



Situation in the Central African Republic II

Article 53(1) Report

Executive Summary

24 September 2014

EXECUTIVE SUMMARY

Article 53 criteria

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

Procedural history

2. The Office has been analysing the recent situation in the CAR since the end of 2012. During the course of 2013, the Office issued three statements in relation to the situation in the CAR.
3. On 9 December 2013, the Prosecutor expressed her concerns over the unfolding events in the CAR, in particular over reports of serious ongoing crimes. The Prosecutor called upon all parties involved in the conflict (including Séléka elements and other militia groups, such as anti-balaka) to stop attacking civilians and committing crimes or to risk being investigated and prosecuted by the Office.¹
4. On 7 February 2014, the Prosecutor announced that the incidents and serious allegations of crimes potentially falling within the jurisdiction of the ICC constituted a new situation unrelated to the situation previously referred to

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

the ICC by the CAR authorities in December 2004. The Prosecutor therefore decided to open a preliminary examination into this new situation.²

5. On 30 May 2014, the transitional government of the CAR referred to the Prosecutor pursuant to article 14 of the Statute “*la situation qui prévaut sur le territoire de la République Centrafricaine depuis le 1er août 2012*” (“the situation on the territory of the Central African Republic since 1 August 2012”).³
6. On 13 June 2014, the Prosecutor formally notified the Presidency of the referral pursuant to Regulation 45 of the Regulations of the Court.
7. On 18 June 2014, the Presidency assigned the Situation in the Central African Republic II to Pre-Trial Chamber II.⁴

Contextual background

8. The Central African Republic is a landlocked country in central Africa sharing borders with Chad, Sudan, South Sudan, the Democratic Republic of the Congo, the Republic of Congo and Cameroon. It is one of the poorest countries in the world. Several different ethnic groups make up the population (estimated at 5,277,959), the largest being the Gbaya (33%), residing mainly in the north-east, and the Banda (27%), residing throughout the country. Sango and French are the most commonly spoken languages, with Arabic also spoken in the north. Prior to the conflict, 15% of the population was reportedly Muslim, 25% Roman Catholic, 25% Protestant and 35% followers of indigenous beliefs.
9. Political instability and armed conflict have plagued the country since 2001. President François BOZIZÉ, who ousted President PATASSÉ from power in 2003, dominated the political landscape for several years. In August 2012, the armed, organized rebel movement Séléka (meaning “alliance” in Sango) emerged as a coalition of militant political and armed groups representing Muslims in the north-east and other groups dissatisfied with President BOZIZÉ, including some of his former close associates. A number of Sudanese and Chadian nationals also joined Séléka.

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

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

⁴ Decision Assigning the Situation in the Central African Republic II to Pre-Trial Chamber II, ICC-01/14-1, 18 June 2014.

10. Séléka launched a major military offensive on 10 December 2012. Facing little resistance from the Central African Armed Forces (“FACA”), the group advanced quickly until they were stopped close to Bangui by forces from Chad and from the Mission for the Consolidation of Peace in the CAR (“MICOPAX”) of the Economic Community of Central African States (“ECCAS”). ECCAS-facilitated negotiations resulting in the Libreville Agreements of 11 January 2013 prevented an imminent coup but ultimately failed to bring lasting peace. Séléka resumed its offensive, took Bangui and, on 24 March 2013, seized power. President BOZIZÉ was forced into exile and Séléka leader Michel DJOTODIA was appointed as President.
11. Following the *coup d'état*, Séléka forces continued to expand their control over CAR territory and sought to suppress resistance, in particular in regions associated with former President BOZIZÉ and his (Gbaya) ethnic group. Civilians in those regions were reportedly frequently subjected to attacks by Séléka fighters, involving mass looting, destruction of property, killings, wounding and sexual violence. In the face of criticism over the conduct of the group, President DJOTODIA declared in September 2013 the dissolution of Séléka, while several thousand “former Séléka” members were integrated into the FACA by decree. However, Séléka continued to exist *de facto* and allegedly continued to commit crimes, particularly as “anti-balaka” groups started to generate armed resistance to Séléka’s rule.
12. Anti-balaka began to engage Séléka forces militarily from June 2013 but became more organized over the following weeks and months, apparently with the integration of numerous former FACA members.
13. As the conflict between Séléka and anti-balaka escalated, the violence also became more sectarian. Anti-balaka attacks allegedly targeted Muslim civilians, associating them with Séléka on the basis of their religion, while Séléka targeted non-Muslims in return, in particular those of the Gbaya ethnic group or those associated with former President BOZIZÉ.
14. On 5 December 2013, as a new African Union-mandated peacekeeping force (“MISCA”) was preparing to take over from the smaller ECCAS-mandated force in the CAR, and on the eve of the deployment of the French troops mandated to support the AU forces, anti-balaka launched an apparently well-coordinated attack on Bangui which first targeted Séléka positions before beginning retaliatory attacks on Muslims throughout the city. In the ensuing violence, which continued for several weeks, both Séléka and anti-balaka

reportedly targeted civilians on the basis of their religion, carrying out deliberate killings, wounding and rapes.

15. The majority of the (minority) Muslim population of Bangui fled, either towards neighbouring countries or perceived safe areas such as Bangui airport, mosques, and the bases of international forces. Some non-Muslims also sought safety in displacement sites. Similar attacks and counter-attacks by both armed groups spread throughout the country. Séléka forces largely retreated from Bangui towards the east of the country, leaving Muslim civilians in Bangui and western CAR vulnerable to anti-balaka attacks which included rapes, killings, and the mutilation of victims' bodies. The country broadly became divided in two, with some on the Séléka side reportedly calling for a permanent partition. Anti-Muslim hate speech by some anti-balaka elements was reported, with some describing anti-balaka attacks against Muslim civilians as "cleansing" operations.

Jurisdiction

16. *Jurisdiction ratione temporis*: The CAR deposited its instrument of ratification on 3 October 2001. The ICC therefore has jurisdiction over Rome Statute crimes committed on the territory of the CAR or by its nationals since 1 July 2002. On 30 May 2014, the CAR authorities referred the situation in the CAR to the ICC with respect to alleged crimes committed "since 1 August 2012" with no end date. The Office may therefore investigate on the basis of the referral any alleged crimes within the jurisdiction of the Court committed in the context of the situation in the CAR since 1 August 2012.⁵
17. *Jurisdiction ratione loci / jurisdiction ratione personae*: The CAR authorities referred to the Court "the situation on the territory of the Central African Republic since 1 August 2012" with no limitations on the scope of the territorial jurisdiction of the Court.⁶ The Court may therefore exercise jurisdiction with respect to any crimes committed anywhere on the territory of the CAR in the context of this situation if warranted. It may also exercise its jurisdiction if the person accused of the crime committed in the context of this

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

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

situation is a national of a State Party or a State accepting jurisdiction of the Court under article 12(3).

18. *Jurisdiction ratione materiae*: The information available provides a reasonable basis to believe that, since at least December 2012, an armed conflict of a non-international character has been taking place in the CAR between Government forces, and organised armed groups and between such groups, considering that: (i) Séléka and anti-balaka exhibit a sufficient degree of organization and (ii) the violence is of sufficient intensity to justify the application of international, as opposed to national, law.
19. Accordingly, conduct that took place in the context of and was associated with this armed conflict may qualify as war crimes under the jurisdiction of the Court.
20. The information available provides a reasonable basis to believe that both Séléka and anti-balaka members have committed crimes against humanity within the territory of the CAR. Information available provides a reasonable basis to conclude that, from February 2013 at the latest to the time of writing of the present report, Séléka forces conducted a widespread and systematic attack against the civilian population as they expanded their control of the territory of the CAR, targeting perceived opponents in the civilian population. In late 2013 these attacks allegedly became more notably targeted at non-Muslim civilians, who were perceived as supporters of anti-balaka.
21. The information available provides a reasonable basis to believe that, from September 2013 at the latest, anti-balaka carried out a widespread and systematic attack against the Muslim civilian population, whom they perceived to be supportive of Séléka. The attack was reportedly concentrated in Bangui and the west of the country and forced a massive displacement of Muslim civilians to other parts of the country or out of the country.
22. The information available provides a reasonable basis to believe that Séléka has committed the following war crimes (at the latest from December 2012 onwards) and crimes against humanity (at the latest from February 2013 onwards): murder as a war crime under article 8(2)(c)(i) and as a crime against humanity under article 7(1)(a); mutilation, cruel treatment and torture as war crimes under article 8(2)(c)(i) and torture and/or other inhumane acts as crimes against humanity under articles 7(1)(f) and (k); intentionally directing attacks against the civilian population as such under article 8(2)(e)(i); attacking personnel or objects involved in a humanitarian assistance mission under article 8(2)(e)(iii); intentionally directing attacks against protected objects

under article 8(2)(e)(iv); pillaging under article 8(2)(e)(v); rape as a war crime under article 8(2)(e)(vi) and as a crime against humanity under article 7(1)(g); conscripting or enlisting children under the age of fifteen years into armed groups or using them to participate actively in hostilities under article 8(2)(e)(vii); and persecution in connection with the above-mentioned alleged crimes of murder, rape, torture and/or other inhumane acts under article 7(1)(h).

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

Admissibility

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

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

Interests of Justice

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

Conclusion

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

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

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