Cour Pénale Internationale

International Criminal Court

Le Bureau du Procureur

The Office of the Prosecutor

Situation in Honduras

Article 5 Report

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Table of Contents

List of Abbreviations

ACHR	American Convention on Human Rights
ADRDM	American Declaration of the Rights and Duties of Man
AI	Amnesty International
AJD	*Asociación de Jueces por la Democracia*, Association of Judges for Democracy
ALBA	*Alianza Bolivariana para los Pueblos de Nuestra América*, Bolivarian Alliance for the Peoples of Our America
APDHE	*Asociación Pro Derechos Humanos de España*, Spanish Association for Human Rights
CAO	Office of the Compliance Advisor Ombudsman for the International Finance Corporation (IFC) & Multilateral Investment Guarantee Agency (MIGA) Members of the World Bank Group
CAT	Committee Against Torture
CCR	Center for Constitutional Rights
CDM	*Centro de Derechos de las Mujeres*, Centre for Women's Rights
CEJIL	*Centro por la Justicia y el Derecho Internacional*, Center for Justice and International Law
CIPRODEH	*Centro de Investigación y Promoción de los Derechos Humanos*, Centre for the Investigation and Promotion of Human Rights
CNRP	*Coordinadora Nacional de Resistencia Popular*, National Coordinator of Popular Resistance
COFADEH	*Comité de Familiares de Detenidos Desaparecidos en Honduras*, Committee of Families of the Detained and Disappeared in Honduras
COHDEFOR	*Corporación Hondureña de Desarrollo Forestal*, Honduran Forest Development Corporation
CONADEH	*Comisionado Nacional de los Derechos Humanos*, National Commissioner for Human Rights
CONATEL	*Comisión Nacional de Telecomunicaciones*, National Commission of Telecommunications
COPINH	*Consejo Cívico de Organizaciones Populares e Indígenas de Honduras*, Civic Council of the Grassroots Indigenous Organisations of Honduras
CPTRT	*Centro de Prevención, Tratamiento y Rehabilitación de las Víctimas de la Tortura y sus Familiares*, Rehabilitation of Victims of Torture and their Families
CV/*TC*	*Comisión de Verdad*, Truth Commission
CVR/*TRC*	*Comisión de la Verdad y la Reconciliación*, Truth and Reconciliation Commission
EEAS	European External Action Service
FAPER	*Frente Amplio Político Electoral en Resistencia*, Political Electoral Front in Resistance
FEDH	*Fiscalía Especial de Derechos Humanos*, Office of the Special Prosecutor for Human Rights
FIDH	*Fédération internationale des ligues des droits de l'Homme,* International Federation for Human Rights
FNRG	*Frente Nacional de Resistencia Popular contra el Golpe de Estado*, National Resistance Front Against the Coup in Honduras
FNRP	*Frente Nacional de Resistencia Popular*, National Popular Resistance Front
HIVOS	Humanist Institute for Development Cooperation

HRW	Human Rights Watch
IACHR	Inter-American Commission on Human Rights
ICC	International Criminal Court
ICG	International Crisis Group
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDEA	Institute for Democracy and Electoral Assistance
INGO	International Non-Governmental Organisation
LGTBI	Lesbian, Gay, Trans, Bisexual and Intersex
LIBRE	*Partido Libertad y Refundación*, Liberty and Refoundation Party
MARCA	*Movimiento Auténtico Reivindicador Campesino del Aguán*, Authentic Peasant Reclamation Movement of Aguán
MCA	*Movimiento Campesino del Aguán*, Peasant Movement of Aguán
MCR	*Movimiento Campesino de Rigores*, Peasant Movement of Rigores
MOCRA	*Movimiento Campesino de Recuperación del Aguán*, Peasant Movement for the Recovery of the Aguán
MOCSAM	*Movimiento Campesino de San Manuel*, Peasant Movement of San Manuel
MRP	*Movimiento de Resistencia Progresista*, Progressive Resistance Movement
MUCA	*Movimiento Unificado Campesino del Aguán*, Unified Campesino Movement of the Aguán
NGO	Non-Governmental Organisation
OAS	Organisation of American States
OHCHR	Office of the United Nations High Commissioner for Human Rights
OTP	Office of the Prosecutor
PAC	*Partido Anticorrupción*, Anti-Corruption Party
PSC	Private Security Company
TSE	*Tribunal Supremo Electoral*, Supreme Electoral Tribunal
UCD	*Unión Cívica Democrática*, Civic Democratic Union
UD	*Unificación Democrática*, Democratic Unification
UN	United Nations
UN WGM	UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination
UNCTAD	United Nations Conference on Trade and Development
UNHRC	United Nations Human Rights Council
UNODC	United Nations Office on Drugs and Crime
WB	World Bank

EXECUTIVE SUMMARY

Article 53 criteria

1. The Office of the Prosecutor ("Office" or "OTP") 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 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.

Procedural history

2. The Office has received 31 communications pursuant to article 15 of the Statute in relation to the situation in Honduras during the period of July 2009 to April 2014. Although most of the communications deal with the events surrounding the *coup d'état* of 28 June 2009 and its aftermath, eight communications relate to events that occurred in the post-election period, and nine concern the Bajo Aguán region.

3. On 18 November 2010, the Office of the Prosecutor announced that it would be conducting a preliminary examination into the situation in Honduras. During this process, the Office has met with a wide cross-section of representatives from the Honduran government, the United Nations (UN), national civil society organisations, international non-governmental organisations, regional organisations, *campesino* movements, academics and relevant stakeholders. The Office has conducted three missions to Honduras: in 2009, 2011 and 2014. The Office has also engaged in consultations with Professor Leila Sadat, Special Adviser to the ICC Prosecutor on Crimes Against Humanity, in 2013 and 2014.

Contextual background

4. In November 2005, José Manuel Zelaya Rosales, of the Liberal Party, was elected President of Honduras. During his presidency, the relationship between the legislative and executive branches deteriorated significantly and became critical in March 2009, after the adoption of an executive decree establishing a public consultation allowing voters to convene a National Constituent Assembly to approve a new Constitution. The initiative was strongly criticised by the opposition, national

authorities and members of the Liberal Party, who feared an attempt of José Manuel Zelaya to extend his mandate beyond the constitutional limit.

5. On 28 June 2009, following an arrest warrant issued by the Supreme Court of Justice, President José Manuel Zelaya was arrested by members of the armed forces and forcibly flown to Costa Rica. The same day, the National Congress passed a resolution stripping José Manuel Zelaya of the presidency and appointing the then President of the Congress, Roberto Micheletti Baín, as President of Honduras.

6. The executive branch immediately implemented a curfew and relied on the police and military for its enforcement. On 6 July, a "crisis room" was established on the premises of the presidential palace for the purpose of coordinating police and military operations. Curfews continued to be imposed through executive decrees restricting freedom of movement, assembly and expression issued on an intermittent basis throughout the summer and into the early autumn of 2009. These actions were roundly decried as an illegal *coup d'état* by the international community.

7. Following this series of events, thousands of former President Zelaya's supporters organised quickly and staged frequent demonstrations throughout the country in opposition to the *coup d'état*. Demonstrations were generally peaceful with isolated acts of violence, though at times demonstrators shut down roads and bridges in various parts of the country. Many of these demonstrations were met with resistance and violence by state security forces. Checkpoints and roadblocks were set up in various parts of the country, often preventing the mobilisation of larger crowds of demonstrators. In September 2009, after two failed attempts to return to Honduras, ousted President Zelaya took temporary refuge in the Brazilian Embassy in Tegucigalpa. His return triggered further demonstrations which were severely repressed by security forces.

8. After negotiations to form a government of unity broke down, general elections were held in November 2009. Porfirio Lobo was elected president and granted a general amnesty for certain crimes committed in the post-coup period (excluding crimes against humanity and serious human rights violations), and instituted a Truth and Reconciliation Commission to shed light on the events of 28 June 2009. In May 2010, Honduran human rights organisations sponsored a separate Truth Commission to carry out an alternative inquiry. Following Porfirio Lobo's election, many governments restored their ties with Honduras and José Manuel Zelaya fled to the Dominican Republic. He returned to Honduras in May 2011 and created with other members of the opposition a new political party LIBRE *("Libertad y Refundación")* to participate in the November 2013 general elections.

9. In the years following the 2009 coup, violence in Honduras escalated sharply, owing partly to the political turmoil triggered by the coup, but also as a result of the expansion of drug trafficking and criminal organisations, the proliferation of weapons, and the armed forces' involvement in matters of citizen security. In the Bajo Aguán region, violence related to land struggles between the local population and private corporations has been exacerbated by the increased presence of transnational criminal organisations, African palm plantations robbers and looters, and rivalries between peasant farmer groups. In this context, private corporations have turned to private security companies to ensure *de facto* control of pieces of land with almost no state control or oversight.

10. In this context, various domestic and international actors have drawn particular attention to the alleged targeting of diverse groups, including political activists of the opposition, human rights defenders, members of the legal profession, journalists and media workers, and members of workers union. In the Bajo Aguán region, an increasing number of crimes were reported, mainly against members of *campesino* movements, members of their families and other individuals associated with their movement; and to a lesser extent against private security guards, members of state security forces and workers of private corporations.

Subject-matter jurisdiction

11. Since there is no information suggesting either the existence of an armed conflict in Honduras or the commission of genocide, the legal analysis has focussed on the question whether the alleged crimes committed in this situation may amount to crimes against humanity under article 7 of the Statute.

Legal analysis of alleged crimes committed during the post-coup period

12. ***Alleged Crimes***: During the period between the coup and former President Lobo's inauguration on 27 January 2010 ("post-coup period"), two types of killings have been alleged. The first being killings due to the excessive and disproportionate use of force by security forces during demonstrations or at checkpoints (seven to twelve cases); the second being alleged targeted killings of selected members of the opposition to the *de facto* regime, including human rights defenders, journalists and political activists (six to over twenty cases). Other alleged crimes include imprisonment and other severe deprivations of liberty (estimates range from 3,000 to 4,500 people affected); instances of torture (the number of cases is unclear, with possible ranges from four to upwards of dozens) and other acts of violence, including some causing serious injuries, mostly inflicted in the context of attempts to suppress demonstrations and following arrest and detention (between 288 to over 400 cases); and acts of rape (two to eleven cases) and other acts of sexual violence

(approximately 23). Furthermore, former President Zelaya was allegedly the victim of deportation.

13. ***Contextual elements***: In examining the contextual elements of crimes against humanity, the Office found that opponents to the *de facto* regime could constitute a civilian population, which would include a large number of individuals spread throughout the country. It is furthermore possible to find that killings due to excessive and disproportionate use of force, the instances of torture, acts of rape and other acts of sexual violence, detentions of a duration beyond 24 hours and/or under severe conditions, and acts of violence causing serious injuries could together constitute a "course of conduct" involving the multiple commission of acts referred to in article 7(1) against the civilian population.

14. Moreover, it could be argued that decrees restricting the freedom of movement, assembly and expression served as a framework for the security forces to commit abuses against civilians who opposed the *de facto* regime. Further, the establishment of a "crisis room" designed to plan operations to repress the opposition could also be an indicator of a policy. The Office found, however, that while it appears that the *de facto* regime developed a plan to take over power and assert control over the country, the design of this plan and implementation of measures pursuant to this plan did not entail or amount to a policy to commit an attack against the civilian population in question.

15. In light of the above, the Office concludes that the information available does not provide a reasonable basis to believe that acts that could constitute a "course of conduct" were committed as part of an attack pursuant to or in furtherance of a State policy to commit such attack, and therefore that these acts constitute crimes against humanity within the scope of article 7 of the Statute. This does not diminish the seriousness of the violations of human rights that occurred.

16. Although not necessary given the finding on the lack of an attack pursuant to or in furtherance of a State policy, the Office also considered whether there was any evidence that the alleged attack could be either widespread or systematic. The Office found that the scale of victims of killings, torture, rape and sexual violence, detentions of longer duration and/or in conditions of a severe nature, and acts of violence causing serious injuries committed between 28 June 2009 and 27 January 2010 was relatively small. Considering that the protests occurred over a period of approximately three months and in the most populated departments of Honduras, it does not appear that the alleged crimes were committed in the context of an attack that can be considered to be "massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims". Although the number of serious human rights violations, including restrictions on the freedom of

movement, assembly and expression, and the interference with personal liberty through a large number of generally brief detentions, was significantly higher, they do not appear to rise to the level of conduct captured by article 7(1)(e) of the Statute. Thus, given the large size of the population allegedly targeted, even taken at the highest estimates of ranges, acts potentially constituting crimes against humanity cannot be said to constitute a widespread attack directed against the opponents to the *de facto* regime as conceived in the Rome Statute.

17. As regards whether the attack was systematic, the information available does not provide a basis for the limited set of acts constituting the alleged attack to be characterised as being of an organised nature and expressing a pattern of crimes "in the sense of non-accidental repetition of similar criminal conduct on a regular basis". In this respect, the Office also notes that many demonstrations proceeded without interference and there is not a consistent pattern of attacking opponents to the *de facto* regime outside of the demonstration-related context, both factors which undermine the purported systematic nature of the attack.

Legal analysis of alleged crimes committed during the post-election period

18. ***Alleged crimes***: The Office has assessed whether the information available on alleged crimes committed between 27 January 2010 and September 2014 ("post-election period") could either affect the characterisation of the conduct in the post-coup period through additional factual information, or could independently provide a reasonable basis for finding the existence of an attack against any civilian population, as per article 7(2)(a) of the Rome Statute.

19. According to the information available, over 150 killings of individuals, including political activists of the opposition, journalists and media workers, members of the legal profession, human rights defenders and members of workers union, were allegedly committed during the post-election period. Although the alleged crimes reportedly took place throughout the country, over 90 cases occurred in the departments of Francisco Morazán and Cortés, where Tegucigalpa and San Pedro Sula, the cities with the highest rates of killings and criminality in Honduras, are located. Some sources indicate that victims were allegedly targeted due to their perceived political affiliation, for their work denouncing or criticising governmental authorities for their support to the coup, or for their alleged involvement in criminal activities.

20. ***Contextual elements***: According to the information available, it does not appear that the alleged killings occurred primarily in locations that could be perceived as being more associated with the political opposition. In many instances, the information available is insufficient to establish that the alleged victims of killings were targeted

owing to their political affiliation or professional activities. Instead, the information available suggests that the alleged crimes may stem from common criminality and the rise of drug trafficking organisations.

21. As documented by the IACHR in its Annual Reports from 2010 to 2013, human rights violations in Honduras prior to and after the 2009 coup are linked to structural situations concerning, *inter alia*, the situation of citizen security, the weakness of the administration of justice associated with high levels of impunity, and the marginalisation of segments of Honduran society. In the period under analysis, it appears that this cycle of criminality and impunity has deteriorated further. In general, the increase in killings in the past years appears to be related to the incapacity of the government to deal with criminal and drug trafficking organisations, in particular after the coup.

22. Against a backdrop of high levels of violent crime and the prevalence of large numbers of criminal groups, the Office found scant information indicating links and common features between the alleged crimes, including in relation to their characteristics, nature, aims, targets, alleged perpetrators, times and locations, as to demonstrate the existence of a "course of conduct" within the meaning of article 7(2)(a) of the Statute. In this respect, the alleged crimes fail to evidence a certain pattern of behaviour as to indicate that they were committed as part of a campaign or operation carried out against the civilian population.

23. Consequently, the Office could not find a reasonable basis to believe that the alleged acts were committed as part of an "attack directed against a civilian population" under article 7(1) of the Statute. Therefore, the Office does not consider that such acts amount to crimes against humanity under the Statute and will not assess the other contextual elements of crimes against humanity.

Legal analysis of alleged crimes committed in the Bajo Aguán region

24. ***Alleged Crimes***: Another focus of the preliminary examination in Honduras has been the Bajo Aguán region, where it is alleged that over 100 members of *campesino* movements, members of their families and other individuals associated with their movements have been killed from January 2010 to September 2013. According to the information available, 78 of these cases have been reported as targeted assassinations and other killings allegedly resulted from violent clashes between *campesinos* and privates security guards in the context of land occupation attempts carried out by large groups of *campesinos*, and forced eviction operations executed by state security forces, in some instances with the support of private security guards. Although various sources indicate that the increasing violence in the region is related to long-standing disputes over land between *campesino* movements and private owners, other

sources attribute the high rates of criminality to activities carried out by criminal and drug trafficking organisations.

25. In this context, it is further alleged that since June 2009 acts of violence, including severe beating (at least 61 cases), enforced disappearances (at least 6 cases), forced eviction operations (30 incidents have been reported but the number of victims remain unclear as entire communities had been allegedly targeted) have been committed by state security forces and private security guards against members of *campesino* movements, members of their families, as well as against journalists, human rights activists and members of the legal profession associated with these organisations.

26. ***Contextual Elements***: According to the information available, the civilian population allegedly targeted is composed of members of *campesino* associations involved in land disputes against large landowners and private corporations, members of their families and other individuals, including journalists, members of the legal profession and human rights defenders, associated with their movements. Although most of the victims fall within the civilian population allegedly targeted, in a few cases private security guards and members of state security forces have also been reportedly killed by *campesinos* in the context of land occupation attempts and under unclear circumstances. In some isolated cases, private security guards have allegedly committed killings and altered the crime scene to incriminate members of peasant movements.

27. The Office notes that the ongoing conflict in the region is not limited to land issues, but it is also closely linked to criminal and drug trafficking organisations' activities, African palm plantation robbers and looters, and rivalries between peasant farmer groups. In this context, the Office found scant information indicating links and common features between the alleged crimes, "in terms of their characteristics, nature, aims, targets and alleged perpetrators, as well as times and locations", as to establish the existence of a "course of conduct".

28. The prevalence and expansion of criminal and drug trafficking organisations appear to be the main factor of rampant violence in the region, in particular from 2009 to 2012, rather than land disputes between local populations and private corporations. Both members of *campesino* associations and owners of private corporations have been accused of having links with these organisations. As confirmed by the information gathered by the Office during its mission to Tegucigalpa in 2014, criminal organisations and international drug cartels are deeply involved in local businesses and criminal activities in the region and seem to be involved in most of the alleged crimes in the Bajo Aguán, including unlawful occupations of land and

robbery of African palm fruits, in order to retain control of the region and to continue to operate in total impunity.

29. In light of the expansion of criminal and drug trafficking organisations in the Bajo Aguán region, in particular following the 2009 coup, the Office found that most of the alleged crimes appear to be related to the cycle of violence that has plagued the region for years. Although some of the alleged crimes could be related to land disputes between *campesino* groups and large landowners and private corporations, in the absence of sufficient information on links and commonality of features between the multiple alleged crimes substantiating the existence of a "course of conduct", the Office found that there is not a reasonable basis to believe that the alleged acts were committed as part of an "attack directed against a civilian population" within the meaning of article 7 of the Statute.

Conclusion

30. The situation in Honduras raises a number of issues that characterise it as a "borderline case". Whereas a number of acts that could constitute a "course of conduct" were committed by the *de facto* regime in the aftermath of the June 2009 coup in Honduras, the Office has concluded after carefully weighing the information available against the legal requirements of the Statute that such information does not provide a reasonable basis to believe that crimes within the jurisdiction of the Court have been committed in the situation in Honduras.

31. Accordingly, the Prosecutor lacks a reasonable basis to proceed with an investigation and has decided to close this preliminary examination. Should further information become available in the future which would lead the Office to reconsider these conclusions in the light of new facts or evidence, the preliminary examination could be re-opened.

I. INTRODUCTION

32. The Office of the Prosecutor ("Office" or "OTP") 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 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. The present report is a public version of the Office's jurisdictional assessment, the first phase of its preliminary examination.

33. Honduras is a State Party to the ICC. On 18 November 2010, the Office of the Prosecutor announced that it would be conducting a preliminary examination into the situation in Honduras.[1] The preliminary examination was initiated taking into consideration information received on crimes allegedly committed following the *coup d'état* of June 2009.

34. This report is based on open and other reliable sources, which the Office has subjected to an independent, impartial and thorough analysis, including, *inter alia*, the reports published by the Honduran Truth and Reconciliation Commission (TRC) and the civil society-supported Truth Commission.

35. The Office has also engaged in consultations with Professor Leila Sadat, Special Adviser to the ICC Prosecutor on Crimes Against Humanity. The Office expresses its gratitude for her contributions to the report.

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

37. 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'".[2] In

[1] ICC, OTP Weekly Briefing, issue No. 64, 16-22 November 2010.
[2] 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", 31 March 2010, ICC-01/09-19-Corr, ("Kenya Article 15 Decision"), para.35.

this context, PTC II has indicated that all of the information need not necessarily "point towards only one conclusion".[3] 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.[4] 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'".[5] Furthermore, it should be noted that findings at the preliminary examination phase are not binding for the purpose of future investigations.[6]

38. This report summarises the analysis conducted and presents the findings of the Office with respect to issues of jurisdiction.

II. PROCEDURAL HISTORY

39. In accordance with article 15, the Office has sought and obtained information on crimes reportedly committed following the 2009 coup and during the post-2010 election period. The Office has also analysed allegations of crimes committed in the Bajo Aguán region since the 2009 coup.

40. The main sources the Office relied upon in its analysis came from the Truth and Reconciliation Commission,[7] the Inter-American Commission on Human Rights (IACHR), the UN Office of the High Commissioner for Human Rights (OHCHR) and other UN agencies, various reports from domestic civil society organisations and international non-governmental organisations including, Human Rights Watch (HRW), International Federation for Human Rights (FIDH) and Amnesty International (AI), the report of the Honduran civil society-supported Truth Commission, reports of the Honduran National Commissioner for Human Rights (*Comisionado Nacional de los Derechos Humanos*, CONADEH), various article 15

[3] 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 disproves 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. *Prosecutor v. Omar Hassan Ahmad Al Bashir*, "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'", 3 February 2010, ICC-02/05-01/09-OA, para.33.

[4] Kenya Article 15 Decision, para.32.

[5] Kenya Article 15 Decision, para.27.

[6] Kenya Article 15 Decision, paras.50 and 75.

[7] The three volumes of the Truth and Reconciliation Report entitled: "*Para que los hechos no se repitan*" ("So That These Events Will Never Reoccur", "TRC Report, Vol. I"); "*Cronologías de los hechos*" ("Chronology of Events", "TRC Report, Vol. II"); and "*Hallazgos y recomendaciones*" ("Findings and Recommendations", "TRC Report, Vol. III").

communications submitted to the Office during the period of July 2009 to April 2014, as well as information submitted on behalf of the Honduran government.

41. There was a high degree of consistency between sources on the general contours of events, though there were often differences in the numbers of victims reported, claims as to the nature and scale of incidents (especially of demonstrations organised during the post-coup period), and the legal characterisation of various acts. The Office has sought, to the extent possible, to rely on the information available to establish as clear of a factual picture as possible for undertaking its own legal analysis both for the post-coup period (28 June 2009–27 January 2010) and the post-election period (27 January 2010–September 2014), and for the situation in the Bajo Aguán.

III. CONTEXTUAL BACKGROUND

A. General background

42. Honduras is a democratic constitutional state with approximately 8.6 million inhabitants.[8] Its executive branch is comprised of the President, Vice-President, and a presidentially-appointed Cabinet of Ministers.[9] The legislative branch is constituted by the unicameral 128-seat National Congress, where members sit for four-year terms and are elected on the same election cycle as the President. The National Congress elects the 15 members of the Supreme Court of Justice, the highest national jurisdiction, for seven-year terms.[10]

43. The current Constitution was adopted in 1982, after the country emerged from a series of authoritarian military regimes.[11] Title VII ("The reform and the inviolability of the Constitution") outlines, *inter alia*, the possibilities for amending the Constitution and determines which constitutional provisions may never be amended. These include: the amendment process itself, the form of government, the national territory, the presidential term and the prohibition from re-election.[12]

44. The President participates in Congress through cabinet ministers, and holds the power to "sanction, veto, or promulgate and publish any laws approved by the National Congress."[13] Certain acts and resolutions of Congress are immune from presidential veto, including constitutional amendments, declarations regarding

[8] CIA, Honduras, World Factbook.
[9] In 2014, the executive branch was significantly restructured and the 38 existing Ministries ("*Secretarías de Estado*"), together with other national institutions, were reorganised into seven Sector Cabinets ("*Gabinetes Sectoriales*").
[10] CIA, Honduras, World Factbook.
[11] NYU, GlobaLex, Update: Guide to Legal Research in Honduras, June 2012 ("GlobaLex, Update: Guide to Legal Research in Honduras").
[12] GlobaLex, Update: Guide to Legal Research in Honduras.
[13] GlobaLex, Update: Guide to Legal Research in Honduras.

grounds for impeachment and decrees on the conduct of the executive branch. The Supreme Court is constitutionally empowered to make appointments to lower courts, declare laws to be unconstitutional, try high-ranking officials (including the President) when the National Congress has declared grounds for impeachment, amongst others. The Attorney General is elected by the National Congress, as is the Public Prosecutor General.[14]

45. In the past decades, Honduras has been plagued by human rights violations, high levels of violence, impunity and corruption.[15] A review of the 2000-2013 human rights reports on the country gives account of a large number of human rights abuses allegedly carried out by state security forces, particularly the police, in a context of weak institutionalism, distrust towards national authorities and continuing discrimination against various groups of civilians, including indigenous and rural populations, women and children.[16] The human rights situation in Honduras has been deeply affected by the steady increase of criminality experienced in the entire Central American region in recent years, which according to various sources is mainly attributed to the fluctuation of drug trafficking patterns and the growing presence of violent street gangs (*maras*) in Honduras, El Salvador and Guatemala, the so-called "Northern Triangle".[17] In Honduras, local and regional drug trafficking organisations control most of the territory to the detriment of gangs which have been generally pushed to the sidelines of the drug trade.[18]

46. Another relevant factor related to the increase of criminality is the wide dissemination of firearms throughout the country.[19] Some sources attribute the high

[14] GlobaLex, Update: Guide to Legal Research in Honduras.

[15] For instance, Honduras was ranked 126 out of 180 countries surveyed in Transparency International's Annual Report of 2008, June 2009, p.55. In 2008, the Economist Intelligence Unit indicated that the Honduran judiciary "is seen as neither effective nor fair" and "in practice, the judicial system is open to political influence", Economist Intelligence Unit, "Honduras Country Profile: 2008" quoted in Meyer, P. J., *Honduran Political Crisis*, June 2009-January 2010, (Congressional Research Service, 1 February 2010), ("CRS/Meyer, Honduran Political Crisis"), p.3.

[16] See IACHR, Annual Reports from 2009-2013; U.S, Department of State, Human Rights Report: Honduras from 2002-2013; UN Human Rights Council, Report of the Working Group on Arbitrary Detention-Addendum-Mission to Honduras (23-31 May 2006), 1 December 2006; UN Committee Against Torture, Concluding observations of the Committee against Torture, 23 June 2009; UN Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women: Honduras, 10 August 2007; UN Committee on the Rights of the Child, Concluding Observations: Honduras, 3 May 2007; UN Human Rights Committee, Concluding observations of the Human Rights Committee: Honduras, 13 December 2006; UN Committee on Economic, Social and Cultural Rights, Concluding Observations, 21 May 2001.

[17] See UNODC, Global Study on Homicide, 2013, p.33; Bosworth, J., "Honduras: Organized Crime Gaining Amid Political Crisis", December 2010, in Arnson, C. J. *et al*, *Organized Crime in Central America: The Northern Triangle* (Woodrow Wilson International Center for Scholars, November 2011).

[18] See Farah, D. and Phillips Lum, P., "Central American Gangs and Transnational Criminal Organisations. The Changing Relationships in a Time of Turmoil", February 2013, p.8.

[19] According to the CONADEH, there are more than 850,000 weapons in circulation in Honduras, of which only 258,000 are officially registered (InSightCrime, "Honduras Guns Feeding Central America's Arms Trade", 12 August 2011). According to the World Bank, Honduras counted about 600,000 firearms, of which 133,000 are registered (World Bank, "Crime and Violence in Central America: A development Challenge", 2011, p.20).

prevalence of guns and their use in crime, whether or not related to drug trade, partly to the lack of state control over gun ownership and lax gun laws, under which civilians can legally own up to five firearms.[20] In a context of a widespread feeling of insecurity among the population at large, Honduran citizens are "heavily armed" and have resorted, in particular private businesses, to private security companies (PSCs) to ensure their security.[21] As noted by the UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (UN WGM), PSCs have outnumbered police officers in an average ratio of five to one and dominate the security sector, operating with almost no state control or oversight on their activities, staff recruitment or the equipment employed.[22]

B. The situation in the Bajo Aguán Region

47. Although no official boundaries define the region, the Bajo Aguán is located in the lower part of the valley formed by the Aguán River, in the northern Atlantic coast of Honduras. The region comprises the department of Colón and has approximately 150,000 inhabitants. In recent years, the aggravation of agrarian and land property conflicts, proliferation of weapons, and prevalence of drug trafficking and criminal organisations have led Honduran authorities to significantly increase the presence of the armed forces in the region to carry out security duties.[23]

48. Land property conflicts in Bajo Aguán between *campesino* farmers and private large landowners originated in the 1970s, when as part of the agrarian reform process the Honduran government promoted the migration of peasants living in the south into the less populous areas in the north, in particular in the Bajo Aguán region. In this context, thousands of land hectares were distributed among the relocated population.[24] Subsequently, the adoption of additional regulations in 1992 and 1994 encouraged the sale of the land acquired through the agrarian reform to individual owners and private corporations. A significant percentage of that land was bought by palm oil producers.

[20] InSightCrime, "Honduras Guns Feeding Central America's Arms Trade", 12 August 2011; and Council of Hemispheric Affairs, "A Black Market for Armaments", 10 September 2014.
[21] IACHR, Annual Report, 2013, para.255; UN HRC, "Report of the Working Group on the use of mercenaries as means of violating human rights and impeding the exercise of the right of peoples to self-determination, Addendum Mission to Honduras (18-22 February 2013)", 5 August 2013, ("UN WGM Report"), para.14.
[22] UN WGM Report, paras.14 and 18.
[23] UN WGM Report, paras.36 and 37. For proliferation of weapons see InSight Crime, "Honduras Gun Ban Aims to Curb Violence in the Country's North", 8 August 2012.
[24] FIDH, "Honduras: Human Rights Violations in the Bajo Aguán", September 2011, p.8.

49. The remarkable increase of African palm oil production had an impact not only on local economy, but also on violence and criminality in the Bajo Aguán.[25] Today, exploitation of palm oil is the most profitable crop in Honduras,[26] registering its highest growth rate in 2010 and 2011,[27] and provides important revenue to the rural poor population. However, in the last decades, *campesino* associations have denounced the legality of a number of land transactions made in the 1990s on grounds of fraud, coercion and corruption. In the absence of a comprehensive plan by the government to solve the land property issues in Bajo Aguán, land disputes have turned into a phenomenon of widespread land occupation by peasant movements who demand the restoration of their lands, as initially established by the land reform program.

50. After the 2009 coup, according to information gathered by the IACHR in 2010, land conflicts intensified due to the militarisation of the area.[28] Since 2010, various armed operations carried out by members of the armed forces and the police have been deployed in the region, including *Operation Trueno*, *Operation Tumbador*, *Operation Xatruch II* and *Operation Xatruch III* to restore order and confront criminal and drug trafficking organisations.[29] The expansion of drug trafficking in the region led to a severe deterioration in citizen security and drug-related violence, exacerbated by the political turmoil that followed the 2009 coup. To the east of the Bajo Aguán, the Mosquito Coast stretching along Honduras eastern Atlantic coast into Nicaragua has become an important landing point for Mexican and other international drug trafficking cartels, such as *Los Zetas* and the *Sinaloa* Cartel. Some of these organisations seem to offer local gangs arms, training and the use of their feared brand, in return for a cut of the revenues from extortion or human trafficking and safe passage for cocaine.[30] In some cases, they may also be encouraging groups of the local population to take over land to be used for landing strips.[31]

51. In this context, private corporations and landowners involved in land disputes with local farmers have resorted to private security companies to ensure their security and

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[25] Soluri, J. "Banana Cultures. Agriculture, Consumption, & Environmental Change in Honduras & the United States", University of Texas Press, 2005, p.8.
[26] UNCTAD, "Infocomm Commodity Profile. Palm Oil", updated 20 April 2012.
[27] Honduras is one of the most important exporters of African palm oil in the world and the third largest producer in Latin America, see Rainforest Rescue, "Palm Oil. Facts about the ingredient that destroys the rainforests." See also Indexmundi, "Honduras Palm Oil Production by year."
[28] IACHR, "Preliminary Observations of the IACHR on its visit to Honduras, May 15 to 18, 2010", 3 June 2010 ("IACHR, Preliminary Observations, 2010"), paras.118-120.
[29] Operation *Trueno* was deployed in April 2010 (counting approximately 7,000 soldiers); Operation *Tumbador*, in November 2010 (counting approximately 1000 soldiers); Operation *Xatruch II* (joint task force of military and police) in August 2011, and was renewed by *Operation Xatruch III* in August 2012.
[30] The Economist, "The Eye of the Storm", 16 July 2012.
[31] The New York Times, "In Honduras, Land Struggles Highlight Post-Coup Polarization", 15 September 2011. See also, Aljazeera America, "Honduran indigenous groups caught in crosshairs of global drug trade", 23 June 2014.

control of their lands.[32] In 2013, the UN WGM found that the legal framework regulating the recruitment of security guards and their training on human rights law and the use of force and weapons remains incomplete and does not seem to be effectively implemented.[33] In addition, although Honduran National Congress enacted in 2012 a law prohibiting the carrying of weapons in the department of Colón, it does not apply to members of state security forces and private security guards.[34]

C. Chronology of events leading up to and following 28 June 2009

52. In Honduran presidential elections of November 2005, José Manuel Zelaya Rosales of the Liberal Party narrowly defeated Porfirio Lobo Sosa of the National Party, and assumed office in January 2006.[35] In the same elections, Roberto Micheletti Baín, also of the Liberal Party, was elected to the National Congress, of which he was elected President in January 2006.

53. During José Manuel Zelaya's presidency, a number of disputes arose owing to his government's measures related especially to telecommunications, the energy sector and financial regulation.[36] His foreign policies were also controversial, in particular the agreement with PETROCARIBE (a regional alliance dealing with petroleum pricing and access) and the country's entrance to the Bolivarian Alliance for the Peoples of Our America (*Alianza Bolivariana para los Pueblos de Nuestra América*, ALBA).[37] According to some reports, President Zelaya's policies on these matters were perceived by part of the opposition as part of a political and economic alliance with the late President of Venezuela, Hugo Chávez, and other leftist governments in the region.[38]

54. The relationship between the legislative and executive branches deteriorated and there was a growing tendency towards confrontation between them.[39] In January 2009, tensions escalated over elections to the Supreme Court. Members of the

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[32] For example, Dinant Corporation reportedly hires approximately 62 security guards from Orion, a legally registered PSC, and counts around 42 guards of its own to protect its eight plantation sites (UN WGM Report, para.16).
[33] UN WGM Report, para.30.
[34] UN WGM Report, para.27.
[35] The margin of difference between the two candidates was less than 80,000 votes, with President Zelaya securing 45.6% of the vote and Lobo Sosa, 42.2%: Supreme Electoral Tribunal, "General Elections 2005" [Unofficial translation], *República de Honduras: Tribunal Supremo Electoral, "Elecciones Generales 2005"*.
[36] TRC Report, Vol. I, pp.103-110.
[37] TRC Report, Vol. I, p.111.
[38] The Economist, "Zelaya plays the Chávez card", 30 October 2008; Reuters, "Honduran Catholic hierarchy opposes Zelaya, Chavez", 15 July 2009.
[39] TRC Report, Vol. I, p.111.

National Congress alleged that President Zelaya exerted pressure to select a particular candidate from outside the normal nomination process.[40]

1. Events prior and surrounding the 28 June 2009 *coup d'état*

55. On 23 March 2009, President Zelaya issued Executive Decree PCM-05-2009. It called for a public consultation (*consulta popular*) to be held on 28 June 2009, asking the electorate whether they would like a "fourth ballot box" to be included in the November 2009 elections, which would allow voters to decide whether to convene a National Constituent Assembly to approve a new Constitution.[41] However, in the light of the strong criticism expressed by members of the opposition, national authorities and members of the Liberal Party who feared an attempt of José Manuel Zelaya to extend his constitutional mandate,[42] and the initiation of a series of legal proceedings challenging its legality,[43] the decree was annulled.[44] Nevertheless, the "fourth ballot box" was reintroduced by the executive branch through the form of a national poll by a new decree.[45]

56. On 23 June 2009, the National Congress approved legislation prohibiting the holding of any referendum or plebiscite within 180 days prior or after general elections.[46] This legislation thus blocked any initiative of the executive branch to consult the population on the adoption of a new Constitution before the November 2009 elections and until the end of President Zelaya's four-year term in January 2010.

57. On 25 June 2009, Attorney General Luis Alberto Rubí brought charges against President Zelaya for crimes against the Honduran state.[47] The next day, the Supreme Court of Justice issued an arrest warrant against him for crimes against the form of government, treason, abuse of authority, and usurpation of power to the detriment of the government and State of Honduras.[48]

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[40] U.S. Embassy in Tegucigalpa, "Congress Pushes Through New Court, Resists Pressure from Zelaya", 26 January 2009.
[41] Executive Decree PCM-05-2009, fifth preambular paragraph. See also "Constitutional reform or power grab", *Latin American Weekly Report*, 26 March 2009, quoted in CRS/Meyer, Honduran Political Crisis, p.2.
[42] CRS/Meyer, Honduran Political Crisis, p.3.
[43] See generally: TRC Report, Vol. II, pp.108-140 and CRS/Meyer, Honduran Political Crisis, p.3.
[44] TRC Report, Vol. II, p.118.
[45] Decree PCM-019-2009 rendered ineffective Decree PCM-05-2009; and Decree PCM-020-2009 called for a national poll to reintroduce the "fourth ballot" in November 2009 elections. Both decrees were adopted on 26 May 2009.
[46] BBC News, "Honduran armed forces boss sacked", 25 June 2009.
[47] Brief of Luis Alberto Rubí, Attorney General, *Corte Suprema de Justicia* (Supreme Court of Justice), 25 June 2009, TRC Report, Vol. II, p.631.
[48] *Orden de captura por la Corte Suprema de Justicia*, 26 June 2009 (Order of the Supreme Court of Justice to the Chairman of the Joint Chiefs), TRC Report, Vol. II, p.632.

58. In the early morning of 28 June 2009, soldiers entered the President's residence and executed the arrest warrant issued two days earlier. José Manuel Zelaya was then flown to Costa Rica without his consent.[49] Members of his cabinet and other public officials fled or were arrested, transferred or ceased in their functions.[50]

59. On the same day, the National Congress passed a resolution stripping José Manuel Zelaya of the presidency and appointing the then President of the Congress, Roberto Micheletti, as President of Honduras. The executive branch immediately implemented a curfew, and relied on the police and military for its enforcement. On 6 July, a "crisis room" was established on the premises of the presidential palace for the purpose of coordinating police and military operations. Curfews continued to be imposed through executive decrees restricting freedom of movement, assembly and expression issued on an intermittent basis throughout the summer and into the early autumn of 2009. These actions were roundly decried as an illegal *coup d'état* by the international community.

60. Domestic opposition to the *de facto* regime formed the National Popular Resistance Front (*Frente Nacional de Resistencia Popular*, FNRP),[51] the Popular Bloc (*Bloque Popular*) and the National Coordinator of Popular Resistance *(Coordinadora Nacional de Resistencia Popular,* CNRP). The FNRP issued its first public communication on 28 June 2009, denouncing the legality of the "brutal and inhumane military coup" and indicating the FNRP's intention to build an active and peaceful resistance with the goal of reinstating the constitutional order and respect for human rights.[52]

61. Demonstrations both in favour of the *de facto* regime and against began on 28 June 2009 and continued in the following days and weeks in multiple places across the country. On 28 June 2009, there were reports that approximately 1,500 to 2,000 of President Zelaya's supporters were protesting in Tegucigalpa's main square.[53] According to information received by OHCHR, the police indicated that between 28 June 2009 and November 2009, almost 300 demonstrations took place in Tegucigalpa alone.[54] The most significant demonstrations of those opposed to the *de facto* regime occurred on or around: 29 June, 2-5 July, 23-31 July, 3 August, 11-14 August, and 21-22 September. On 30 June, opponents to President Zelaya, organised generally under

[49] IACHR, "Honduras: Human Rights and the Coup d'État", 30 December 2009 ("IACHR, Honduras: Human Rights, 2009"), para.73.
[50] IACHR, Honduras: Human Rights, 2009, para.75.
[51] See FNRP's official website. Originally, the group referred to itself as the National Front Against the *Coup d'Etat* in Honduras (*Frente Nacional Contra el Golpe de Estado en Honduras*, FNRG). In this report FNRP and FNRG are used interchangeably.
[52] FNRP, *Comunicado No. 1*, 28 June 2009.
[53] BBC News, "New Honduran leader sets curfew", 29 June 2009; Reuters, "Honduras isolated over Zelaya ouster", 29 June 2009.
[54] UN HRC, "Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d'état on 28 June 2009", 3 March 2010 ("OHCHR Report"), para.47, fn.18.

the Civic Democratic Union (*Unión Cívica Democrática*, UCD), were reported to have gathered thousands of people in a demonstration in the centre of Tegucigalpa expressing support for the actions of the *de facto* regime in removing President Zelaya.[55]

62. Based on the information available, although the vast majority of pro-Zelaya demonstrations were peaceful, clashes between demonstrators and security forces, and between pro- and anti-*de facto* regime demonstrators, were reported in various locations and on various days throughout the country.[56] Pro-Zelaya demonstrations did, at times, obstruct traffic, close bridges and close down businesses. The OHCHR received reports of acts of arson by demonstrators identified as FNRG[57]/Zelaya supporters, damaging some restaurants. Moreover, official sources indicate that 16 police officers and 21 members of the military were injured, though none gravely, with the exception of one member of the military who was reportedly wounded by gunfire.[58] The TRC received testimony about violence and destruction to public and private property during the demonstrations of Zelaya supporters, mainly against media outlets, fast-food restaurants and churches (both Catholic and Evangelical) perceived to be supporting the coup.[59] The IACHR received testimony and complaints that supporters of President Zelaya looted and destroyed local businesses on at least 9 occasions.[60] In its daily reports on the situation, the U.S. Embassy took note of instances of pro-Zelaya demonstrators using bottles, stones, and Molotov cocktails during clashes with security forces.[61]

63. On 30 June 2009, Executive Decree No. 011-2009 was adopted, declaring a state of siege (*estado de sitio*), establishing curfew hours, and substantially restricting freedom of movement, assembly and expression.[62] The decree also extended the period of time that an individual could be detained incommunicado before being brought before a

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[55] La Tribuna, "*Plantón por la paz y democracia*", 30 June 2009; Proceso, "*Miles de hondureños marchan por la paz y rechazan retorno de ex presidente Zelaya*", 30 June 2009.

[56] See for instance: U.S. Embassy in Tegucigalpa, "Honduran Coup: Sitrep #6 06/30/09", describing that on 29 June 2009, in San Pedro Sula, "opposing demonstrations of approximately 1,000 people each clashed in the Central Park" and describing clashes between anti-riot police and military troops with anti-regime demonstrators in Tegucigalpa on the same day.

[57] The OHCHR refers to the National Resistance Front Against the Coup as "FNRG", which was the initial name of the FNRP (OHCHR Report, para.9).

[58] OHCHR Report, para.47, fn.18.

[59] TRC Report, Vol. I, p.394.

[60] IACHR, Honduras: Human Rights, 2009, paras.328-331.

[61] See U.S. Embassy Tegucigalpa, "Honduran Coup: Sitrep #5 06/29/09", describing clashes between protesters and security forces in front of the Presidential Palace.

[62] Executive Decree No. 011-2009 received support from the National Congress in Legislative Decree No. 144-2009 (*Diario Oficial La Gaceta*, No. 31, 972, 27 July 2009), which ratified in total and all parts Executive Decree No. 011-2009.

competent judicial authority beyond the 24 hours already permitted by article 71 of the Constitution.[63]

64. Former President Zelaya attempted, unsuccessfully, to return to the country on 5 and 24 July 2009. His first attempt was frustrated by the armed forces which prevented his plane from landing. On that occasion, as the plane approached, clashes broke out between thousands of Zelaya's supporters who gathered outside the airport and security forces, resulting in the killing of at least one person and injuries to at least 30 others.[64] In his second attempt, José Manuel Zelaya reportedly stayed in the country for only 30 minutes before returning to Nicaragua because the "risk of bloodshed was too great."[65] At that time, the *de facto* regime had imposed an 18-hour curfew along the border, defending it as a necessary security measure.[66] Reports indicate that shortly after the curfew was imposed, police began firing teargas against protesters in El Paraíso.[67]

65. José Manuel Zelaya returned to Honduras on 21 September and took refuge in the Brazilian Embassy in Tegucigalpa.[68] His sheltering on the premises of the embassy was followed by the declaration of a state of siege and a curfew by the *de facto* authorities. The next day, under the pretext of enforcing the curfew, Honduran security forces reportedly employed tear gas grenades and fired real and rubber bullets to disperse around 3,000 Zelaya's supporters who had gathered in the area. As a result of this event, one person died, 26 individuals were injured and approximately 300 demonstrators were arrested for violation of the curfew.[69] According to OHCHR, people inside the embassy complained "of harassment from loud noises and the release of harmful chemicals, which they attributed to police and army officers surrounding the building."[70]

66. On 22 September, *de facto* authorities approved Executive Decree PCM-M-016-2009 which severely affected the freedom of movement, assembly, and expression. The

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[63] Article 71 reads: "*Ninguna persona puede ser detenida ni incomunicada por más de veinticuatro (24) horas sin ser puesta a la orden de la autoridad competente para su juzgamiento. (…)*" ["no person can be detained incommunicado for more than twenty-four hours without being brought before the competent authority for his/her judgment. …"] [Unofficial translation] The IACHR noted that the law allows detention within a 24-hour period, but "the Commission deems that the situation created by the detention of several dozen people should receive immediate attention", Inter-American Commission on Human Rights, "Preliminary Observations on the Visit to Honduras 2009" ("IACHR, Preliminary Observations, 2009"), "Democratic Institutional System". The TC noted that in June 2011, the National Congress proposed a Decree 106-2011 allowing for the time period to be extended from 24 to 48 hours, which was ratified by the legislature in 2012 (Truth Comission Report, "*La voz más autorizada es la de las víctimas"*, October 2012, ("TC Report") p.107).

[64] The Guardian, "Army foils Zelaya's bid to return", 6 July 2009.

[65] BBC News, "Ousted Zelaya makes brief return", 25 July 2009.

[66] BBC News, "Ousted Zelaya makes brief return", 25 July 2009.

[67] NY Times, "Exiled Leader of Honduras Steps Into Country", 24 July 2009.

[68] BBC News, "Honduras curfew as Zelaya returns", 22 September 2009.

[69] IACHR, Honduras Human Rights, 2009, para.103.

[70] OHCHR Report, para.11.

latter by prohibiting all publications (spoken, written, or televised) that may "offend human dignity, public officials," or may threaten the law and/or government resolutions.[71] It authorised the National Commission of Telecommunications (*Comisión Nacional de Telecomunicaciones*, CONATEL) to immediately interrupt, through the use of the National Police or Armed Forces, the broadcasting of any radio station, television channel, or cable television station that, in its opinion, may violate the aforementioned dispositions.[72] The Decree, which was meant to have effect for 45 days, was abrogated on 6 October but this decision was not published until 17 October.[73]

67. In early July, the Organisation of America States (OAS) initiated negotiations with the *de facto* government and ousted President Zelaya, with the mediation of the President of Costa Rica, Oscar Arias. On 29 October, these negotiations resulted in the "Tegucigalpa-San José Accord", which provided for, *inter alia*, a unity government and requested the National Congress and the Supreme Court to decide on whether to reinstate President Zelaya.[74] For various reasons the agreement broke down, the National Congress decided against the return of José Manuel Zelaya to the presidency, and general elections were held on 29 November 2009. The National Party candidate, Porfirio Lobo Sosa, won and took office on 27 January 2010. During the entire period of Micheletti's rule, no State recognised the *de facto* government and some continued to withhold recognition of the government under President Lobo.[75]

2. Events following Porfirio Lobo's inauguration (27 January 2010)

68. Amid fear of unrest and despite José Manuel Zelaya's call for a boycott, general elections took place mostly peacefully. About 35,000 police officers and soldiers were deployed across the country and several hundred protesters gathered in San Pedro Sula on the day of the elections, but no major incidents of violence were reported.[76] The day of his inauguration as new President of Honduras, Porfirio Lobo signed an amnesty decree approved by the National Congress granting amnesty to all persons involved in the events of 28 June 2009, excluding those persons responsible for crimes

[71] Executive Decree PCM-M-016-2009 (*Diario Oficial La Gaceta,* No. 32.024, 26 September 2009). The decree stated in the justification part: "[A]s a result of the constitutional succession of the executive branch, dissidents and groups ideologically committed to and supported by governments that do not share our democratic system, are inciting insurrection by said citizens, provoking clashes between the general population, the forces of the National Police and the Armed Forces […] placing in danger life, property, social peace and Constitutional rule". [Unofficial translation].
[72] Executive Decree PCM-M-016-2009, Article 3.
[73] OHCHR Report, para.16.
[74] OHCHR Report, para.11.
[75] CRS/Meyer, Honduran Political Crisis, pp.11-12.
[76] Telegraph, "Honduras' election won by Porfirio Lobo", 30 November 2009.

against humanity and human rights violations.[77] On the same day, under the terms of an agreement concluded between Porfirio Lobo and Leonel Fernández, President of the Dominican Republic, José Manuel Zelaya left the Brazilian Embassy in Tegucigalpa and flew to Dominican Republic into exile. On 13 April 2010, in compliance with the Tegucigalpa-San José Accord of 2009, Porfirio Lobo established a truth and reconciliation Commission (*Comisión de la Verdad y Reconciliación*) to shed light on the events between 28 June 2009 and 27 January 2010. In May 2010, Honduran human rights organisations sponsored a separate truth commission (*Comisión de Verdad*) to carry out an alternative inquiry into events following the *coup d'état* until August 2011. The reports by both commissions were published in July 2011 and October 2012, respectively.

69. Former President José Manuel Zelaya returned to Honduras on 28 May 2011 and created with other members of the opposition a new political party LIBRE *(Libertad y Refundación)* to participate in the November 2013 general elections. The OAS General Assembly resolved in June to lift, with immediate effect, the suspension of the Honduran State's right to participate in the Organization of American States.[78]

70. On 30 November 2011 the National Congress passed a decree-law, proposed by Porfirio Lobo, which authorises the armed forces to perform on a temporary basis police functions in emergency situations affecting individuals and their property.[79]

71. On 24 November 2013, general elections were held and Juán Orlando Hernández of the National Party was elected President, followed closely by Xiomara Castro, wife of the ousted President Zelaya, and one of the founders of the political party LIBRE. Since his election, and previously as President of Congress, Juán Orlando Hernández has bolstered the involvement of the military in matters related to citizen security to combat criminal and drug trafficking organisations in Honduras.[80]

72. According to the United Nations Office on Drugs and Crime (UNODC), since 2009, Honduras has registered homicide rates of over 71 per 100,000 inhabitants, the highest in the world in 2012 and one of the highest recorded in modern times.[81] The

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[77] The amnesty decree 2-2010 was adopted by Honduran National Congress on 26 January 2010 and entered into force on 22 February 2010.

[78] OAS General Assembly, Resolution AG/RES. 1 (XLI-E/11) on the Participation of Honduras in the Organization of American States, Forty-first Special Session, 1 June 2011.

[79] Decree Law interpreting Article 274 of the Constitution, Article 1.

[80] See preamble of Decree No. 168-2013 establishing a Military Police (*Policía Militar de Orden Público*). As President of the Congress, Juan Orlando Hernández raised the need to strengthen the state response to criminal organisations with the creation of militarised corps, such as TIGRES (*Tropa de Inteligencia y Grupos de Respuesta Especial de Seguridad*). See El Heraldo, "*TIGRES le hará frente al crimen organizado*", 15 May 2013.

[81] Honduras has registered homicide rates of 60.8 per 100,000 inhabitants in 2008, 70.7 in 2009, 81.8 in 2010, 91.4 in 2011, and 90.4 in 2012. See UNODC, Global Study on Homicide, 2013, p.126; and UNODC, "Transnational Organized Crime in Central America and the Caribbean. A Threat Assessment", September 2012 ("UNODC, Transnational Organized Crime"), p.16.

rise of violence levels in Honduras in this period has been attributed to several factors, including the further expansion of drug trafficking and criminal organisation activities, and the militarisation and privatisation of citizen security. After the 2009 coup, violence related to drug trafficking in Honduras has risen, to a great extent, due to the fall into disarray of local law enforcement, concentration of resources to maintain order in Tegucigalpa and the suspension of United States' counter-narcotics assistance, resulting in a "kind of cocaine gold rush".[82] In this context, major territory-bound criminal groups, particularly those active in Colombia, Mexico and Guatemala, have grown in prominence[83] and are reportedly involved in homicides, kidnappings, and agricultural land expropriation, all related to various forms of drug production and trafficking, as well as trafficking of weapons and of human beings.[84]

73. Following the 2009 coup, the IACHR decided to closely monitor the human rights situation in Honduras and to include it in Chapter IV of the IACHR's Annual Report. Although in 2009 the inclusion of Honduras was based on various criteria, including the total or partial suspension of the free exercise of human rights and allegations of massive and grave human rights violations by the state, Honduras' subsequent inclusion in Chapter IV in 2013 was based solely on "the presence of other structural situations that seriously affect the use and enjoyment of fundamental rights recognised in the American Declaration, the American Convention or other applicable instruments."[85] Honduran authorities have consistently argued in their observations to the IACHR Annual Reports that "the causes of the violence in Honduras go beyond the political crisis of 2009" and are "partly due to changes in cocaine trafficking routes and increased competition and conflicts related to drug trafficking, together with the presence of *maras* and other criminal gangs".[86]

IV. PRECONDITIONS TO JURISDICTION

74. Honduras is a State Party to the ICC since 1 July 2002. Pursuant to article 126 of the Statute, the ICC has jurisdiction over crimes committed on the territory of Honduras and/or committed by Honduran nationals as of 1 September 2002 onwards.

V. SUBJECT-MATTER JURISDICTION

75. 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. Since there is no information suggesting either the existence of an armed conflict in Honduras or the commission of genocide, the legal

[82] UNODC, Transnational Organized Crime, p.19.
[83] UNODC, Transnational Organized Crime, p.23. See also InSightCrime, "Honduras Profile".
[84] UNODC, Transnational Organized Crime, p.25.
[85] IACHR, Annual Report, 2013, para.236.
[86] IACHR, Annual Report, 2012, para.174.

analysis has focussed on the question whether the alleged crimes committed in this situation may amount to crimes against humanity under article 7 of the Statute.

A. Crimes against humanity

76. The contextual elements serve to distinguish crimes against humanity from ordinary crimes over which the Court has no jurisdiction. The Elements of Crimes emphasise that the provisions of article 7 must be "strictly construed", taking into account that crimes against humanity are "among the most serious crimes of concern to the international community as a whole".[87]

77. Under the Rome Statute, a crime against humanity involves any of the specified acts 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".

78. Article 7(2)(a) provides that an attack directed against any civilian population is "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".[88]

79. 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.[89]

80. 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.[90] It is, notably, not restricted to a "military attack."[91] The expression "course of conduct" involves a "systemic aspect as it describes a series or overall flow of events as opposed to a mere aggregate of random acts."[92] A "course of conduct" implies the existence of a certain

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[87] Elements of Crimes, Article 7(1), "Introduction".

[88] Rome Statute article 7(2)(a). See also *Prosecutor v. Laurent Gbagbo*, "Decision on the confirmation of charges against Laurent Gbagbo", 12 June 2014, ICC-02/11-01/11-656-Red, ("*Gbagbo* Confirmation of Charges Decision"), paras.208-210.

[89] Situation in the Republic of Côte D'Ivoire, "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", 3 October 2011, ICC-02/11-14 ("Côte d'Ivoire Article 15 Decision") para.29.

[90] *Prosecutor v. Gemain Katanga*, "Jugement rendu en application de l'article 74 du Statut", 7 March 2014, ICC-01/04-01/07-3436, paras.1097 and 1101, ("*Katanga* Trial Judgment"); *Gbagbo* Confirmation of Charges Decision, para. 209; Kenya Article 15 Decision, para.80.

[91] Elements of Crimes, Article 7, Introduction, para.3. See also *Katanga* Trial Judgment, para.1101.

[92] *Gbagbo* Confirmation of Charges Decision, para.209.

pattern as the "attack" refers to "a campaign or operation carried out against the civilian population, which involves the multiple commission of acts referred to in article 7(1) of the Statute".[93] The term "civilian population" refers to persons who are civilians, as opposed to members of the armed forces and other combatants.[94] The attack must be directed against the civilian population as a whole and not merely against randomly selected individuals.[95] However, there is no need to establish that the entire civilian population of the geographical area in question was being targeted.[96] The civilian population must be the primary target of the attack (not just incidental victims), though the presence of certain non-civilians does not necessarily deprive the population of its civilian character.[97]

81. Pre-Trial Chamber I has further explained that "while a course of conduct must involve multiple acts, the occurrence of those acts is not the only evidence that may be relevant to prove its existence. On the contrary, since the course of conduct requires a certain "pattern" of behaviour, evidence relevant to proving the degree of planning, direction or organisation by a group or organisation is also relevant in assessing the links and commonality of features between individual acts that demonstrate the existence of a "course of conduct" within the meaning of article 7(2)(a) of the Statute."[98] To satisfy the required nexus between an individual act and the attack, incidents in the context of which the alleged crimes were committed should share common features "in terms of their characteristics, nature, aims, targets and alleged perpetrators, as well as times and locations".[99]

82. Pre-Trial Chambers have found that the requirement of a State or organizational policy under article 7 "implies that the attack follows a regular pattern".[100] 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.[101] However, the policy need not be explicitly defined or formalised by the State or organizational

[93] *Gbagbo* Confirmation of Charges Decision, para.209.
[94] Côte D'Ivoire Article 15 Decision, para.33; Kenya Article 15 Decision, para.82.
[95] *Katanga* Trial Judgment, para.1105; Côte D'Ivoire Article 15 Decision, para.32.
[96] *Katanga* Trial Judgment, para.1105; Côte D'Ivoire Article 15 Decision, para.33.
[97] *Katanga* Trial Judgment, paras.1104-1105; ICTY, *Prosecutor v. Tadić*, 7 May 1997, Case No. IT-94-1-T, Trial Judgment, para.638.
[98] *Gbagbo* Confirmation of Charges Decision, para.210.
[99] *Gbagbo* Confirmation of Charges Decision, para.212.
[100] Kenya Article 15 Decision, paras.85 and 86; *Bemba* Confirmation of Charges Decision, para.81. See also *Prosecutor v. Laurent Gbagbo*, "Decision on the Prosecutor's Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo", 30 November 2011, ICC-02/11-01/11-9-Red, ("*Gbagbo* Article 58 Decision"), para.37; Côte D'Ivoire Article 15 Decision, para.43.
[101] *Ruto et al.* Confirmation of Charges Decision, para.210; Kenya Article 15 Decision, paras.85-86; *Bemba* Confirmation of Charges Decision, para.81.

group.[102] Trial Chamber II ("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.[103]

83. With regard to the term "organizational", 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 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.[104] However, these factors are not a rigid legal definition, and they do not need to be exhaustively fulfilled.[105] 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. Instead, what is essential is that it possesses the capacity to realise its objective of attacking a civilian population.[106]

84. The terms "widespread" and "systematic" under article 7 are presented in the alternative.[107] Pre-Trial Chambers have found that "[t]he expression 'widespread or systematic' […] excludes random or isolated acts of violence".[108] 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".[109] A widespread attack could be

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[102] *Prosecutor v. Callixte Mbarushimana*, "Decision on the Confirmation of Charges", 16 December 2011, ICC-01/04-01/10-465-Red, para.263; *Gbagbo* Article 58 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.

[103] *Katanga* Trial Judgment, para.1109.

[104] *Katanga* Trial Judgment, paras.1119-1120; Côte D'Ivoire Article 15 Decision, para.46, quoting the Kenya Article 15 Decision, paras.90-93. See also *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", 23 January 2012, ICC-01/09-01/11-373, ("*Ruto et al*. Confirmation of Charges Decision"), para.185.

[105] Côte D'Ivoire Article 15 Decision, para.46.

[106] *Katanga* Trial Judgment, paras.1119-1121.

[107] *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", 15 June 2009, ICC-01/05-01/08-424 ("*Bemba* Confirmation of Charges Decision"), para.82.

[108] *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, "Decision on the confirmation of charges", 30 September 2008, ICC-01/04-01/07-717, ("*Katanga* and *Ngudjolo* Decision on Confirmation of Charges"). para.394; see also *Prosecutor v. Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman*, "Decision on the Prosecution Application under Article 58(7) of the Statute", 27 April 2007, ICC-02/05-01/07-1 ("*Harun and Kushayb* Article 58 Decision"), para.62.

[109] Côte D'Ivoire Article 15 Decision, para.53, quoting the Kenya Article 15 Decision, para.95 (footnotes omitted).

the "cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude."[110] 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."[111]

85. 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.[112]

B. Alleged crimes committed during the post-coup period

1. Alleged crimes

86. The majority of the alleged crimes in the period between the 28 June 2009 coup and former President Lobo's inauguration on 27 January 2010 ("post-coup period") arose out of attempts by the security forces to deal with demonstrations. The main categories of these crimes stem from allegations concerning the treatment of *de facto* regime opponents. A number of communications received placed a large degree of emphasis on the scale and nature of the detentions conducted in violation of due process rights and allegations of persecution.

87. Based on a review of the information available, two types of killings are alleged during the post-coup period: (i) alleged killings due to the excessive and disproportionate use of force by security forces in the context of demonstrations, or shortly thereafter during enforcement of curfews and/or at checkpoints, either from live ammunition or excessive inhalation of tear gas (seven to twelve cases); [113] and (ii) alleged targeted killings ("*asesinatos selectivos*") of selected members of the opposition to the *de facto* regime, including human rights defenders, journalists and political activists (six to over twenty cases).

88. The information available indicates that detentions occurred on a large-scale, generally on the basis of violations of curfews and participation in demonstrations. Estimates range from 3,000 to 4,500 people affected.[114] The IACHR and the OHCHR

[110] *Gbagbo* Article 58 Decision, para.49.
[111] Côte D'Ivoire Article 15 Decision, para.54, quoting the Kenya Article 15 Decision, para.96. See also *Katanga* Trial Judgment, paras.1098, 1113 and 1123.
[112] Côte D'Ivoire Article 15 Decision, para.29.
[113] The TRC analysed the allegations in view of international human rights standards and found that the use of lethal violence was not justified because there was no imminent threat to the life of police officers or others (TRC report, Vol. I, pp.289-303). At least two killings were caused by teargas. The TC also names two people who died from teargas inhalation but they do not overlap with those found by the TRC.
[114] The OHCHR wrote that the "police and the army arbitrarily or illegally arrested thousands of people, including women and children, mostly during protests against the coup." (OHCHR Report, para.32). See also

noted that, in the context of the post-coup period, security forces conducted detentions on a massive scale with the specific purpose of suppressing pro-Zelaya supporters' expression.[115] The majority of detentions were for 45 minutes to 24 hours.[116] There were allegations of ill-treatment and injury, in some instances during arrests and detentions, including threats and insults, sexual harassment of women, acts of rape, deprivation of water, food and limited access to sanitary facilities.[117]

89. In the aftermath of the coup, security forces allegedly carried out "serious assaults" and often resorted to excessive and disproportionate use of force against people participating in demonstrations against the coup.[118] Acts of violence, including some causing serious injuries, mostly inflicted in the context of attempts to suppress demonstrations and following arrest and detention were reported in the range between 288 to over 400. An unclear number of cases of torture were also alleged, with possible ranges from four to upwards of dozens occurring during detentions.[119]

90. The information available indicates two to eleven cases of rape[120] and approximately 23 acts of sexual violence, in different forms of sexual harassment.[121] Most of these occurred in the context of demonstrations and/or related to detentions, where female detainees were often verbally abused with sexual comments. Police officers were identified as perpetrators in most of the cases reported[122] and, to a lesser extent, members of the military.[123] In one of the cases reported by the TRC, police officers used derogatory language towards the victim for being a demonstrator and employed a police baton to rape her.[124]

91. It was further alleged that President Zelaya was the victim of deportation, having been removed from the country against his will and without lawful orders for his removal. Further, there are allegations concerning the expulsion of an unknown

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IACHR, Honduras: Human Rights, 2009, para.341; TRC Report, Vol. I, pp.325 and 326; and IACHR, Preliminary Observations, 2009, "Right to personal liberty".

[115] IACHR, Honduras: Human Rights, 2009, paras.378 and 222; and OHCHR Report, para.25.

[116] IACHR, Preliminary Observations, 2009, "Right to personal liberty"; and OHCHR Report, para.33.

[117] The OHCHR found that torture or other forms of ill-treatment "often occurred" during the detentions (OHCHR Report, para.33). See also TRC Report, Vol. I, p.327 and 328.

[118] OHCHR Report, para.24. The IACHR has reported that, on the basis of testimonies, pictures, forensic exams and judicial records, the security forces acted violently against demonstrators, through verbal abuse, the use of sprays and tear gas, kicking and hitting with metal bars and chains on the head, chest, legs, stomach and genitals, even when demonstrations were of a pacific nature (IACHR, Honduras: Human Rights, 2009, para.318).

[119] OHCHR Report, para. 25; COFADEH, *Informe Situación de Derechos Humanos en Honduras*, Tegucigalpa, Honduras, *Centro América*, October 2009-January 2010 and *Informe Preliminar. Violaciones a Derechos Humanos en el Marco del Golpe de Estado en Honduras*, 15 July 2009; and TC Report, pp. 230 and 231.

[120] TRC Report, Vol. I, pp.340-341; IACHR, Honduras: Human Rights, 2009, paras.519 and 520; TC Report, p.230; and OHCHR Report, para.60, fn.22.

[121] OHCHR Report, para.60, fn.22.

[122] See for example, TRC Report, Vol. I, pp.340-341; TC Report, p.231; and OHCHR Report, para.60.

[123] See for example, IACHR, Honduras: Human Rights, 2009, para.519.

[124] TRC Report, Vol. I, p.340.

number of foreigners, mainly Nicaraguans and Venezuelans (states perceived as supportive to José Manuel Zelaya), and other nationalities reportedly on national security grounds, though with little supporting information.[125]

92. In various forms, the information available suggests that the *de facto* regime developed a policy of targeting their opponents through, *inter alia*: the selective use and enforcement of curfews; shutting down media outlets; the targeting of human rights activists, journalists, and opposition leaders; mass detentions either for participating in demonstrations and/or for violating the curfews (at times the two overlapped and people who were demonstrating were arrested for curfew violations); excessive and disproportionate use of force by security forces in demonstrations and at checkpoints; and ill-treatment in detention facilities.

2. Contextual elements

93. The situation in Honduras raises a number of issues that characterise it as a "borderline case". The Office has carefully weighed the information available against the legal requirements of the Rome Statute and has identified arguments supporting the finding that the alleged crimes committed in Honduras in the post-coup period amounted to crimes against humanity, as well as counter-arguments.

94. Overall, taking into account conflicting views and interpretations, the Office has reached the conclusion that the reasonable basis threshold is not met for the following reasons.

(a) "Attack directed against any civilian population"

95. In examining the contextual elements of crimes against humanity, the Office found that the opponents to the *de facto* regime could constitute a civilian population. Given the level of support for former President Zelaya within the Honduran population, this would constitute a large number of individuals spread throughout the country.

96. Satisfaction of the requirement for "any civilian population" centres on the identification of a collective. According to the information available, it appears that the "opponents to the *de facto* regime" could form such a group.[126] Executive Decree PCM-M-016-2009, issued in September, suggests that the *de facto* regime perceived the

[125] There is no clear estimation of the number of persons that left the country for this reason but the IACHR suggests that it could be approximately 150. See IACHR, Honduras: Human Rights, 2009, paras.199-201; and OHCHR Report, para.39, fn.16.

[126] The TRC referred to the group as members of the population that had mobilised against the *de facto* government: TRC Report, Vol. II, p.537. See also CCR and FIDH, "Impunity in Honduras for Crimes Against Humanity between 28 June 2009 and 31 October 2012. Submission Pursuant to Article 15 of the Rome Statute of the International Criminal Court", submitted November 2012 ("CCR/FIDH Report"), which identified "civilians who have criticized or expressed opposition to the ruling authorities", p.7.

persons who participated in demonstrations as "dissidents" and "groups ideologically committed to foreign governments, which do not share [its] democratic system". In this regard, the TRC reported that some victims were told by their aggressors that they were "rebels", "trouble-makers", "communists", "leftists", and made other statements intended to be derogatory. The peaks in curfew enforcement and demonstration repression around times when President Zelaya attempted to or did re-enter the country cross the border with Nicaragua could be another indicator. This could be further corroborated by the fact that supporters of Roberto Micheletti were not targeted by government repression.

97. Acts against opponents to the *de facto* regime occurred at the hands of the police and armed forces, particularly through the use of disproportionate and excessive force against mainly peaceful demonstrators using law enforcement weaponry, including live ammunition, tear gas, batons and, in some instances, metal bars and chains. However, the use of violence resulting in serious injuries and/or that could amount to torture, rape and sexual violence, and killings during demonstrations and at checkpoints appeared to be the exception given the time span, geographical spread, and the nature of interactions between demonstrators and security forces. The removal of President Zelaya from the country could constitute an act of deportation, but the remaining allegations of forcible transfer are too uncertain and unclear to be considered part of a larger pattern.

98. The information available places a large degree of emphasis in particular on the scale and nature of the detentions. However, for allegations of illegal detention to amount to the crime of imprisonment or other severe deprivation of physical liberty under article 7(1)(e) of the Statute, the perpetrator must have imprisoned or otherwise severely deprived one or more persons of physical liberty and the gravity of the conduct must have been such that its occurrence would amount to a violation of fundamental rules of international law.[127] The term 'fundamental rules of international law' would, according to commentary on the Article, include not only treaties and customary international human rights law and international humanitarian law, but also general principles of law.[128]

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[127] Elements of Crimes, Article 7(1)(e). In the International Law Commissions 1996 Draft Code of Crimes against the Peace and Security of Mankind, "arbitrary imprisonment" would cover "systematic or large-scale instances of arbitrary imprisonment such as concentration camps or detention camps or other forms of long-term detention": Commentary on ILC Draft Statute Article 18, para.14.

[128] Hall, Christopher K., "Imprisonment or other severe deprivation of physical liberty" in O. Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court*, 2nd ed. (München: Verlag C.H. Beck oHG, 2008), p.203, MN 38. Relevant instruments concerning the rights of detainees could include the UN Standard Minimum Rules for the Treatment of Prisoners of 1955 and the 1969 American Convention for Human Rights, the 1988 UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the 1990 UN Basic Principles on the independence of the Judiciary, the 1990 UN Guidelines on the Role of the Prosecutors and the 1990 UN Basic Principles on the Role of Lawyers.

99. In terms of the post-coup period, the Office found that despite the large-scale nature of the detentions and the due process violations that appeared to be routine, their brevity and the conditions of such detentions were significant factors in their legal characterisation. The analysis found that the vast majority of them could not be considered as falling within the ambit of article 7(1)(e) "Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law".[129] For those detained for longer periods of time and/or in severe conditions, it is possible that some of these detentions could amount to the crime under article 7(1)(e), but on the face of the information reviewed, these types of detentions appeared to be the exception.

100. Taken at its highest, it is nonetheless possible to find that the killings due to excessive and disproportionate use of force (seven to twelve cases), the instances of torture (the number of cases is unclear, with possible ranges from four to upwards of dozens), acts of rape (two to eleven cases) and other acts of sexual violence (approximately 23), detentions of a duration beyond 24 hours and/or under severe conditions (unclear), and acts of violence causing serious injuries (unclear though less than 400) could together provide a basis for finding that there was a "course of conduct" involving the multiple commission of acts referred to in article 7(1) against the civilian population.

101. Finally, it is noted that there are other alleged acts of serious human rights violations and conduct that occurred in this period. These include most of the instances of "targeted killings" explored in all sources, some acts of torture and/or violence causing serious injuries, some acts of rape and sexual violence, violent attacks on media outlets (both against and in support of the *de facto* regime), attacks on NGOs' offices by heavily armed individuals, most of the death threats and harassment against activists, human rights defenders, journalists, and others who opposed the coup. Most of these different acts have in common the self-identification of victims as members of the opposition and unknown attribution. However, some of these acts do

[129] Elements of Crimes, Article 7(1)(e). In this respect, it is noted that the crime provided for under article 7(1)(e) of the Statute may not be equated with arbitrary arrests as provided under human rights law. Rather, for the conduct to constitute deprivation of liberty under the Statute, the crime must contain an additional element of severity. Discussions leading to the Rome Statute offered a number of factors that could be considered to assess the severity of the crime, including the duration, the extent and the condition of the deprivation. See Proposal submitted by Canada and Germany on article 7 (1)(e), U.N. Doc. PCNICC/1999/WGEC/DP.36, at 4 (23 November 1999). Commentators have also suggested as additional factors "whether the detainee was subjected to torture or other inhuman or degrading treatment or punishment, including crimes of sexual violence, or other intimidation". Hall, C., "Imprisonment", in O. Triffterer, *Commentary on the Rome Statute of the International Criminal Court*, p.203, MN 38. The ICTR found that "the deprivation of liberty must be of a similar gravity and seriousness as the other crimes against humanity enumerated in [the ICTR Statute]." *Prosecutor v. Ntagerura et al.*, Trial Judgment 1 September 2009, ICTR-99-46-T, para.702. In the International Law Commission 1996 Draft Code of Crimes against the Peace and Security of Mankind, "arbitrary imprisonment" would cover "systematic or large-scale instances of arbitrary imprisonment such as concentration camps or detention camps or other forms of long-term detention": Commentary on ILC Draft Statute Article 18, para.14.

not amount to any of the underlying acts of crimes against humanity listed under article 7(1), and in the absence of more information on attribution and circumstance, there is an insufficient factual basis for connecting these various alleged acts to the "course of conduct" identified above.

(b) "A State or organizational policy"

102. It could be argued that decrees restricting the freedom of movement, assembly and expression served as a framework for the security forces to commit abuses against civilians who opposed the *de facto* regime, including a number of crimes that could amount to underlying acts of crimes against humanity listed under article 7(1). However, while the decrees themselves expanded the powers of the police and armed forces, they did not as such authorise, promote, or otherwise encourage the commission of acts that could potentially constitute the "course of conduct" identified above. As regards the "crisis room", it is not clear that emanating from this coordination there was a policy designed to attack the civilian population constituted by opponents to the *de facto* regime.

103. The Office found that while it appears that the *de facto* regime developed a plan to take over power and assert control over the country, the design of this plan and implementation of measures pursuant to this plan did not entail or amount to a policy to commit an attack against the civilian population in question within the meaning of article 7 of the Statute.

104. Accordingly, the Office concludes that the information available does not provide a reasonable basis to believe that acts that could constitute a "course of conduct" were committed as part of an attack pursuant to or in furtherance of a State policy to commit such attack, and therefore do not amount to crimes against humanity under the Rome Statute. This does not diminish the seriousness of the violations of human rights that occurred, but it does create difficulties in qualifying such acts as crimes against humanity under the Statute.

(c) "Widespread or systematic attack"

105. Although not necessary given the findings on the lack of an attack directed against opponents to the *de facto* regime pursuant to or in furtherance of a State policy, the Office also considered whether there was any evidence that the alleged attack could be either widespread or systematic. The Office found that the scale of victims of killings, torture, rape and sexual violence, detentions of longer duration and/or in conditions of a severe nature, and acts of violence causing serious injuries committed between 28 June 2009 and 27 January 2010 was relatively small. Although the number of serious human rights violations, including restrictions on the freedom of

movement, assembly and expression, and the interference with personal liberty through a large number of generally brief detentions, was significantly higher, they do not appear to rise to the level of conduct captured by article 7(1)(e) of the Statute. Thus, given the large size of the population allegedly targeted, even taken at the highest estimates of ranges, acts potentially amounting to crimes against humanity cannot be said to constitute a widespread attack directed against the opponents to the *de facto* regime as conceived in the Rome Statute.

106. The demonstrations were but one manifestation of opposition to the *de facto* regime, but they were the most obvious and the site of most of the interactions between members of this population and the state (barring curfew violations outside the demonstration-related context). Accepting even a conservative estimate of 100,000 participants in these demonstrations, and accepting the upper end of the claims as to the total number of victims of excessive and disproportionate use of force resulting in killings, acts of violence causing serious injuries, detentions, rape and sexual violence, and torture, only a small fraction of the participants in the demonstrations were direct victims of the alleged attack. Considering that the protests occurred over a period of approximately three months and in the most populated departments of Honduras, it does not appear that the alleged crimes were committed in the context of an attack that can be considered to be "massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims".[130]

107. In assessing whether the alleged attack was systematic, the Office considered three main types of conduct that occurred during and after the coup. The first type of conduct appears to have been a set of mainly planned actions and measures, devised and carried out by the *de facto* regime and/or state security forces, which sought to exert control over the population through: the arrest and deportation of President Zelaya, which corresponded with media blackouts and power outages, the subsequent restrictions on freedom of movement, assembly and expression through the implementation of curfews, mass detentions, actions against media outlets (including threats, occupation of media stations, and discriminatory decrees) and the restriction of some opposition demonstrations. This type of conduct can be attributed to the state and it bears indicia of a systematic nature. However, although it constitutes widespread and serious human rights violations, this type of conduct does not appear to amount to any of the underlying acts of crimes against humanity listed under article 7(1).

108. The second type of conduct relates to the commission of more serious, violent offences during further attempts by state security forces to control the population and

[130] *Bemba* Confirmation of Charges Decision, para.83; *Gbagbo* Confirmation of Charges Decision, para.222; Côte d'Ivoire Article 15 Decision, para.53, quoting Kenya Article 15 Decision, para.95.

suppress the opposition. The most serious acts of violence in this regard occurred as security forces escalated their responses in demonstration-related contexts or checkpoint enforcement and subsequent detentions, resulting in a relatively small number of victims of killings, torture, rape and sexual violence, detentions of longer duration and/or in conditions of a severe nature, and/or serious injuries. However, the information available does not provide a basis for this limited set of acts to be characterised as being of an organised nature and expressing a pattern of crimes "in the sense of non-accidental repetition of similar criminal conduct on a regular basis", as to amount to a systematic attack.[131] In this respect, the Office also notes that many demonstrations proceeded without interference and there is not a consistent pattern of attacking opponents to the *de facto* regime outside of the demonstration-related context, both factors which undermine the purported systematic nature of the attack.

109. The third type of conduct captures a wider range of acts of serious human rights violations and conduct that could amount to any of the underlying acts of crimes against humanity listed under article 7(1), which share the characteristic of unknown attribution. However, as these acts cannot be connected to the larger pattern identified, as noted previously, the Office will not assess the systematic nature of these alleged crimes.

C. Alleged crimes committed during the post-election period

1. Alleged crimes

110. The Office has assessed whether the information available on alleged crimes committed between 27 January 2010 and September 2014 ("post-election period") could either affect the characterisation of the conduct analysed in the post-coup period through additional factual information, or could independently provide a reasonable basis for finding the existence of an attack against any civilian population, as per article 7(2)(a) of the Rome Statute.

111. According to the information available, over 150 killings of individuals, including political activists of the opposition, journalists and media workers, members of the legal profession, human rights defenders and members of workers union, were allegedly committed during the post-election period. Although the alleged crimes reportedly took place throughout the country,[132] over 90 cases occurred in the departments of Francisco Morazán and Cortés, where Tegucigalpa and San Pedro

[131] *Gbagbo* Confirmation of Charges Decision, para.223; *Katanga* Trial Judgment, para.1123; Côte D'Ivoire Article 15 Decision, para.54, quoting the Kenya Article 15 Decision, para.96.

[132] Cases of killings reported by various sources allegedly took place in at least 12 of the 18 departments of Honduras, namely: Francisco Morazán, Cortés, El Paraíso, Olancho, Atlántida, Colón, Choluteca, Lempira, Yoro, Copán, Comayagua and Ocotepeque.

Sula, the cities with the highest rates of killings and criminality in Honduras, are located.[133]

112. Some sources indicate that victims were allegedly targeted due to their perceived political affiliation, for their work denouncing or criticising governmental authorities for their support to the coup, or for their alleged involvement in criminal activities.[134] The information available indicates that at least 31 members of political parties of the opposition,[135] including candidates for public office and sitting officials, were killed under unclear circumstances.[136] In addition, according to the information available, six members of the ruling National Party were killed also under unclear circumstances. The information available further indicates that 33 journalists and media workers, including hosts and technical staff, and 81 members of the legal profession were reportedly killed during the same time period.[137]

113. Although no specific information on the identity of the perpetrators is available, information on the manner of commission suggests that a large number of killings could have been committed by paid hitmen; however the motives of indirect perpetrators remain unknown. The Office notes that in almost all cases reported, killings were committed by gunfire and, to a lesser extent, by groups of at least two assailants, in drive-by shootings, and employing military equipment and high calibre weapons, including AK-47 assault rifles. In a limited number of cases, perpetrators were reportedly hooded or wearing police uniforms.[138] Furthermore, in at least 14 cases, killings were committed nearby the victim's house (10) or at their office (2), as well as in football fields and in the street. In one case the victim was shot in the centre of Tegucigalpa in the middle of the day.

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[133] According to UNODC, Tegucigalpa registered over 1,000 killings in 2010 and 2011 (UNODC, Global Study on Homicide, 2013, p.146). In 2012, San Pedro Sula was considered by the *Consejo Ciudadano para la Seguridad Pública y la Justicia Penal A.C* (a Mexican NGO) the "most violent city in the world" for three consecutive years, registering 1,218 killings in 2012 (a rate of 3.3 murders a day) ("*San Pedro Sula otra vez la ciudad más violenta del mundo; Acapulco la segunda*", 7 February 2013).

[134] IACHR, Annual Report, 2013, paras.327, 337, 340, 342 and 345; IACHR, Annual Report, 2012, paras.243, 247 (case of José Ricardo Rosales), 258, 260, 263, 273, 277 and 278; IACHR, Annual Report, 2011, paras.334-336; Annual Report, 2010, para.509.

[135] Political parties and organisations of the opposition allegedly targeted include LIBRE, the Liberal Party, FAPER ("*Frente Amplio Político Electoral en Resistencia*"), UD ("*Unificación Democrática*"), the Anticorruption Party, the Socialist *Morazánico* Party, FNRP ("*Frente Nacional de Resistencia Popular*"), MRP ("*Movimiento de Resistencia Progresista*"), and LIBRE-MRP.

[136] According to the report of FIDH, CIPRODEH and COFADEH, "Elecciones en Honduras: Militarización y Grave Atentado contra el Poder Judicial", November 2013 ("FIDH/CIPRODEH/COFADEH Report"), ten members of the opposition were killed. Two held public positions (member of municipal council and deputy-mayor), while the other eight were pre-candidates for deputy-mayor (one) and mayor (one), candidates for mayor (three), for parliament (two), and for city council (one).

[137] FIDH/CIPRODEH/COFADEH Report, pp.8-11; La Prensa, "*Honduras: En 56 meses han sido asesinados 81 abogados*", 20 September 2014; and CONADEH, Annual Report, 2013, pp.31-56.

[138] CCR/FIDH Report, pp.16-19.

114. According to the information available, police officers and members of the military allegedly committed arbitrary detentions (around 10 cases), followed in some instances by acts of torture, sexual violations and unlawful searches against persons active in the resistance, mainly in the department of Francisco Morazán. For example, HRW reported the case of two political activists critical of the June 2009 coup who were allegedly arbitrarily detained by police officers and, after being beaten and ill-treated, they were reportedly asked about financial sources and the location of weapons used by the opposition after the 2009 coup.[139] The IACHR further reported a case involving five members of a family that was active in the resistance, who were allegedly kidnapped by heavily armed men dressed in military uniforms and wearing ski masks. During the unlawful detention, two women were reportedly raped, and two men tortured.[140]

115. In addition to the allegations described above, it is further alleged that *de facto* authorities took disciplinary and discriminatory measures against public officials, including magistrates and human rights prosecutors, due to their actual or perceived opposition to the 2009 coup or for investigating cases involving human rights violations.[141] The IACHR observed that, by contrast, a number of judges and magistrates who made public statements in support of the coup were never investigated for their remarks.[142]

2. Contextual elements

"Attack directed against any civilian population"

116. It is alleged that following President Lobo's assumption on 27 January 2010, Honduran authorities targeted civilians throughout the country who continued to voice their opposition to the coup or to the *de facto* regime, including political activists of the opposition, journalists and media workers, members of the legal profession, human rights defenders and members of workers union.

117. According to the information available, most of the victims allegedly targeted for their political affiliation with the opposition were members of LIBRE and, to a lesser extent, of the Liberal Party, UD-FAPER and PAC. The Office notes that in the last presidential elections in 2013, LIBRE obtained 632,320 votes, mainly concentrated in the departments of Colón, Gracias a Dios, Olancho and Santa Barbara; while the ruling National Party was the most voted party in the department of Francisco

[139] HRW, "After the Coup", December 2010, pp.25 and 26.
[140] IACHR, Preliminary Observations, 2010, para.93.
[141] IACHR, Preliminary Observations, 2010, paras.77-86.
[142] IACHR, Preliminary Observations, 2010, para.84.

Morazán, where Tegucigalpa is located.[143] As noted above, most of the alleged crimes were committed in or around Tegucigalpa and San Pedro Sula, the so-called "violence capital of the world" located in the departments of Cortés, in northwest Honduras. Although Honduras has no area with crime rates below 5 per 100,000 inhabitants, rates are reportedly higher around Tegucigalpa, along the Atlantic coast and close to the Guatemalan border, in particular in San Pedro Sula.[144] Therefore, it does not appear that killings occurred primarily in locations that could be perceived as being more associated with the political opposition.

118. Further, in many instances, the information available is insufficient to establish that the alleged victims of killings were targeted owing to their political affiliation or professional activities.[145] In some cases, local authorities and political activists of the ruling party have also been reportedly killed.[146] Only in two cases victims were allegedly arbitrarily detained and interrogated on issues relating to their opposition to the 2009 coup.[147] In fact, other groups of civilians, such as policemen and taxi drivers, appear to be more frequent victims of killings than those groups of civilians allegedly targeted.[148]

119. The information available suggests that the alleged killings at issue may also stem from common criminality and the rise of drug trafficking organisations. Since the 2009 coup, the number of criminal and drug trafficking organisations rose sharply, and are commonly held responsible for violent crimes, including murder, extortion, kidnapping, torture, human trafficking, and intimidation of journalists and human and worker rights defenders. According to InSightCrime, just days after the coup, Colombian drug trafficking organisations changed their routes to Honduras.[149] The Atlantic coast of Honduras, from the border with Guatemala in the west to the eastern Mosquito Coast, is reportedly the area the most deeply affected by drug trafficking-related violence and with a strong presence of international cartels, mainly from Mexico.[150]

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[143] See *Tribunal Supremo Electoral*, Supreme Electoral Tribunal, Official results of 2013 elections.
[144] World Bank, "Crime and Violence in Central America: A development Challenge", 2011, pp.3 and 4.
[145] For example, only in two cases it is mentioned that the victims were anti-coup activists, of which one was also member of LIBRE. In the case of Saira Fabiola Almenares de Borja, open sources revealed that she was a student of journalism who worked on sports issues. El Heraldo, "*Jovencita encontrada muerta en Río Blanquito era periodista*", 1 March 2012. In at least 12 cases victims were reportedly bystanders.
[146] Six members of the ruling National Party, three of which were acting mayors, one was candidate for Major and one was pre-candidate for Major for the National Party, were reportedly killed. See FIDH/COFADEH/CIPRODEH Report, pp.9-12.
[147] See above, para.114 (HRW, "After the Coup", December 2010, pp.25 and 26).
[148] CONADEH, Annual Report, 2013, pp.28 and 58.
[149] InSightCrime, "Honduras Profile".
[150] ICG, "Corridor of Violence: the Guatemala-Honduras Border", Latin America Report No. 52, 4 June 2014.

120. Notably, a number of assaults reported bore the hallmarks of the methods used by criminal organisations, as they were reportedly committed by more than one heavily armed gunmen, hooded or with their faces covered, driving motorised vehicles with no licence plates, and were mainly committed in public spaces. This manner of commission of killings is widely employed in Honduras and affects the entire society.[151] According to the Honduran Autonomous National University Observatory on Violence (*Observatorio de la Violencia de la Universidad Nacional Autónoma de Honduras*), killings committed by hitmen from January 2010 until December 2013 constituted the second cause of "violent deaths" in Honduras (killings for which there is no information available or committed for unknown motives are ranked first) and the main motives are personal vendettas ("*ajuste de cuentas*").[152]

121. During the mission conducted by the OTP to Tegucigalpa in March 2014, the delegation was explained that, regardless of their political affiliation, individuals involved in politics or of certain professions, such as businessmen, lawyers and journalists are often exposed to criminal organisations' reprisals when they refuse to cooperate with them. In its 2013 Annual Report, the CONADEH illustrates this by considering that "the practice of law in Honduras is a profession of high risk, due to the insecurity levels in the country" [Unofficial translation].[153] A reporter of the Honduran newspaper *El Heraldo*, who has been victim of threats, indicated that journalists of all political stripes and even those with no political affiliation have been victims of killings.[154]

122. In the case of the journalist and member of an LGTBI rights group, Erick Alexander Martínez Ávila, some sources suggest that his murder was motivated by his affiliation to the LIBRE Party, while others linked it to his work as a journalist or as human rights defender, and some others considered his murder as a homophobic hate crime.[155] In other cases, journalists and media workers were allegedly killed, threatened or assaulted, and media outlets sabotaged, for investigating or covering activities of organised crime and drug trafficking organisations, corruption and other crimes attributed to authorities unrelated to the coup, street gangs' activities, anti-

[151] Honduran law forbids the carrying of firearms on motorcycles and in 2011, in response to the high number of killings under this modality, legislation was adopted banning that two or more men could be aboard of a motorcycle, but the police have struggled to enforce it. See El Heraldo, "*Entra en vigencia decreto que prohíbe a dos hombres transportarse en motocicleta*", 13 December 2011.

[152] See *Observatorio de la Violencia*: *Boletín Enero-Diciembre 2013, Edición No. 32*, February 2014; *Boletín Enero-Diciembre 2012*, *Edición No. 28*, January 2013; *Boletín Enero-Diciembre 2011, Edición No. 24*, March 2012; and *Boletín Enero-Diciembre 2010*, *Edición No. 20*, March 2011.

[153] "*En Honduras el ejercicio del derecho es ya una profesión de alto riesgo para quienes la ejercen, debido a los niveles de inseguridad que hay en el país*", CONADEH, Annual Report, 2013, p.5.

[154] The Economist, "Central America. Out of Control", 7 March 2013.

[155] Freedom House, "Murder of Honduran LGTB Activist Must be Carefully Investigated", 8 May 2012.

mining demonstrations, environmental issues, demonstrations of educators and workers unions, and land conflicts.[156]

123. Lastly, the information available does not provide sufficient details on the identity of the perpetrators, which remains unknown in almost all the cases reported, as it is the case in most of the homicides committed in Honduras.[157] In the rare cases where national authorities have conducted investigations and/or initiated/completed judicial proceedings against suspects, these only involve direct perpetrators. Some sources attribute responsibility for the alleged crimes to state security forces, but only by inference based on the victims' political affiliation or their professional activity.

124. As documented by the IACHR in its Annual Reports from 2010 to 2013, human rights violations in Honduras prior to and after the 2009 coup are linked to structural situations concerning, *inter alia*, the situation of citizen security, the weakness of the administration of justice associated with high levels of impunity, and the marginalisation of segments of Honduran society.[158] In the period under analysis, it appears that this cycle of criminality and impunity has deteriorated further. In general, the increase in killings in the past years appears to be related to the incapacity of the government to deal with criminal and drug trafficking organisations, in particular after the coup.

125. Against a backdrop of high levels of violent crime and the prevalence of large numbers of criminal groups, the Office found scant information indicating links and common features between the alleged crimes, including in relation to their characteristics, nature, aims, targets, alleged perpetrators, times and locations, as to demonstrate the existence of a "course of conduct" within the meaning of article 7(2)(a) of the Statute.[159] In this respect, the alleged crimes fail to evidence a certain pattern of behaviour as to indicate that they were committed as part of a campaign or operation carried out against the civilian population.[160] Instead, the alleged crimes reflect more a mere aggregate of random acts,[161] appearing to stem from a context of

[156] See for example, IACHR: Annual Report 2013, paras.319, 325, 326, 328, 330, 331, 335, 337, 339, 340 and 345; Annual Report, 2012, paras.251, 252, 255, 258-260, 263, 265-267, 271, 274-277, 279, 280 and 282; Annual Report, 2011, paras.312, 321-329, 334, 335 and 339; and Annual Report, 2010, paras.488,-490, 502 and 508.

[157] *Observatorio de la Violencia*: *Boletín Enero-Diciembre 2013, Edición No. 32*, February 2014; *Boletín Enero-Diciembre 2012, Edición No. 28*, January 2013; *Boletín Enero-Diciembre 2011, Edición No. 24*, March 2012; and *Boletín Enero-Diciembre 2010, Edición No. 20*, March 2011.

[158] IACHR: Annual Report, 2013, para.235; Annual Report, 2012, paras.150-153; Annual Report, 2011, para.278; Annual Report, 2010, para.417.

[159] See *Gbagbo* Confirmation of Charges Decision, paras.210-212.

[160] See *Gbagbo* Confirmation of Charges Decision, paras.209-210

[161] See *Gbagbo* Confirmation of Charges Decision, para.209 (explaining that the expression "course of conduct" under article 7(2)(a) describes "a series or overall flow of events as opposed to a mere aggregate of random acts").

chronic and general violence in Honduras, where over 7,000 killings have been registered only in 2012.[162]

126. Consequently, the Office concludes that there is not a reasonable basis to believe that the alleged acts were committed as part of an "attack directed against a civilian population" under article 7(1) of the Statute.[163] Therefore, the Office does not consider that such acts amount to crimes against humanity under the Statute and will not assess the other contextual elements of crimes against humanity.

D. Alleged crimes committed in the Bajo Aguán region

1. Alleged crimes

127. According to some sources, in order to protect the interests of private corporations, Honduran authorities have allegedly implemented a stigmatisation campaign against the *campesino* movements[164] and have militarised the region to purportedly tackle criminality.[165] Since the 2009 coup, a large number of acts of violence have been allegedly committed by state and private security forces against members of *campesino* movements, their families and other individuals associated with their movements, in a context of land property conflicts opposing private corporations and around 3,000 peasants.

128. The information available indicates that at least 100 members of *campesino* movements, members of their families and other individuals associated with their movements have allegedly been killed from January 2010 to September 2013, of which 78 cases have been reported as targeted assassinations.[166] Other killings allegedly resulted from violent clashes between *campesinos* and privates security guards in the context of attempted land occupations by large groups of *campesinos*,

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[162] UNODC, Global Study on Homicide, 2013, p.126.

[163] *Gbagbo* Confirmation of Charges Decision, para.209; Kenya Article 15 Decision, para.80.

[164] In 2013, the IACHR received information regarding the fact that members of the "agrarian movement" who participated in the electoral process of November 2013 had been criminalised, and that they were the target of threats and assaults (IACHR, Annual Report, 2013, para.268).

[165] In order to tackle illegal activities of these organisations, the Honduran government has increased the deployment of military forces in the area, with the support of other countries, such as the United States of America. La Prensa, "*EUA ratifica ayuda militar a Honduras*", 15 August 2013.

[166] A report published by Rights Action contains a list of 93 *campesinos* and other individuals associated to them killed from January 2010 to February 2013. See Rights Action, "Human Rights Violations Attributed to Military Forces in the Bajo Aguán Valley in Honduras", 20 February 2013, ("Rights Action, Human Rights Violation Attributed to Military Forces"), pp.47-54. The World Bank's "Compliance Advisor Ombudsman's (CAO) audit of IFC's investment in Corporación Dinant" has also reported that information gathered from civil society organisations, including CCR, FIDH and Rights Action, indicates that at least 102 individuals affiliated with the peasant movement in the Aguán have been killed during the period of January 2010 to May 2013 (Office of the CAO, Audit Report of IFC Investment in Corporación Dinant S.A. de C.V., Honduras), 20 December 2013 ("CAO Audit Report"), p.9. CONADEH reported that, between 2009 and 2012, 92 individuals were killed, of which 53 were *campesinos* (CONADEH, Annual Report, 2012, pp.74 and 75).

and during forced eviction operations executed by state security forces, supported in some instances by private security guards. It is further alleged that six cases of enforced disappearance[167] and eight cases of killings preceded by the abduction of the victims by unknown assailants occurred.[168] In addition, a smaller number of private security guards and members of state security forces have also been killed under unclear circumstances. In two cases, it was alleged that crimes scenes were deliberately altered to falsely attribute the commission of a number of killings of private security guards to peasants.[169]

129. It is further alleged that 61 *campesinos* were victims of acts of violence, including severe beatings (in some instance employing guns and clubs), and of disproportionate and excessive use of force by members of state security forces and private security guards. In a limited number of cases, alleged victims included children, women and the elderly. Most of these cases reportedly took place in the context of forced evictions operations or following attacks that seem to be related to these operations.

130. The information available indicates that 30 forced evictions operations reportedly took place from January 2010 to October 2012. The Office notes, however, that eight of these incidents did not take place in the Bajo Aguán region, but in the departments of Francisco Morazán, La Paz, Cortés, Santa Barbara, Yoro and El Paraíso; one of which is not related to a land issue.[170]

131. When conducting the alleged evictions, members of security forces, including police, armed forces, the special police unit Cobra, La Ceiba's Fourth navy base, *Xatruch III* Task Force, as well as private security guards working for private corporations, allegedly opened fire indiscriminately and used excessive quantities of tear gas (sometimes shot from three to four meters by high power launchers) against crowds of *campesinos*. It is further alleged that they also proceeded with arbitrary detentions, destroyed and set fire to *campesinos*' belongings, their houses and other public properties, such as schools, churches, a kindergarten, and community crops and livestock. Methods and means reportedly employed by the alleged perpetrators included regular night raids, mistreatment of women and children, threats and intimidation measures, military tactics and bulldozers to destroy houses and crops

[167] The CCR/FIDH Report indicated that five individuals were allegedly victims of enforced disappearance in 2011: two members of MARCA, a taxi driver and another individual of unknown profession with no apparent links to any *campesino* movement, and a social leader, pp.31 and 32. See also Rights Action, Human Rights Abuses Attributed to Military Forces, p.48.
[168] Rights Action, Human Rights Violation Attributed to Military Forces, pp.47-54.
[169] In an incident on 16 August 2011, it was reported that a truck, recognised to belong to security guards opened fire on another group of security guards. A similar incident was reported in September 2012 in the farm *Los Camarones* (Rights Action, Human Rights Violations Attributed to Military Forces, p.20).
[170] CCR/FIDH Report, pp.27-31.

field. During one of the reported eviction operations, members of the Cobra unit allegedly employed a military sharp shooter against an entire *campesino* community. In another case, a farmer cooperative was attacked by unknown assailants in vehicles bearing police insignias.[171]

2. Contextual elements

"Attack directed against a civilian population"

132. According to the information available, the civilian population allegedly targeted is composed of members of *campesino* associations involved in land disputes against large landowners and private corporations,[172] members of their families and other individuals, including journalists, members of the legal profession and human rights defenders, associated with these movements. The Office notes that, although most of the victims fall within the civilian population allegedly targeted, in a few cases private security guards and members of state security forces have also been reportedly killed by *campesinos* in the context of land occupation attempts and under unclear circumstances.[173] In some isolated cases, private security guards have allegedly committed killings and altered the crime scene to incriminate members of peasant movements.[174]

133. The information available indicates that the alleged crimes were committed in the context of land disputes between *campesino* associations and large landowners and private corporations operating in the Bajo Aguán region,[175] or even as "part of the overall context of state repression and persecution in partnership with powerful private actors".[176] Nevertheless, as highlighted in a number of reports and media

[171] Rights Action, Human Rights Violations Attributed to Military Forces, p.33; and CCR/FIDH Report, p.28.
[172] *Campesino* associations allegedly targeted include MUCA and its 28 affiliated cooperatives (including *Guanchías*, *La Confianza*, *La Aurora*, *25 de Abril* and *San Esteban*), *Cooperativa Camarones*, COPINH, COHDEFOR, MARCA and its affiliated groups (*Cooperativa El Despertar*, *Cooperativa Trinidad*, *Cooperativa San Isidro*), *Movimiento Campesino Colonia Nueva Vida de Rigores*, MCR (*Movimiento Campesino de Rigores*), *Comunidad Cayo Campo*, MOCRA (*Movimiento Campesino de Recuperación del Aguán*), *Refundación Gregorio Chávez*, MCA (*Movimiento Campesino del Aguán*) and its affiliated cooperatives (*Unión Catracha*, *14 de Mayo*, *Nueva Esperanza*, *Nueva Vida* and *Familias Unidas*), *Cooperativa Campo Verde II*, *Cooperativa Corfinito*, *El Salado Lislis* and MOCSAM (*Movimiento Campesino de San Manuel*).
[173] Rights Action, Human Rights Violations Attributed to Military Forces, pp.28, 55 and 56.
[174] Rights Action, Human Rights Violations Attributed to Military Forces, p.20.
[175] See for example FIDH, "Honduras: Human Rights Violations in Bajo Aguán", September 2011, pp.14-16; HRW, "There Are No Investigations Here. Impunity for Killings and Other Abuses in Bajo Aguán Honduras", February 2014, ("HRW, There Are No Investigations Here"), p.2; and CAO Report, pp.2 and 3.
[176] In particular considering that the 2009 coup interrupted ongoing negotiations between the government and *campesino* cooperatives on the validity of property titles over tracks of land currently disputed with the owners of landholding firms (CCR/FIDH Report, pp.19 and 20).

articles,[177] the Office notes that the ongoing conflict in the region is not limited to land issues, but it is also closely linked to criminal and drug trafficking organisations' activities, African palm plantation robbers and looters, and rivalries between peasant farmer groups. In this context, the Office found scant information indicating links and common features between the alleged crimes, "in terms of their characteristics, nature, aims, targets and alleged perpetrators, as well as times and locations", as to establish the existence of a "course of conduct".[178]

134. Although in most of the cases the identity of the alleged perpetrators remains unknown, some sources attribute the commission of the alleged crimes to state security forces, including police officers, members of the Cobra unit, members of the 15th Battalion, members of the Fourth navy base in La Ceiba, and joint task forces, as well as to private security guards employed by private corporations.[179] It is alleged that killings of *campesinos* were committed in the context of violent land occupation attempts carried out by large groups of *campesinos*[180] on properties under the control of private owners, such as Dinant Corporation's *El Tumbador*, *Paso Aguán* and *El Despertar* plantations. The Office notes that the information available on the weapons reportedly employed by *campesinos* during these operations is contradictory. While some sources indicate that they were armed only with machetes, some others indicate that *campesinos* were "heavily armed with illegal assault weapons".[181] It is also alleged that security guards and workers of the Dinant Corporation have been killed during land occupation attempts by *campesinos*. At least one security guard killed reportedly "showed signs of [having been] executed while facing the floor unarmed" and a Dinant farm worker was reportedly captured and tortured before being summarily executed.[182]

135. The information available further indicates that in the department of Colón there are at least four armed groups that participate in land invasions in exchange for payment. According to local authorities, these armed groups are heavily armed and are also involved in robberies and other crimes.[183] For example, in March 2013, one of

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[177] See for example, U.S. Department of State, "Honduras Human Rights Report", 2013; CAO Audit Report, pp.6, 32 and 46; La Prensa, "*Urgen al Gobierno poner fin al caos en el Bajo Aguán*", 15 August 2013; and La Tribuna, "*Narcotráfico y el crimen organizado mantienen el conflicto del Bajo Aguán*", 17 April 2012.

[178] *Gbagbo* Confirmation of Charges Decision, para.212.

[179] See for example FIDH, "Honduras: Human Rights Violations in Bajo Aguán", September 2011, pp.13-15; Rights Action, Human Rights Violations Attributed to Military Forces, p.10; UN WGM Report, paras.38 and 39; IACHR, Annual Report 2013, para.255.

[180] According to HRW approximately 160 *campesinos* members of the MCA carried out the occupation attempt (HRW, There Are No Investigations Here, p.21).

[181] See HRW, There Are No Investigations Here, p.22, quoting a letter sent by Dinant Corporation of 18 October 2013; El Heraldo, "*Campesinos armados invaden otra finca en el Bajo Aguán, al Norte de Honduras*", 25 July 2012.

[182] See HRW, There Are No Investigations Here, p.32, quoting a letter sent by Dinant Corporation of 18 October 2013.

[183] La Prensa, "*Grupos armados evolucionan en el Bajo Agúan*", 15 August 2013.

these groups appeared to be involved in an attack against a military contingent near the African palm plantation, *La Atascosa*.[184] Moreover, according to the information available, organisations involved in the robbery of African palm fruits use military weapons to commit their unlawful activities. As stated by a regional delegate of the CONADEH in the department of Colón, these armed groups possess weapons of higher calibre than the armed forces, such as Remington R-15 assault rifles, M60 machine guns, AK-47 and FAL rifles.[185] It is alleged that these organisations could have ties with larger criminal organisations, but the security situation prevents authorities from carrying out investigations, as judges and prosecutors reportedly receive threats from farmers linked to these armed groups. In addition to these groups, the information available indicates that groups of armed farmers of unclear affiliation have occupied lands and stolen livestock of independent farmers.[186]

136. The Office notes that allegations of state security forces' involvement in the commission of the alleged crimes are, in some instances, substantiated mainly by inference from the weapons used by the perpetrators or by the time and location of the alleged crime. For example, Rights Action alleges that targeted killings reported demonstrate the existence of a pattern of violence that can be identified as "death squad style executions", based on the fact that the time frame of those killings (2010-2013) coincides with the deployment of the 15th Battalion and other military operations in the region.[187] However, as noted above, not only the armed forces are equipped with military weapons, but also *campesinos*, criminal and drug trafficking organisations and private security guards have all access to high caliber and sophisticated equipment. In October 2011, 300 FAL riffles and 300,000 high caliber bullets were reportedly stolen from the Cobra special unit. Several officials have been charged for the incident and authorities suspect that part of these stolen weapons are in the hands of African palm fruit robbers and drug trafficking organisations in the Bajo Aguán region.[188] In these circumstances, the Office finds it difficult to clearly identify the perpetrators or any group that could be involved in the commission of these crimes.

137. According to the information available, most of the alleged crimes reportedly took place between 2009 and 2012.[189] This coincides with the period of political instability in Honduras following the coup and that led to the development of criminal and drug trafficking organisations in the region, the deployment of military operations by

[184] La Prensa, "*Urgen al Gobierno poner fin al caos en el Bajo Aguán*", 15 August 2013.
[185] La Prensa, "*Urgen al Gobierno poner fin al caos en el Bajo Aguán*", 15 August 2013.
[186] La Prensa, "*Urgen al Gobierno poner fin al caos en el Bajo Aguán*", 15 August 2013.
[187] Rights Action, Human Rights Violations Attributed to Military Forces, p.22.
[188] La Prensa, "*No descartan que armas de cobras estén en el Aguán*", 15 August 2013.
[189] According to the CONADEH, 92 individuals were allegedly killed in the Bajo Aguán region between 2009 and 2012 (CONADEH, Annual Report, 2012, p.79).

former President Lobo,[190] and the highest growth rate of African palm oil production in Honduras.[191] Since 2013 the number of killings in the region decreased by more than a half.[192] Although a few confrontations persist, they are mainly related to personal vendettas and retaliations between families of farmers.[193] In its 2013 Annual Report, the IACHR pointed out that it received information on alleged threats and assaults against "members of the agrarian movement who participated in the electoral process of November 2013", but it did not refer to further killings or other crimes committed against the alleged targeted population after March 2013.[194]

138. The prevalence and expansion of criminal and drug trafficking organisations appear to be the main factor of rampant violence in the region, in particular from 2009 to 2012, rather than land disputes between local populations and private corporations. Both members of *campesino* associations and owners of private corporations have been accused of having links with these organisations.[195] As confirmed by the information gathered by the Office during its mission to Tegucigalpa in 2014, criminal organisations and international drug cartels are deeply involved in local businesses and criminal activities in the region and seem to be involved in most of the alleged crimes in the Bajo Aguán, including unlawful occupations of land and robbery of African palm fruits, in order to retain control of the region and to continue to operate in total impunity.

139. In light of the expansion of criminal and drug trafficking organisations in the Bajo Aguán region, in particular following the 2009 coup, the Office found that most of the alleged crimes appear to be related to the cycle of violence that has plagued the region for years. Although some of the alleged crimes could be related to land disputes between *campesino* groups and large landowners and private corporations, in the absence of sufficient information on links and commonality of features between the multiple alleged crimes, the Office found that there is not a reasonable basis to believe that they constitute a "course of conduct" within the meaning of article 7(2)(a) of the Statute.

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[190] Former President Porfirio Lobo considered the situation of rampant violence in the Bajo Aguán a "national security crisis" and deployed the army three times in 2010. See HRW, There Are No Investigations Here, pp.1 and 2.

[191] With 54 million tons in 2011, it is the most widely produced vegetable oil worldwide. It has the highest yield of any oil crop and is the cheapest vegetable oil to produce and refine. See Rainforest Rescue, "Palm Oil. Facts about the ingredient that destroys the rainforests". See also Indexmundi, "Honduras Palm Oil Production by year".

[192] According to government statistics, the number of violent deaths decreased to an estimated 16 as of September 2014, from an estimated 40 in 2012. See U.S. Department of State, "Honduras Human Rights Report", 2013, p.3.

[193] See statements from Col. René Jovel Martínez, head of the *Xatruch* Operation in Tocoa in El Heraldo, "*Violencia se aleja de las fincas de palma africana en el Bajo Aguán*", 19 May 2014.

[194] IACHR, 2013 Annual Report, paras.265-270.

[195] Miguel Facussé Barjum, owner of the Dinant Corporation, has been accused of having ties with drug trafficking organisations and that its properties have been used as staging posts. See for example, InsightCrime, "Honduran Tycoon Accused of Drug Ties Named 'Press Predator' ", 18 May 2012; and CAO Report, pp.6 and 31.

140. Therefore, the Office concludes that there is not a reasonable basis to believe that, collectively, the alleged acts were committed as part of an "attack directed against a civilian population" within the meaning of article 7 of the Statute.[196] Consequently, based on the considerations outlined above, the Office does not consider that such acts constitute crimes against humanity under the Statute and will not assess the other contextual elements of crimes against humanity.

VI. CONCLUSION

141. Whereas the Office found that a number of acts committed by the *de facto* regime in the aftermath of the June 2009 *coup d'état* could constitute a "course of conduct", the information available does not provide a reasonable basis to believe that this campaign qualifies as a widespread or systematic attack directed against any civilian population pursuant to a State policy, and therefore amounted to a crime against humanity under article 7 of the Statute.

142. As regards allegations of crimes against various groups of civilians, especially those who resisted the coup, committed after 27 January 2010, as well as with regard to alleged crimes committed in the Bajo Aguán region mainly against members of *campesino* movements involved in land disputes with private corporations, the information available does not provide a reasonable basis to believe that crimes against humanity have been committed. In particular, the information available is insufficient to substantiate the existence of a "course of conduct", in terms of links and common features between the alleged crimes, including in relation to their characteristics, nature, aims, targets and alleged perpetrators, as well as times and locations.

143. Accordingly, the Office has determined that there is no reasonable basis to proceed with an investigation and has decided to close this preliminary examination. Should further information become available in the future which would lead the Office to reconsider these conclusions in the light of new facts or evidence, the preliminary examination could be re-opened.

[196] *Gbagbo* Confirmation of Charges Decision, para.209; Kenya Article 15 Decision, para.80.