI) (Special Inquiry and Judicial Investigation Unit).<sup>349</sup> The CSEI, under the supervision of the *Procureur Général* (Chief Prosecutor) of the Court of Appeal in Bangui, will have jurisdiction to investigate acts of genocide, crimes against humanity, war crimes and aggression as well as other grave violations of international humanitarian law and human rights committed on the territory of the Central African Republic since 1 January 2004.<sup>350</sup>
233. According to the decree, the CSEI shall be composed of one special prosecutor, three investigating judges, three deputy prosecutors, three registrars, three secretaries and 20 judicial police officers from the *Gendarmerie* and the national police. While the prosecutors and judges have been nominated, they lack the personal security and operational means to conduct investigations.<sup>351</sup> Once operational, the CSEI would be competent to investigate crimes that could fall under the jurisdiction of the Court.

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<sup>348</sup> Central African Republic, Decree no. 13.100, 20 May 2013.

<sup>349</sup> Central African Republic, Decree 14/099, 9 April 2014.

<sup>350</sup> Central African Republic, Decree 14/099, 9 April 2014.

<sup>351</sup> Additional information provided by the Central African authorities on 7 August 2014.

### *Special criminal court*

234. In August 2014, the Government of the CAR and MINUSCA agreed on the establishment of a national special criminal court partially composed of international prosecutors and judges, competent to prosecute crimes under the jurisdiction of the ICC.<sup>352</sup> MINUSCA will support the special court as part of the “urgent temporary measures” the UN Security Council authorized MINUSCA to adopt, in accordance with the mission’s mandate to provide support for national and international justice and the rule of law and to contribute to the fight against impunity.<sup>353</sup>

235. The special court will have jurisdiction to investigate and prosecute grave crimes, including violations of international humanitarian law and of abuses and violations of human rights, including sexual violence committed in armed conflict and violations and abuses committed against children, such as child recruitment. Internationally recruited prosecutors and judges would be authorized, together with national magistrates, to investigate and try such crimes.<sup>354</sup>

### **3. Existence of relevant proceedings**

236. In an effort to address impunity for alleged crimes committed during the crisis in the CAR, the Office of the *Procureur de la République* (Public Prosecutor) created two distinct special investigation teams with a national competence. The two teams of 20 judicial officers each are respectively placed under the auspices of the *Section de recherches et des investigations* of the *Gendarmerie* (SRI) and the *Direction des services de la police judiciaire* of the national police force (DSPJ). Both teams have profited from the direct support of the Presidency and have been equipped with information technology which enables them to conduct different types of investigations.<sup>355</sup>

237. The Central African authorities have provided information to the Office about efforts to investigate and prosecute some of the alleged perpetrators of crimes committed since 2012. Arrest warrants were issued against certain

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<sup>352</sup> La Nouvelle Centrafrique, Bangui va créer un tribunal spécial pour les crimes liés à la crise actuelle, 12 August 2014; UN Security Council, “Report of the Secretary-General on the situation in the Central African Republic”, S/2014/562, 1 August 2014, paras. 53-55; Additional information provided by the Central African authorities on 16 August 2014.

<sup>353</sup> UN Security Council Resolution 2149, 10 April 2014, para. 40 and 30(f).

<sup>354</sup> UN Security Council, “Report of the Secretary-General on the situation in the Central African Republic”, S/2014/562, 1 August 2014, paras. 53-54.

<sup>355</sup> Additional information provided by the Central African authorities on 13 May 2014.

Séléka and anti-balaka leaders as well as members of the BOZIZÉ regime. The *Procureur de la République* has called upon security forces and the international forces in the CAR to arrest and transfer any person suspected of committing crimes as well as any person who is subject of an arrest warrant issued by the competent Central African authorities.<sup>356</sup> Lists of suspects were shared with the international forces for that purpose.<sup>357</sup>

238. On 10 April 2014, the UN Security Council explicitly provided MINUSCA, the UN peacekeeping mission in the CAR, with the power to “arrest and bring to justice those responsible for war crimes and crimes against humanity in the country, including through cooperation with States of the regions and the ICC”.<sup>358</sup>
239. According to the national authorities, preliminary investigations have been initiated by the Central African authorities in relation to the discovery of two mass graves in Bangui. However, no suspects have been identified.
240. Sangaris (the French peacekeeping force) and MISCA forces reportedly arrested anti-balaka leaders in the Boye Rabe neighbourhood of Bangui in February 2014, all of who escaped from prison in March, according to local authorities. Additionally, in April 2014, international arrest warrants for two anti-balaka leaders were issued. One leader was reportedly arrested but subsequently provisionally released and placed under judicial supervision. The other arrest warrant remains pending.
241. Similarly, some members of the BOZIZÉ regime are under investigation for alleged crimes committed between 2003 and 2013, some of which have been qualified by the authorities as war crimes, crimes against humanity, and incitement to genocide, among others. Following a preliminary investigation into these crimes, the Central African authorities issued seven international arrest warrants. At the time of writing, the execution of these warrants remains pending.
242. According to information received from the military authorities in the CAR, no members of the military have been prosecuted or arrested in relation to the crimes committed since 2012.
243. On 22 September 2014 the Office received further information from the CAR authorities in support of their referral of the situation to the Prosecutor. The

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<sup>356</sup> Additional information provided by the Central African authorities on 13 May 2014.

<sup>357</sup> Additional information provided by the Central African authorities on 13 May 2014.

<sup>358</sup> UN Security Council Resolution 2149, 10 April 2014, para. 30(f).

communication repeated the request for an investigation by the Office, on the basis that the weaknesses of the CAR judicial system and the collapse of the State, resulting from the grave crises into which it has been plunged over several years prevent it from successfully undertaking proceedings in relation to events of this scale and above all it is unable to arrest those responsible.<sup>359</sup> The communication received from the CAR authorities further indicates that the investigating judge assigned to cases which could potentially fall within the jurisdiction of the Court has discontinued his proceedings in order to refer the case(s) to the ICC, based on the aforementioned problems encountered at the national level.<sup>360</sup>

#### 4. Assessment

244. While an admissibility determination is not a judgment or reflection on the national justice system as a whole, the Office may consider, inter alia, whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to collect the necessary evidence and testimony, unable to obtain the accused, or is otherwise unable to carry out its proceedings.
245. During the mission of the Office to Bangui in May 2014, all of the CAR authorities whom the members of the mission met with indicated that the CAR judicial system is currently unable to investigate or prosecute individuals for crimes committed since 2012 that could fall under the ICC's jurisdiction. The main challenges raised by the authorities relate to the general lack of security and the specific dangers facing judicial personnel, as well as the lack of infrastructure and capacity at all levels of the criminal justice system, in Bangui and even more so in the provinces. The Office was informed that no tribunal outside Bangui was functional.
246. The Office understands that both the general lack of security and the prevalence of political pressure are the main obstacles to conducting domestic proceedings. These also appear to represent the main reasons for the temporary suspension of all judicial proceedings in Bangui following the killing of the Director General of judicial services on 16 November 2013.<sup>361</sup> On 3 March 2014, for example, threats by anti-balaka members prevented the

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<sup>359</sup> “[L]es faiblesses de son système judiciaire et la déliquescence de l’Etat, consécutives aux graves crises dans lesquelles elle est plongée depuis plusieurs années ne lui permettent pas d’organiser une poursuite efficace de faits d’une telle ampleur et surtout qu’elle n’a pas les moyens d’arrêter leurs auteurs”. Information received by the Office, from the CAR authorities, on 22 September 2014.

<sup>360</sup> Information received by the Office, from the CAR authorities, on 22 September 2014.

<sup>361</sup> Additional information received by the Central African authorities on 13 May 2014.

holding of a trial against three other anti-balaka members.<sup>362</sup> On 4 March 2014, anti-balaka forces allegedly attempted to kidnap the Registrar of a tribunal in Bangui.<sup>363</sup> In August 2014, the UN independent expert on the human rights situation in the CAR also came to the conclusion that security concerns, insufficient protection and political pressure are preventing magistrates and lawyers from doing their work.<sup>364</sup> Similarly, a United Nations multidisciplinary team which visited the Central African Republic in 2014 confirmed “an almost total lack of capacity of national counterparts in the areas of police, justice and corrections” and found that “there are no guarantees that national magistrates can render justice in an impartial manner and without fear of political interference or physical violence.”<sup>365</sup>

247. The only operational prison in the country, Ngaraba central prison, is not sufficiently secure. In 2014 alone, three mass escapes took place: on 23 January 2014 anti-balaka forces attacked the prison, killed four detained Séléka members and freed all other inmates; on 6 March 2014, 14 prisoners escaped including at least eleven anti-balaka members.<sup>366</sup> The latest major prison break took place on 27 March 2014, when twelve prisoners escaped.<sup>367</sup> Alleged collusion of security staff with armed groups, corruption and weak physical security have been identified as the main factors behind these recurrent prison breaks.<sup>368</sup>
248. The Office welcomes the support provided by the international community and in particular by MINUSCA to the rehabilitation of the criminal justice chain in the Central African Republic. This includes support to the administration and security of the penitentiary system, providing close protection to judges and prosecutors and the deployment of international advisors to advise CAR prosecutors and investigative judges on investigating and prosecuting international crimes. In addition, MINUSCA is mandated to conduct arrest operations in support of the CAR justice system.

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<sup>362</sup> UN Human Rights Council, “Rapport préliminaire de l’Experte indépendante sur la situation des droits de l’homme en République centrafricaine, Marie-Thérèse Keita Bocoum, A/HRC/26/53, 30 May 2014, para. 37.

<sup>363</sup> UN Human Rights Council, “Rapport préliminaire de l’Experte indépendante sur la situation des droits de l’homme en République centrafricaine, Marie-Thérèse Keita Bocoum”, A/HRC/26/53, 30 May 2014, para. 37.

<sup>364</sup> UN Security Council, “Report of the Secretary-General on the situation in the Central African Republic”, S/2014/562, 1 August 2014, para. 16.

<sup>365</sup> UN Security Council, “Report of the Secretary-General on the situation in the Central African Republic”, S/2014/562, 1 August 2014, para. 52.

<sup>366</sup> Additional information received by the Central African authorities on 13 May 2014.

<sup>367</sup> Additional information received by the Central African authorities on 13 May 2014.

<sup>368</sup> UN Security Council, “Report of the Secretary-General on the situation in the Central African Republic”, S/2014/562, 1 August 2014, para. 16.

Such international support may ultimately help the CAR authorities fulfil their primary responsibility to investigate and prosecute international crimes, including within the framework of the special criminal court that is being set up, and ensure that the perpetrators who may not be the subject of ICC proceedings will nonetheless be brought to account at the national level. As noted above, the special criminal court is intended to operate in parallel with and in addition to any investigation conducted by the Office.

249. In line with its policy on sexual and gender-based crimes (SGBC),<sup>369</sup> the Office also assessed the existence of barriers to genuine proceedings, including discriminatory attitudes and gender stereotypes in substantive law as well as other factors related to SGBC.<sup>370</sup> The Office notes the existence of SGBC in the CAR penal code which reflects the language of the Rome Statute.<sup>371</sup> However, the Office also notes that information on relevant proceedings addressing SGBC is lacking. The Office will seek to encourage genuine national investigations and prosecutions by the State(s) concerned in relation to sexual and gender-based crimes. It will also sensitize relevant national authorities and other entities to address potential barriers to genuine proceedings, and to provide support for the victims of such crimes.

## **5. Conclusion on complementarity**

250. While the CAR authorities have made initial efforts to investigate crimes that could fall under the jurisdiction of the Court, existing proceedings remain limited to the preliminary stage and the Office understands that the prosecutors and police generally lack the capacity and security to conduct investigations and apprehend and detain suspects. Considering further the referral of the situation to the ICC Prosecutor by the CAR Government by which the CAR authorities indicated their inability to successfully conduct the necessary investigations and prosecutions, the Office has determined that the potential cases that would likely arise from an investigation into the situation would be admissible.
251. The information currently available indicates that no other State with jurisdiction is conducting or has conducted national proceedings in relation to crimes allegedly committed in the context of the Situation in the CAR II.

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<sup>369</sup> ICC OTP, [Policy Paper on Sexual and Gender-Based Crimes](#), June 2014, paras. 38-47.

<sup>370</sup> For an exhaustive list see ICC OTP, [Policy Paper on Sexual and Gender-Based Crimes](#), June 2014, para. 41.

<sup>371</sup> See for example the crime against humanity of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence of comparable gravity pursuant to article 153 of the CAR penal code.



The Office may further revisit this assessment following any information received from States pursuant to the article 18 notification procedure.

## **B. Gravity**

252. Although any crime falling within the jurisdiction of the Court is serious,<sup>372</sup> article 17(1)(d) requires the Court to assess as an admissibility threshold whether a potential case that would likely arise from an investigation is of sufficient gravity to justify further action by the Court.
253. The assessment of gravity of crimes includes both quantitative and qualitative considerations based on the prevailing facts and circumstances. As stipulated in Regulation 29(2) of the Regulations of the Office, the non-exhaustive factors that guide the Office's assessment include the scale, nature, manner of commission of the crimes, and their impact.<sup>373</sup>
254. As previously stated, potential cases likely to arise from an investigation into the situation in the CAR would include case(s) respectively against members of Séléka and anti-balaka, focusing on the crimes within the jurisdiction of the Court as identified above.

### **1. Séléka**

#### *Scale*

255. Conduct by Séléka forces in the context of the conflict since December 2012, including the systematic or widespread attack against the civilian population since February 2013, caused a significant number of direct and indirect victims. According to statistical analysis conducted by the Office, between December 2012 and July 2014, 186 reported incidents of killings could be attributed to Séléka forces, resulting in some 1488 victims.<sup>374</sup> From 23 March to 30 April 2013 alone, Séléka allegedly killed 306 people in the CAR and wounded 805 more.<sup>375</sup> FIDH estimated that Séléka had killed at least 400

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<sup>372</sup> See Rome Statute, Preamble para. 4, articles 1 and 5.

<sup>373</sup> See, in concurrence with the Prosecution's submissions, *Prosecutor v. Abu Garda*, Decision on the Confirmation of Charges, ICC-02/05-02/09-243-Red, 8 February 2010, para. 31; Kenya Article 15 Decision, para. 188.

<sup>374</sup> The greatest number of killings, 1,691, could not be attributed to any group. This includes the over 1,000 killings of the 5 December 2013 incident in Bangui during which anti-balaka and Séléka forces targeted civilians.

<sup>375</sup> UN Security Council, "Report of the Secretary-General on the Situation in the Central African Republic", S/2013/261, 3 May 2013.

civilians between March and September 2013.<sup>376</sup> With the exception of Haute-Kotto, the Office registered cases of killings attributable to Séléka in each of the prefectures in the CAR and the commune of Bangui, between December 2012 and July 2014. The highest numbers of killings were recorded in Ouham-Pendé prefecture followed by the commune of Bangui and Ouham prefecture. Other crimes allegedly committed by Séléka forces follow a similar pattern.

#### *Nature*

256. The alleged crimes committed by Séléka constitute crimes against humanity under article 7 and war crimes under article 8 of the Statute. They include acts of killing, deliberate attacks on civilians, torture, attacking humanitarian personnel, deliberate targeting of particularly vulnerable victims including acts of sexual violence against women and recruitment of children under the age of 15. According to the available information, Séléka forces committed acts of persecution, i.e. the intentional and severe deprivation of fundamental rights by reason of the identity of the group or collectivity on political, ethnic and/or religious grounds.

#### *Manner*

257. The information available suggests that a significant number of crimes were committed with particular cruelty. Victims were tortured before being killed, others were burned alive. Pregnant women were gang raped, while others were raped with family members present, adding an additional level of cruelty to the commission of the crime.

#### *Impact*

258. The alleged crimes had a severe impact on the victims, family members, affected communities and the CAR society as a whole. In particular the ethnic and religious components of the violence have led to a *de facto* partition of the CAR with Séléka occupying the north-east of the country.

#### *Conclusion*

259. Based on the information available, the potential case or cases against members of Séléka that may arise from an investigation into the situation appear to be of sufficient gravity to justify further action by the Court.

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<sup>376</sup> FIDH, "Central African Republic: A country in the hands of Séléka war criminals", 23 September 2013.

## 2. Anti-balaka

### *Scale*

260. Conduct by anti-balaka forces in the context of the conflict since June 2013 including the systematic or widespread attack against the civilian population since September 2013, caused a significantly high number of direct and indirect victims. According to statistical analysis conducted by the Office, between August 2013 and July 2014, 114 reported incidents of killings could be attributed to anti-balaka forces, resulting in some 1248 victims.<sup>377</sup> In January 2014 alone, anti-balaka groups killed at least 492 mostly Muslim civilians in Ouham-Péndé, Ombella-M'Poko, Nana-Mambéré and Bangui. Out of 16 prefectures and the commune of Bangui, the Office recorded killings attributable to anti-balaka forces in 11 prefectures plus Bangui, between August 2013 and July 2014. The highest numbers of killings were recorded in Ouham-Pendé prefecture followed by the commune of Bangui and Ouham prefecture. Other crimes allegedly committed by anti-balaka forces follow a similar pattern.

### *Nature*

261. The alleged crimes committed by anti-balaka constitute crimes against humanity under article 7 and war crimes under article 8 of the Statute. They include acts of killing, deliberate attacks on civilians, outrages on upon personal dignity, attacking humanitarian personnel, deliberate targeting of particularly vulnerable victims including acts of sexual violence against women and recruitment of children under the age of 15. According to the available information, anti-balaka forces committed acts of persecution, i.e. the intentional and severe deprivation of fundamental rights by reason of the identity of the group or collectivity on religious grounds.

### *Manner*

262. Anti-balaka forces reportedly targeted with particular brutality the nomadic Mbororo Muslims, against the background of customary tensions between the sedentary farmers (Christian) and nomadic cattle herders (Mbororo Muslims). Anti-balaka groups reportedly mutilated the bodies of killed Séléka fighters as well as Muslim civilians suspected of being associated with Séléka forces. Anti-balaka forces allegedly raped minors, gang-raped victims

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<sup>377</sup> The greatest number of killings, 1,691, could not be attributed to any group. This includes the over 1,000 killings of the 5 December 2013 incident in Bangui during which anti-balaka and Séléka forces targeted civilians.

and raped victims in front of their family members, adding an additional level of cruelty to the crime.

### *Impact*

263. The alleged crimes had a severe impact on the victims, family members, affected communities and the CAR society as a whole. In particular the ethnic and religious components of the violence have led to a *de facto* partition of the CAR with anti-balaka forces occupying the north-west of the country. Targeted attacks on Muslims have led to large displacements of the Muslim population. According to the UN, by March 2014 only about 20% of the total Muslim population remained in the CAR and fewer than 1,000 of more than 100,000 Muslims remained in Bangui.<sup>378</sup> The massive movement of Muslim populations, traditionally at the centre of the small-scale trade and commerce sectors, has resulted in a shortage of goods, including medicines, and has also caused significant increase in market prices.<sup>379</sup>

### *Conclusion*

264. Based on the information available, the potential case or cases against members of anti-balaka that may arise from an investigation into the situation appear to be of sufficient gravity to justify further action by the Court.

## **VII. INTERESTS OF JUSTICE**

265. Under article 53(1), while jurisdiction and admissibility are positive requirements that must be satisfied, the interests of justice represent a potential countervailing consideration that may produce a reason not to proceed with an investigation. As such, the Prosecutor is not required to establish that an investigation is in the interests of justice, but rather, whether there are specific circumstances which provide substantial reasons to believe it is not in the interests of justice to do so at that time.

266. Based on its assessment of the situation, including through its mission to the CAR of May 2014, the Office considers there are no substantial reasons to believe that an investigation into the Situation in the CAR II would not serve the interests of justice.

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<sup>378</sup> Reuters, "UN says almost all Muslims have fled Central African capital", 7 March 2014.

<sup>379</sup> UN Security Council, "Report of the Secretary-General on the situation in the Central African Republic", S/2014/562, 1 August 2014, para. 35.

## VIII. CONCLUSION

267. The information available provides a reasonable basis to believe that war crimes have been committed in the context of the Situation in the CAR II, namely: (1) murder, mutilation, cruel treatment and torture constituting war crimes under article 8(2)(c)(i); (2) outrages upon personal dignity constituting a war crime under article 8(2)(c)(ii); (3) intentionally directing attacks against the civilian population as such constituting a war crime under article 8(2)(e)(i); (4) intentionally directing attacks against personnel, installations, materials, units, or vehicles involved in a humanitarian assistance mission constituting a war crime under article 8(2)(e)(iii); (5) intentionally directing attacks against protected objects constituting a war crime under article 8(2)(e)(iv); (6) pillaging constituting a war crime under article 8(2)(e)(v); (7) rape and other forms of sexual violence constituting war crimes under article 8(2)(e)(vi); (8) conscripting or enlisting children under the age of fifteen years and using them to participate actively in hostilities constituting a war crime under article 8(2)(e)(vii).
268. Additionally, the information available provides a reasonable basis to believe that crimes against humanity have been committed in the context of the Situation in the CAR II, namely: (1) murder constituting a crime against humanity under article 7(1)(a); (2) deportation or forcible transfer of population constituting a crime against humanity under article 7(1)(d); (3) torture constituting a crime against humanity under article 7(1)(f); (4) rape constituting a crime against humanity under article 7(1)(g); (5) persecution constituting a crime against humanity under article 7(1)(h) and (6) other inhumane acts constituting a crime against humanity under article 7(1)(k).
269. On the basis of the information presented in this report, there is a reasonable basis to proceed with an investigation into the Situation in the CAR II.

ANNEX 1: Map of Central African Republic



Map No. 4048 Rev. 6 UNITED NATIONS April 2013

Department of Field Support Cartographic Section

(Source: United Nations, April 2013)