

## II. SITUATIONS UNDER PHASE 2 (SUBJECT-MATTER JURISDICTION)

### GABONESE REPUBLIC

#### *Procedural History*

23. The situation in the Gabonese Republic has been under preliminary examination since 29 September 2016. The Office has received a total of 17 communications pursuant to article 15 in relation to this situation.
24. On 21 September 2016, the Office received a referral on behalf of the Government of the Gabonese Republic with respect to alleged crimes potentially falling within the ICC's jurisdiction committed in its territory since May 2016, with no end-date.<sup>9</sup>
25. On 28 September 2016, the Office received a supplementary note from the Gabonese authorities' legal representatives clarifying the scope of the referral and providing additional details on alleged crimes.
26. On 29 September 2016, the Prosecutor issued a statement informing the public of the referral and announcing the opening of a preliminary examination of the situation in the Gabonese Republic since May 2016.<sup>10</sup>
27. On 4 October 2016, the Presidency of the ICC assigned the situation to PTC II. This was a procedural step in accordance with regulation 46(2) of the Regulations of the Court, and as such does not signify the beginning of an investigation. Pursuant to article 53(1), it is for the Prosecutor to determine whether there is a reasonable basis to proceed with an investigation.

#### *Preliminary Jurisdictional Issues*

28. The Gabonese Republic deposited its instrument of ratification to the Statute on 20 September 2000. The ICC therefore has jurisdiction over Rome Statute crimes committed on the territory of the Gabonese Republic or by its nationals from 1 July 2002 onwards.

#### *Contextual Background*

29. On 27 August 2016, a presidential election was held in the Gabonese Republic. Incumbent President Ali Bongo Ondimba, elected in 2009 after the death of his father who served as President for 42 years, ran for a second term against the main opposition candidate, former Minister of Foreign Affairs, Jean Ping. In

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<sup>9</sup> [Referral under Article 14 of the Rome Statute](#), 20 September 2016.

<sup>10</sup> [Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, concerning referral from the Gabonese Republic](#), 29 September 2016.

spite of growing tensions reported between the supporters of both candidates in the previous months, the election was generally held in a peaceful climate and with a relatively high voter turnout. A joint mission from the African Union (“AU”) and the Economic Community of Central African States (“ECCAS”) and an electoral observation mission from the European Union (“EU”) were deployed to monitor the process.

30. Prior to the publication of the official results, both camps declared victory and accused each other of attempting to commit fraud. On 31 August 2016, the Minister of Interior, Decentralization, Security and Public Hygiene, Pacôme Moubelet Boubeya, announced Ali Bongo Ondimba’s victory by a slender margin. According to the official results, Ali Bongo Ondimba won 49.8% of the vote against 48.2% for Jean Ping with a voter turnout of 59.5%. The opposition contested the results and resigned from the National Electoral Commission (*Commission électorale nationale autonome et permanente*, “CENAP”) denouncing widespread irregularities, in particular in Ali Bongo’s home province Haut-Ogooué. According to the electoral commission, President Bongo Ondimba won 95.46% of the votes in the province with a turnout of 99.93%. The EU Electoral Observation Mission in Gabon flagged “evident anomalies” in the results registered in Haut-Ogooué.
31. Immediately after the announcement of the provisional results, thousands of Jean Ping’s supporters held public demonstrations in Libreville and other cities claiming the rigging of the elections and calling Ali Bongo to step down. In this context, violent clashes between opposition supporters and security forces broke out in at least nine neighbourhoods of the Gabonese capital and other cities resulting, according to some reports, in hundreds of detentions. A more limited number of deaths and injuries on both sides were also initially reported, although there are important discrepancies between the number of victims announced by the Government and those claimed by the opposition. During violent riots in Libreville, the Gabonese National Parliament and other Government buildings, as well as various private residences and businesses, were reportedly looted and set ablaze by demonstrators.
32. In the early hours of 1 September 2016, the Gabonese security forces reportedly raided the opposition’s headquarters and subsequently broke into the premises, facing strong resistance from hundreds of opposition supporters. While the opposition claims that their supporters in the headquarters were brutally assaulted, the Gabonese authorities argue that the raid was conducted to arrest armed criminals for their alleged implication in riots and various acts of violence in Libreville.
33. On 27 September 2016, President Ali Bongo Ondimba was sworn in for his new term, after the Constitutional Court, rejecting an appeal by Jean Ping who had called for a recount over widespread allegations of fraud, upheld his election.

## *Alleged Crimes*

34. The following summary of alleged crimes is preliminary in nature and is based on the referral submitted by the Gabonese authorities, article 15 communications received by the Office and other open sources available. The descriptions below should not be taken as indicative of, or implying any particular legal qualifications or factual determinations regarding the alleged conduct. Additionally, the summary below is without prejudice to the identification of any further alleged crimes which may be made by the Office in the course of its continued analysis.
35. The preliminary examination focuses on alleged crimes committed in the Gabonese Republic since May 2016 in the context of the 2016 presidential election. The referral from the Gabonese Government alleges that the main opposition leader and former presidential candidate, Jean Ping, incited his supporters to genocide during a political rally and that hundreds of opposition supporters resorted to various acts of violence amounting to crimes against humanity.
36. According to the information available, violent clashes between the security forces and anti-government demonstrators broke out on 31 August 2016, resulting in hundreds of arrests. According to some reports, some detainees were subjected to acts of torture and ill-treatment. Furthermore, an unclear number of killings were also reported between 31 August and 4 September 2016. In this context, the alleged attack on Jean Ping's headquarters on 1 September 2016 appears to mark a peak of violence. A limited number of crimes are also alleged to have occurred after 4 September 2016.
37. *Killings and injuries*: the number of civilians killed in the period from 31 August to 4 September 2016 is subject to highly diverging estimates provided by the opposition (up to 300) and by the Government (four). Based on publicly available sources, between 7 and 27 civilians appear to have been killed during the post-election period. Additionally, between 38 and 41 civilians would have been injured during the same period.
38. As thousands of anti-government demonstrators rallied in Libreville and other cities against the provisional results announced on 31 August 2016, the alleged killings were reportedly committed during violent clashes between State security forces and demonstrators, and during security operations conducted across the country to repress various acts of violence attributed to supporters of Jean Ping. The information available also suggests that one police officer was reportedly killed, and that 67-70 members of the Gabonese security forces were injured during the events.
39. According to the information available, at least one person was reportedly killed by State security forces during the alleged attack on the opposition's

headquarters. No casualties among the State forces were recorded during this incident.

40. *Enforced disappearances*: between 31 August and 28 September 2016, the opposition recorded 47 alleged instances of enforced disappearances related to the post-electoral unrest. It is also alleged that medical facilities and morgues withheld from family members information on the number of dead bodies in their premises.
41. *Deprivation of liberty*: the information available suggests that between 800 and 1,100 individuals were arrested in Gabon in the period from 31 August to 4 September 2016, in particular on the first two days. On 1 September 2016, the Minister of Interior reported that State security forces had arrested between 600 and 800 individuals in Libreville, including during the alleged attack on Jean Ping's headquarters, and conducted between 200 and 300 arrests in other cities. International media outlets generally reported over a thousand arrests during the same five-day period.
42. *Torture and other forms of ill-treatment*: the opposition alleges that a few opposition supporters were subjected to acts of torture and/or ill-treatment during their detention. It is also alleged that one civilian was tortured by members of the opposition for his perceived affiliation with the Government.
43. *Rape and other forms of sexual violence*: the opposition alleges that at least three incidents of rape and other forms of sexual violence were also reported in the context of post-electoral unrest.
44. *Incitement to commit genocide*: the Gabonese Government alleges that a public statement made by Jean Ping during the presidential campaign would amount to the crime of inciting to commit genocide. Namely, during a public meeting held during his political campaign, Mr Ping reportedly called on his supporters to "fight to the death" to defend their votes and would have referred to Ali Bongo's supporters as "cockroaches that should be eliminated". According to Jean Ping, these allegations are ill-founded and the video that circulated in the media was edited and disseminated by the Government to undermine his candidacy.

#### ***OTP Activities***

45. Over the reporting period, the Office has continued to conduct a thorough factual and legal assessment of all the information available from various sources, including article 15 communications, media reports and the supporting materials and documentation accompanying the referral. The Office notes, however, that the events in questions have not been the subject of any independent fact-finding mission or international inquiry.

46. Consistent with standard practice, the Office has subjected the information available to rigorous source evaluation, including in terms of the reliability of the sources and credibility of the information received. In this regard, the Office has continued to take steps to verify and corroborate a number of relevant factual issues, including by requesting additional information from relevant actors.
47. The Office also engaged and consulted with relevant stakeholders, including by holding meetings at the seat of the Court. In December 2016, the Office met with Jean Ping's legal counsel, who submitted an article 15 communication on behalf of his client and various victims and Gabonese civil society organisations. In April 2017, the Office met with a delegation of representatives of Gabonese civil society organisations, who provided additional information on crimes allegedly committed against the civilian population in the context of the situation.
48. In June 2017, the Office conducted its first mission to Libreville with a view to informing the relevant stakeholders and the general public of the preliminary examination process; seeking clarification on a number of incidents disputed by the Government and the opposition; and gathering and verifying further information available on the electoral period and the crimes allegedly committed in this context. During the mission, the OTP delegation met with political and judicial authorities, including the Ministers of Justice, Interior, Defence and Communications, as well as with the General and the Public Prosecutors of Libreville. The Office also held separate meetings with the *Coalition pour la Nouvelle République*, including with its President Jean Ping, as well as with civil society organisations, the UN Regional Office for Central Africa ("UNOCA") and diplomatic representations in Libreville. The OTP delegation further engaged with the national and international press in Libreville to provide clarifications on the scope and the process of the preliminary examination.

### *Conclusion and Next Steps*

49. The Office is continuing its assessment of the information available in order to reach a determination on whether there is a reasonable basis to believe that the alleged crimes fall within the subject-matter jurisdiction of the Court. Strictly guided by the requirements of the Statute, the Office intends to reach a determination in due course.
50. Given the open-ended nature of the situation referred, any alleged crime occurring in the future in the context of the situation in the Gabonese Republic could also be included in the Office's analysis.