

PUBLIC REDACTED ANNEX A

**PUBLIC REDACTED VERSION OF THE SEPARATE OPINION OF JUDGE
MARÍA DEL SOCORRO FLORES LIERA**

1. At the outset, I note that the existence of a non-international armed conflict between the Seleka and the ‘pro-Bozizé forces’, and therefore, the applicability of international humanitarian law during the time frame of the present case, was heavily contested between the parties.
2. I agree with the Chamber’s conclusion that a non-international armed conflict existed in CAR from at least December 2012, when protracted armed violence occurred between the Central African armed forces and an organised non-State armed group, known as the Seleka.¹ However, I disagree with my colleagues’ overall conclusion in that they were not satisfied beyond a reasonable doubt that the armed conflict between the original parties to this conflict continued following the Seleka takeover of Bangui on 24 March 2013.²
3. The year 2013 was a violent and volatile year in the Central African Republic. Clashes, instability, displacement, absence of rule of law, killings and suffering of the civilian population, among others, were a constant during the whole year, having as the epicentre, the conflict between two main actors: a coalition of armed groups known as the Seleka and military forces loyal to François Bozizé, forces which reconstituted and regrouped within a short period of time after the ousting of Bozizé, and became known as the Anti Balaka. During this time, the country was not peaceful, hostilities preceding the takeover of Bangui by the Seleka on 24 March 2013 diminished in intensity but never ceased and the risk of their resumption was always present and motivated a heinous persecution of persons perceived to be Bozize supporters.
4. I recall that my colleagues’ conclusion is based *inter alia* on their findings that François Bozizé’s ouster on 24 March 2013 represented a complete defeat of the Central African

¹ Trial Judgment, para. 540 (legal findings).

² Trial Judgment, para. 573 (legal findings).

armed forces by the Seleka and brought to an end the armed conflict that began in 2012.³ My colleagues considered that, in the present case, several factors indicating an end to an armed conflict not of an international character were present cumulatively and to a significant degree. These included (i) the lack of continuity in the parties due to the Anti-Balaka organizing months after the defeat of the FACA, and the significant differences in the leadership, structure and composition of these two bodies; (ii) the lack of military preparedness, resources and logistical capability on the part of the Anti-Balaka; and (iii) the long duration of the period without armed confrontations between the Seleka and the so-called ‘pro-Bozizé forces’ between March and August 2013.⁴

5. While the evidence before the Chamber is incomplete, it was sufficient, in my view, to assess the situation in CAR. I accept that depending on the standard applied by a Chamber, the outcome on the continuation of the concerned armed conflict could vary. However, in my view, the only reasonable inference based on the evidence before the Chamber is that the armed conflict between the Seleka and the so-called pro-Bozizé forces continued well into 2014. Based on my reading of the evidence, I take a different view regarding the continuity of the parties to the conflict, their organisation, as well as the intensity of the hostilities between them, as set out below.

a) Parties to the Conflict

6. I agree with my colleagues that after 24 March 2013, the Seleka effectively continued to remain an organised non-State armed group.⁵ However, I disagree with the conclusion that the Central African armed forces involved in the armed conflict from at least December 2012 to 24 March 2013 were different from the group of individuals that joined together to form a non-state armed group called the Anti-Balaka that emerged after 24 March 2013.⁶
7. In my view, the Anti-Balaka constituted a splinter group of the Central African armed forces that, as a non-state armed group, continued the armed conflict against the Seleka

³ Trial Judgment, para. 569 (legal findings).

⁴ Trial Judgment, para. 572 (legal findings).

⁵ Trial Judgment, paras 544-548 (legal findings).

⁶ Trial Judgment, paras 549-560 (legal findings).

after 24 March 2013.

8. I recall that after the Seleka takeover of Bangui on 24 March 2013, many members of the FACA and Presidential Guard abandoned their posts and went into hiding in Bangui, or sought refuge in the DRC, Cameroon and the Republic of the Congo.⁷ Many members of the Central African defence and security forces reported for duty between early April 2013 and July 2013 and were formally brought under Michel Djotodia's command as President and Minister of Defence.⁸ I acknowledge that not all members of the Central African forces left CAR or deserted. However, in my view, a sufficient number fled to regroup and reorganise a non-state armed group that splintered and emerged from one of the original parties to the conflict.
9. As an indication of an intent to reorganise, I recall that the deserting members of the Central African armed forces took what weapons they could carry and hid or abandoned weapons that they could not take with them prior to leaving Bangui.⁹ I agreed with my colleagues that that these weapons may not have been retrieved on a large-scale by the Anti-Balaka.¹⁰ However, in my view, it was sufficient that at least some of these weapons that had been hidden were obtained by individuals in Gobere and divided amongst the groups that became to be known as the Anti-Balaka.¹¹ The only reasonable inference in these circumstances was that these weapons had been hidden with the intention of recovering them later to fight against the Seleka.
10. Another indicator was that François Bozizé and persons close to him began organising in opposition to the Seleka shortly after the Seleka takeover of Bangui on 24 March 2013 and did so continuously, at the very least, until August 2013.¹² In this respect, I recall that François Bozizé and persons close to him held meetings to solicit support from abroad and to prepare a movement to expel the Seleka from CAR.¹³ I note that in

⁷ Trial Judgment, para. 376 (factual finding). *See also* P-2232: T-102, pp. 13-14, 21 (recognising that civilians and soldiers in Zongo were housed separately and that there was a heavy presence of soldiers along the river); P-1339: T-131, p. 22-23.

⁸ Trial Judgment, para. 377 (factual finding).

⁹ Trial Judgment, para. 376 (factual finding).

¹⁰ Trial Judgment, paras 384 (factual finding), 444 (evidentiary analysis).

¹¹ Trial Judgment, paras 444, 475, 478 (evidentiary analysis) referring to P-2232: T-102, pp. 22, 39-43; P-2269: CAR-OTP-2111-0336, at 0345, para. 68; P-1339: T-131, p. 34; P-1524: CAR-OTP-2062-0468, at 0486-0487, paras 90-92.

¹² Trial Judgment, para. 378 (factual finding).

¹³ Trial Judgment, para. 378 (factual finding).

meetings in Zongo (as early as April 2013), persons linked to François Bozize started to prepare the grounds, which would later result in the emergence of the Anti-Balaka.¹⁴ A number of individuals alleged to have links to François Bozizé communicated with each other from at least May 2013 and were strategizing about organising a response to the Seleka.¹⁵ Maxim Mokom in Zongo was also communicating with Bernard Mokom (a relative of François Bozizé) and Patrice-Edouard Ngaïssona (a former Minister of Youth, Sport, Arts and Culture under Bozizé) in Cameroon.¹⁶ On 16 August 2013, FROCCA was announced, a movement created by Lin Banoukepa and involving Patrice-Edouard Ngaïssona and Levy Yakete among others.¹⁷ Both Maxime Mokom and Patrice-Edouard Ngaïssona were then later associated with the Anti-Balaka leadership in 2014.¹⁸ The inference is inescapable that the preparatory activities in CAR and in neighbouring countries during this time, amongst individuals linked to François Bozizé, were conducted with a view to carrying out armed violence against the Seleka.

11. As regards the composition of the Anti-Balaka, I recall that some youth groups associated with François Bozizé's political party, namely COCORA and COAC were active before the Seleka takeover of Bangui on 24 March 2013.¹⁹ I note Jean-Jacques Demafouth's evidence that persons linked with François Bozizé resorted to using these youth groups and mobilised the population against the Seleka.²⁰ I also recall that people in Central African provinces would organise and arm themselves to defend against particular security threats.²¹ From the number of civilians that joined the groups in Govere, there were those that had previously been part of self-defence groups in their localities.²² I consider that self-defence groups have been a part of the life in CAR, with

¹⁴ P-2232: T-104, pp. 20-21; P-2232: T-103, pp. 30-33; P-2232: T-102, pp. 16-17; P-2269: CAR-OTP-2111-0336, at 0339-0340, para. 25, [REDACTED]. See also P-1339: T-131, pp. 22-23.

¹⁵ Trial Judgment, para. 378 (factual finding).

¹⁶ Trial Judgment, para. 378 (factual finding).

¹⁷ Trial Judgment, para. 378 (factual finding).

¹⁸ Trial Judgment, para. 393 (factual finding). See also P-2232: T-102, pp. 25-26; P-0884: T-077, pp. 45, 50; P-0884: CAR-OTP-2072-1541, at 1559-1562; P-0884: CAR-OTP-2080-1678, at 1685; P-0291: prior recorded testimony given in the *Yekatom and Ngaïssona* case, ICC-01/14-01/18-T-051-CONF-ENG, p. 41.

¹⁹ Trial Judgment, paras 365 (factual findings), 414 (evidentiary analysis).

²⁰ Trial Judgment, para. 414 (evidentiary analysis), referring to P-2328: CAR-OTP-2099-0165, at 0172-0173, paras 41-42, draft translation, CAR-OTP-00000147, at 000008-000009, paras 41-42; P-2328: prior recorded testimony given in the *Yekatom and Ngaïssona* case, ICC-01/14-01/18-T-046-CONF-ENG, pp. 56-57, 61, 63; P-2328: T-129, pp. 6-12. See also P-0291: prior recorded testimony given in the *Yekatom and Ngaïssona* case, ICC-01/14-01/18-T-051-CONF-ENG, pp. 13-14.

²¹ Trial Judgment, para. 353 (factual finding).

²² Trial Judgment, para. 383 (factual findings).

each government facilitating their establishment to fulfil its own interests. François Bozize was no exception. Under his leadership, several self-defence groups, such as the anti-Zaraguina, were supported by his government.²³ In my view, the repurposing of the youth groups in Bangui and the self-defence groups in the provinces, by individuals linked to François Bozizé in 2013, was just another part of the reorganisation efforts by the Anti-Balaka to counter the Seleka.

12. In assessing continuity of the parties, I also considered the Seleka responses to reorganisation efforts by the Anti-Balaka. I recall that, as soon as the Seleka took power and senior Seleka members acquired positions in the government, armed Seleka searched houses for weapons and members of the FACA, using local informants to locate their targets.²⁴ The Chamber has also found that the Seleka carried out a widespread and systematic attack against the civilian population of Bangui perceived as supporting François Bozizé.²⁵ As part of this attack, persons detained and mistreated were interrogated about weapons and their links with François Bozizé.²⁶

13. In my view, this attack was carried out with the aim of preventing any reorganisation by the splintered part of the Central African armed forces and counter any challenges to the Seleka's military authority in CAR. The widespread campaigns and attacks launched in areas of Bangui perceived to be supportive of François Bozizé²⁷ also support this conclusion. I recall that Michel Djotodia and Nouradine Adam appealed to the members of the armed forces to return to work and that some of these people did indeed return to work.²⁸ However, in my view, these were not genuine appeals for Central African armed forces to resume duties. The Chamber is well aware that members of the FACA and Presidential Guards, even those who returned to work during this period, were subjected to violence, intimidation and harassment.²⁹

14. Furthermore, I recall that Seleka suspected former FACA members in exile in the DRC

²³ P-2328: CAR-OTP-2099-0165, at 0172-0173, paras 40-41, draft translation, CAR-OTP-00000147, at 000008-000009, paras 40-41.

²⁴ Trial Judgment, paras 625, 633 (factual findings); paras 665, 702, 754 (evidentiary analysis) referring *inter alia* to P-1524: CAR-OTP-2062-0468, at 0486-0487, paras 90-92.

²⁵ Trial Judgment, paras 845-868 (legal findings).

²⁶ See Trial Judgment, paras 943-946 (Incident C); paras 978-983 (Incident J); paras 1000, 1003 (Incident M); para. 1010 (Incident N); paras 1013, 1025 (Incident O); paras 1041, 1057 (Incident Q).

²⁷ See Trial Judgment, paras 625-630 (operations in the 7th arrondissement and Boy Rabe).

²⁸ See Trial Judgment, paras 377 (factual findings), 649 (factual findings).

²⁹ See Trial Judgment, para. 649 (factual findings).

of posing a security threat to the Seleka in Bangui and Nouradine Adam was attempting to gather information on their activities.³⁰ The Seleka also targeted individuals perceived to be supporters of François Bozizé in efforts to gather information.³¹ In my view, it is reasonable to infer that the Seleka were aware of the intentions of the so-called ‘pro-Bozizé forces’ to return to power.

15. I now turn to the ideology underlying the Anti-Balaka. I note my colleagues’ conclusion that the former FACA and civilians were motivated to join the Anti-Balaka in order to respond to and defend against Seleka exactions.³² However, in my view, persons loyal to François Bozizé actively promoted the gathering of individuals and formation of groups in the bush, *using* the Seleka exactions as a tool to attract new recruits. I also note that FROCCA, created purportedly for the return of the ‘constitutional order’ in CAR, was nothing but political lobbying, on behalf of François Bozizé, to restore him as President of CAR.³³ Even though François Bozizé did not hold a leadership role in the Anti-Balaka after Michel Djotodia’s resignation,³⁴ François Bozizé’s own involvement in the Anti-Balaka in August 2013³⁵ was sufficient in my view to draw such an inference. On this basis, I consider that the Anti-Balaka initially formed with the objective to restore François Bozizé to power.

16. In my view, whether this objective was eventually fulfilled, or whether it continued to remain a unifying factor within the Anti-Balaka in 2014 was immaterial. It was also

³⁰ Trial Judgment, paras 387 (factual findings), 485 (evidentiary analysis). In my analysis, I additionally considered the following documents which when read holistically show the preparatory activities underway against the Seleka and the gathering of intelligence about them. *See* report dated 6 July 2013, CAR-OTP-2075-0908 (preparatory meeting of a rebellion); report dated 1 August 2013, CAR-OTP-2075-0933 (on rumours about the presence of a rebel group in Bertoua and Tuboro led by Oliver Koudemon, Papy Bozize and Francis Bozize, which are preparing an offensive aiming at destabilising the current regime); report dated 19 September 2013, CAR-OTP-2075-1001 (pro-Bozize civilians in DRC received supplies from Sebastien Wenezoui and ‘who is running the events in Boeing’ and refers also to intelligence collected Sani Yalo and Levy Yaketé agreed to form a coalition aimed at destabilising the regime); report dated 10 September 2013, CAR-OTP-2100-1790, at 1791 (referring to violence in Ouham and Ouham-Pende on 10 September 2013 between the Seleka and Anti-Balaka); minutes of CNS meeting dated 30 October 2013, CAR-OTP-2079-1004, at 1009-1010 (reporting on attacks in Bouar with heavy weapons by assailants who were FACA and former presidential guards).

³¹ Trial Judgment, para. 387 (factual findings).

³² Trial Judgment, paras 379-380, 383 (factual findings). *See also* Trial Judgment, para. 458 (evidentiary analysis).

³³ Trial Judgment, para. 378 (factual findings).

³⁴ Trial Judgment, para. 393 (factual findings).

³⁵ Trial Judgment, paras 378, 452-453 (factual findings), 523 (evidentiary analysis), referring *inter alia* to P-0291: T-062, pp. 62-63; P-0291: prior recorded testimony given in the *Yekatom and Ngaïssona* case, ICC-01/14-01/18-T-051-CONF-ENG, pp. 21-24, referring to audio, CAR-OTP-2000-0603; transcript, CAR-OTP-2060-0663; P-2328: CAR-OTP-2099-0165, at 0176, 0182, 0211, at paras 60, 87, 250, referring to audio, CAR-OTP-2000-0603; transcript, CAR-OTP-2060-0663, draft translation, CAR-OTP-00000147, at 000012-000013, 000018, 000047, para. 60, 87, 250.

immaterial whether the various individuals forming part of the Anti-Balaka had different objectives for fighting the Seleka and whether these objectives included restoring François Bozizé to power. It is possible, even likely that the objective of the Anti-Balaka changed or evolved over time. In my view, this was also immaterial. Affiliation to Bozizé was a simplified way to define the Anti-Balaka but did not mean that all the groups composing the Anti-Balaka shared the same affiliation or loyalty to François Bozizé throughout the period of relevance for the Chamber.³⁶ What mattered was that all of these individuals of various background and interests were united in opposition to the Seleka.

17. Having regard to the foregoing, I would have found that there was continuity in the parties to the armed conflict before and after 24 March 2013, with a non-state armed group opposing the Seleka on 5 December 2013 (the Anti-Balaka) being a splintered part of the original party to the armed conflict (Central African armed forces) with its core figures, albeit with a different name, added recruits and tactics adapted to their circumstances.

b) Military organisation

18. My colleagues found that at least as of August 2013, the groups gathered at Gobre and to the south-west of Bangui exhibited limited military operational capacity, no ability to carry out large-scale operations, and no control over territory apart from maintaining a presence in a limited region in the bush in these areas.³⁷
19. I concede that the Anti-Balaka, as a splinter group, was initially small in size and did not immediately have the military capacity to carry out full armed confrontations against the Seleka during the period between April and June 2013. However, in my view and as set out in detail below, they always retained the capacity to mobilise and to restart armed confrontations as soon as they became capable of doing so and any armed action the Anti-Balaka undertook later demonstrated an intention to engage

³⁶ It is important to underline that the term ‘pro-Bozize forces’ encompasses not only affiliation to François Bozizé but is broader. In this regard, I recall that the decision on the confirmation of charges stated that ‘the parties to this non-international armed conflict were distinguished from one another by factors, *including their affiliation or opposition to*’ François Bozizé, and ‘even though their outward appearance, military organisation, and tactics, significantly adapted as time passed and according to the vicissitudes of war’. See [Confirmation of Charges Decision](#), ICC-01/14-01/21-218-Red, p. 50, para. 3.

³⁷ Trial Judgment, para. 561 (legal findings).

militarily with the Seleka.

20. In this respect, I recall that the Anti-Balaka gathered after 24 March 2013 in common locations (namely, Gobere and Zongo) and more people joined over time.³⁸ It is clear that these groups were arming and training.³⁹ All of these gathered groups faced the same limitations and used same tactics in terms of weapons, means of communication, financing and acquiring *gris-gris*.⁴⁰ I accept that a lot of Anti-Balaka used machetes and atypical weapons. However, the calibre of the weapons was less relevant in my assessment, given the circumstances in which the Anti-Balaka were reorganising. What was more relevant was the violence and death that resulted from the use of such weapons against a perceived enemy.

21. I also acknowledge that the timing and magnitude of these gatherings are not entirely clear due to conflicting accounts of witnesses.⁴¹ However, regardless of what one can make of the specific dates, what is clear is that these gatherings happened at some point in the months subsequent to the Seleka takeover of Bangui, with armed confrontations becoming visible in August-September 2013, as the Anti-Balaka became more organised.⁴²

22. In assessing how long it took for the Anti-Balaka to reorganise, it was important to consider the nature of the circumstances in which they were operating. I note that individuals joining the Anti-Balaka were organising secretly in remote regions, relying on word of mouth to inform people about the organisation of a resistance and about gatherings in common locations.⁴³ People joining had to travel on foot to get there.⁴⁴ Former members of the armed forces had to train civilians in handling weapons and combat readiness. This explained why any reorganisation efforts would necessarily

³⁸ Trial Judgment, paras 379-380, 382 (factual findings).

³⁹ Trial Judgment, paras 384 (factual findings). *See also* Trial Judgment, paras 474-478 (evidentiary analysis).

⁴⁰ Trial Judgment, paras 474-478 (evidentiary analysis).

⁴¹ Trial Judgment, paras 379, 381 (factual finding).

⁴² Trial Judgment, paras 381, 385, 390-391 (factual findings). *See also* Trial Judgment, paras 509-510 (evidentiary analysis), referring *inter alia* to photographs of the Anti-Balaka emerging in social media in September 2013. Nicolas Tiangaye visited Bossangoa around 17 October 2013 in response to the resulting humanitarian situation, and noted that the Anti-Balaka and Seleka were both already present in Bossangoa: P-0291: prior recorded testimony given in the *Yekatom and Ngaïssona* case, ICC-01/14-01/18-T-051-CONF-ENG, pp. 43-45.

⁴³ Trial Judgment, para. 379 (factual findings). *See also* Trial Judgment, paras 460-461 (evidentiary analysis).

⁴⁴ *See for example* Trial Judgment, para. 460 (evidentiary analysis), referring to P-0966: CAR-OTP-2031-0241, at 0245, para. 25. P-0966 mapped out the path he took from his village to Gobere: annotated map, CAR-OTP-2031-0266.

have taken months rather than weeks.

23. As regards the evidence concerning the structure of the Anti-Balaka, I agree that it is not clear when exactly it became a structured entity opposing the Seleka militarily. However, in my view, this lack of structure was attributable to the splintering and reorganisation of one of the original parties to the conflict (namely the Central African armed forces). It did not mean that the Anti-Balaka were not preparing militarily before September 2013.

24. I recall that the Anti-Balaka attacked different locations in the provinces in September 2013, which in my view, demonstrated a common military goal.⁴⁵ I also recall that by December 2013, the Anti-Balaka was fully capable of engaging the Seleka militarily, so much so that it led to Michel Djotodia's resignation.⁴⁶ In my view, such military capacity was not built in a few weeks or months, but was the result of concerted efforts that started immediately after the ousting of François Bozizé.

25. In any event and even in the absence of direct evidence as to the military capacity of the Anti-Balaka in the months before August 2013, for my colleagues to require that the Anti-Balaka should have regrouped and acquired military capacity within a span of a few weeks or months and soon after François Bozizé fled the country, imposed an unnecessarily high standard of assessment. What is important is that a splinter group of the original party that later became to be known as the Anti-Balaka never disappeared.

26. Having regard to the foregoing, I consider that the risk of resumption of armed confrontation between the Seleka and the so-called pro-Bozizé forces was always present. In fact, this is what motivated the Seleka to target perceived supporters of the François Bozizé in the period between April to August 2013.

c) Intensity of Hostilities

27. My colleagues concluded that they were unable to determine that clashes between the Seleka and so-called 'pro-Bozizé forces' between 24 March 2013 and the end of August 2013 were armed confrontations.⁴⁷ They were unable to determine the scale of the attacks

⁴⁵ Trial Judgment, paras 390-391 (factual findings). *See also* Trial Judgment, paras 507-510 (evidentiary analysis).

⁴⁶ Trial Judgment, paras 391-392 (factual findings).

⁴⁷ Trial Judgment, para. 389 (factual findings).

that took place in September 2013 and concluded that large-scale attacks took place on 5 December 2013.⁴⁸ Accordingly, they found that the duration of period without armed confrontations was sufficiently long to bring about an end to the conflict that began in December 2012.⁴⁹

28. I agree with my colleagues that, given the very nature of non-international armed conflicts, the applicable threshold for assessing when they have ended is lower than the threshold required to bring about the start of a non-international armed conflict. In other words, hostilities need not have continued at the same level as in the beginning of the armed conflict.⁵⁰

29. However, I disagree with the manner in which my colleagues applied this standard. At the very outset, I would have not limited the analysis of intensity of hostilities to a period when the reorganisation was taking place but extended it to the entire chain of events well until 2014.

30. I recall that armed violence in CAR during the relevant period was constant and neither Bangui nor CAR were stable at the time of the events. The operations in Boy Rabe to counter and face the presence of former FACA in the area are also revealing. I accept that there were temporary periods of calm in Bangui. However, as mentioned above, in my view, this period corresponded with the reorganisation of the Anti-Balaka. I recall that a party's regrouping may happen even over a lengthy period of time, particularly when it suffers a degree of defeat and is in disarray.⁵¹ The fact that there are no hostilities during a certain period of time does not mean that the party has ceased to exist.

31. The events in Bangui, including the killing of the two Seleka in April 2013 and the attempt to disrupt Michel Djotodia's inauguration in August 2013 were signs of reorganisation of the Anti-Balaka underway during that time.⁵² The retaliation by the Seleka on Boy-Rabe in August 2013 with the use of high calibre weapons show that this operation was not a mere disarmament operation but indicative of suppression of

⁴⁸ Trial Judgment, paras 390-391 (factual findings), 564-567 (evidentiary analysis).

⁴⁹ Trial Judgment, paras 571-572 (legal findings).

⁵⁰ Trial Judgment, para. 336 (applicable law).

⁵¹ [ICRC Commentary on Third Geneva Convention](#), para. 523.

⁵² Trial Judgment, para. 389 (factual findings).

the any reorganisation efforts by the so-called ‘pro-Bozizé forces’.⁵³

32. Having regard to the foregoing, I consider that the period during which there were no armed confrontations between the Seleka and the Anti-Balaka was merely a lull in the hostilities and not an indication of a cessation of an armed conflict. Given that armed confrontations resumed between the Seleka and the Anti-Balaka in August-September 2013 in the provinces and eventually led to the attacks on Bangui and Bossangoa by December 2013,⁵⁴ I was not convinced that the absence of armed confrontations between the parties to the conflict was ‘lasting’.⁵⁵ There was always a real risk of resumption of hostilities, as it was visible from September 2013 onwards.

33. Accordingly, based on the aforementioned findings concerning the intensity of hostilities during this period until at least 10 January 2013, the only reasonable conclusion, in my view, was that the hostilities between the Seleka and the groups that later formed the Anti-Balaka never actually ceased, even during periods of relatively lower levels of armed violence between the concerned groups.

d) Conclusion

34. Having regard to the reasons set out above, I believe that the conditions that triggered the application of international humanitarian law in CAR from at least December 2012 remained the same for the entirety of 2013, notwithstanding the re-composition of the original parties to the non-international armed conflict.

35. In my view, the conclusion reached by my colleagues that the Anti-Balaka was essentially a *new* party opposing the Seleka artificially separates the fighting in CAR in 2013.⁵⁶ Respectfully, I consider that such a conclusion stems from fundamentally ignoring the fluid nature of conflicts in CAR, the conduct of the parties after the takeover of Bangui, the constant violence that afflicted the country in the months following 24 March 2013, and the intense armed confrontations between the Seleka and the Anti-Balaka at the end of 2013.

36. In assessing the factual circumstances of the situation before the Chamber, my

⁵³ Trial Judgment, paras 628-629 (factual findings).

⁵⁴ Trial Judgment, paras 390-391 (factual findings). *See also* Trial Judgment, paras 507-518 (evidentiary analysis).

⁵⁵ Trial Judgment, para. 331 (factual findings); [ICRC Commentary on Third Geneva Convention](#), para. 528.

⁵⁶ Trial Judgment, paras 549-560 (legal findings).

colleagues should have placed more significance to ‘the often-fluctuating nature of conflicts to avoid prematurely concluding that a non-international armed conflict has come to an end’.⁵⁷

37. Accordingly, I would have found that the armed conflict between the Seleka and the Central African armed forces that began in December 2012 continued after 24 March 2013, with a splinter of the Central African armed forces, having reconstituted itself as the Anti-Balaka in the months following the takeover of Bangui and with levels of intensity in violence never dropping below the required threshold, well into 2014.⁵⁸

38. Regardless of whether an armed conflict not of an international character existed at the time of the charged incidents, I agree with my colleagues’ conclusion that Mr Said did not have the requisite knowledge of the factual circumstances establishing the existence of such a conflict,⁵⁹ given his role and hierarchy in the Seleka and under Michel Djotodia’s presidency. Accordingly, I agree that the Chamber need not have assessed Mr Said’s responsibility for the war crimes of torture (count 3), cruel treatment (count 4) and outrages upon personal dignity (count 5), as applicable, concerning the charged incidents.⁶⁰

e) Policy Considerations

39. I stress the importance of the general principle that the application of international humanitarian law ceases once the conditions that triggered its application in the first place are no longer met.⁶¹ In particular, I recall the ICRC commentary stating that the classification of a conflict must not be a ‘revolving door between applicability and non-applicability’ of humanitarian law, as this can lead to a considerable degree of legal uncertainty and confusion.⁶² I also recall that common article 3 of the Geneva Conventions provides specific protection to the victims of non-international armed conflicts particularly when there is no normalcy in the country.

⁵⁷ Trial Judgment, para. 334 (applicable law), referring *inter alia* to [ICRC Commentary on Third Geneva Convention](#), para. 527.

⁵⁸ *Contra* Trial Judgment, para. 572 (legal findings).

⁵⁹ Trial Judgment, paras 593-595 (legal findings).

⁶⁰ Trial Judgment, para. 575 (legal findings).

⁶¹ Trial Judgment, para. 328 (applicable law).

⁶² [ICRC Commentary on Third Geneva Convention](#), para. 527, referring to [Gotovina et al. Trial Judgment](#), para. 1694.

40. The evidence before the Chamber demonstrated that the Central African civilian population experienced a period of terrible violence, and nor did it have effectively functioning State institutions for a large part of 2013 after 24 March.⁶³
41. I note that disruptions and protests organised by François Bozizé's supporters in Bangui (between April and August 2013) prompted a violent response from CAR government under Michel Djotodia's presidency in areas of the city perceived as being 'pro-Bozizé'.⁶⁴ I also note that there are indications of violence in other parts of the country where resistance activities were detected.⁶⁵ Violence in Boy Rabe and Boeing in August 2013 resulting from Seleka operations was aimed at punishing supporters of François Bozizé, forcing the population to flee and seek refuge.⁶⁶
42. In my view, my colleagues should have additionally considered these factors before deciding that the civilian population lost protection from international humanitarian law in CAR for a period of several months in 2013 with the ousting of François Bozizé. While in theory human rights law applies at all times, there is an ongoing discussion about how best to address the accountability gap in situations of chaos such as the one that CAR faced.⁶⁷
43. Any finding that international humanitarian law ceased to apply in CAR at a particularly chaotic moment in history (from April to November 2013) and applied later when the Anti-Balaka and the Seleka engaged in armed confrontation beginning in December 2013, in my view, generates a gap in legal protection afforded by international

⁶³ I note that the international community condemned the Seleka coup d'état in CAR and refused to recognise the new authorities. There was a constant involvement of different international and regional bodies during 2013 to support the pacification and stabilisation of the country. Although on 13 April 2013 a National Transitional Council was established, the Africa Union continued to refuse recognition of Michel Djotodia as President and he was not received at the UN to refer to the situation in the country. Prime Minister at the time, Nicolas Tiangaye participated in the meetings. A transitional Chart was adopted on 8 July 2013 and promulgated on 18 July 2013. See report signed by Nicolas Tiangaye from 25 July 2013, CAR-OTP-2101-2134, at 2135. Efforts to stabilize the country and restore peace and security continued to be deployed, including through MISCA and BINUCA. See Reports of the UNSG, CAR-OTP-2001-1102 and CAR-OTP-2001-0329.

⁶⁴ Trial Judgment, paras 626-629 (factual findings).

⁶⁵ Trial Judgment, para. 387 (factual findings). See also Trial Judgment, paras 488-489 (evidentiary analysis) referring to minutes of the meetings of *Conseil National de Sécurité* in September and October 2013 noting the security situation in the communes in CAR.

⁶⁶ Trial Judgment, paras 626, 628-629, 632-633, 635 (factual findings).

⁶⁷ I note the Defence witness, Annyssa Bellal's testimony that 'this period was rather qualified as chaotic and was hardly governed either by international humanitarian law or human rights law, because we were up against a failed state and because the armed groups were not sufficiently organised for them to be ascribed any form of legal responsibility, whether under international humanitarian law or international law on the protection of human rights.' P-0015: T-135, pp. 32-33.

humanitarian law, at a sensitive time when functional state authority was lacking and CAR was flooded with violence.

44. Looking at the evidence as a whole, and with the benefit of hindsight, there are strong reasons and policy considerations to affirm that international humanitarian law was applicable in CAR during the entirety of 2013 and beyond.
45. While my conclusions are derived from my interpretation of the facts of this specific case, I consider it necessary to generally reflect on the interpretation of international humanitarian law in situations like the one CAR experienced in 2013. There is no clarity in law or jurisprudence on the criteria to determine the cessation of an armed conflict not of an international character, and in particular on the criteria to determine when the requirements of organisation and/or intensity of hostilities have dropped below the threshold required. More clarity would avoid situations where the civilian population may be deprived of the protection of IHL for several months when faced with instability, violence and chaos.



Judge María del Socorro Flores Liera

Dated 23 September 2026

At The Hague, The Netherlands