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谨随函转递中非共和国问题国际调查委员会主席根据安全理事会第2127(2013)号决议提交的该委员会的最后报告(见附件)。

请将本报告提请安全理事会成员注意为荷。

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United Nations



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**La Commission d'enquête internationale sur  
la République Centrafricaine  
The International Commission of Inquiry on  
the Central African Republic**

**FINAL REPORT**

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**DECEMBER 2014**
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## List of Acronyms

ACHPR	African Charter on Human and People's Rights
BINUCA	Integrated United Nations Peace-building Office in the CAR
CAR	Central African Republic
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
COCORA	Coalition citoyenne d'opposition aux rebellions armées
CPJP	Convention des patriotes pour la justice et la paix
ECCAS	Economic Community of Central African States
EUFOR	European Force in the CAR
FACA	Forces Armées Centrafricaines
FAO	Food and Agricultural Organisation
FDPC	Front Démocratique du Peuple Centrafricain
FIDH	Fédération internationale des droits de l'homme
FOMAC	Force Multinationale de l'Afrique centrale
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally Displaced Person
IOM	International Organization for Migration
MISCA	African-led International support mission in the Central African Republic
MINUSCA	United Nations Multidimensional Integrated Stabilization Mission in the CAR
OCHA	Office for the Coordination of Humanitarian Affairs of the United Nations
OHCHR	Office of the High Commissioner for Human Rights of the United Nations
UDHR	Universal Declaration of Human Rights
UFDR	Union des Forces Démocratiques pour le Rassemblement
UFR	Union of Republican Forces
UNICEF	United Nations Children's Fund
UNHCR	United Nations High Commissioner for Refugees

## Executive Summary

Pursuant to Security Council resolution 2127 of 5 December 2013 which established an International Commission of Inquiry to investigate international human rights and humanitarian laws violation and abuses in CAR by all the parties involved in the armed conflict since 1 January 2013. The Secretary-General of the United Nations appointed Madame Fatimata M'Baye, Professor Philip Alston and Bernard A Muna as members of the Commission. Bernard A. Muna was asked by the Secretary-General to Chair the Commission.

In paragraph 24 of resolution 2127, the Security Council requested the Commission to compile information to help identify the perpetrators of such violations and abuses, point to their possible criminal responsibility and help ensure that those responsible are held accountable.

The Commission started work only in April 2014, under very difficult conditions, including a hostile and violent atmosphere that made it difficult for investigators to carry out their work, especially in the interior of the country. It was initially able to conduct investigations, albeit only in a constrained and limited manner, of the violations and abuses that were committed in Bangui, parts of which enjoyed relative calm at certain intervals, thus permitting access by investigators.

Working under these conditions, the Commission nevertheless filed a preliminary report, after only two months of limited investigations, in June 2014, in keeping with paragraph 25 of resolution 2127.

This second report is a result of investigations largely carried out on violations and abuses that took place in Bangui and the western part of the country. The investigators visited 15 towns and surrounding villages outside Bangui to meet with victims, their relatives, witnesses and alleged perpetrators.

At the onset of its activities, the Commission drew up an ambitious but realistic plan to undertake a far wider range of investigative missions, covering the key areas most affected by the violence in the western part of the country. However missions to the central part of the CAR proved impossible due to high security risks to the members of the investigating teams.

The Commission gathered as much information as possible and attached great importance to meeting with the President and members of the National Transitional Government, members of the diplomatic community in Bangui, United Nations organs and agencies, and international and national NGO's. The Commission also met with members of the CAR judicial and prosecution services, private legal practitioners as well as leaders of their respective associations.

In keeping with the letter and spirit of the Security Council resolution, the Commission made it a duty to investigate all violations and abuses of human rights and humanitarian laws. However since there were a large range of abuses committed over the period covered by the mandate, the Commission has had to focus most of its efforts on the more serious abuses.

The Commission carried out 910 interviews with victims, witnesses, family members and other relevant individuals in CAR as well as those who fled to Cameroon.

The Commission has, throughout its work, always kept in mind the fact that the one thing that the Security Council particularly wished to put an end to the reigning climate of impunity in CAR. This impunity has been a major factor in fuelling the present armed conflict, in large part because similar conflicts in the past have never been followed by measures designed to hold to account the major players responsible for crimes and violations committed. On the contrary, the major players have usually stage-managed a “national reconciliation” and seen to it that self-serving amnesty laws were enacted to cover themselves from any prosecutions. The holding of perpetrators of violations and abuses of human rights and humanitarian law accountable for their acts will make an important contribution to putting an end to impunity in CAR.

The Commission is satisfied at this stage of the investigations, that a non-international armed conflict took place in CAR, during different parts of the period covered by the mandate of the Commission that is, from 1 January, 2013 to 24 March 2013, when President Bozizé left power and after 4 December 2013 to the present. It is the view of the Commission that from 24 March when Djotodia took over as President of a Transitional government until he resigned on the 5 December 2013, there were internal disturbances or violence but the Commission did not consider they reached the level of non-international armed conflict.

The Commission is further satisfied that the parties to this conflict are: the members of the Armed Forces of the CAR (FACA) under President Bozizé (FACA), and the principal militia groups, the Séléka and the anti-balaka. The Commission is satisfied that the investigations it has conducted have established that all the parties were involved in serious violations of international humanitarian law and gross abuses of human rights including rape and other gender based sexual offences and violations. Many of these abuses are also characterized by the Commission as having amounted to crimes under both domestic law and the Rome Statute of the International Criminal Court.

The Commission also investigated allegations against the UN and other international peace keeping forces, which were brought to its attention. While appreciating the difficulties that such forces face in carrying out their duties and obligations under the prevailing conditions in CAR, the Commission believes that a more systematic and institutionalized response is needed to deal with such allegations in the future. Accordingly, several recommendations are made to address this challenge.

The Commission is aware that its establishment was brought about as a response to the horrendous abuses of human rights and humanitarian law, and the fear that the conflict in CAR could quite easily turn to a genocidal killing spree. However after examining all the available evidence, the Commission concludes that the threshold requirement to prove the existence of the necessary element of genocidal intent has not been established in relation to any of the actors in the conflict. It emphasizes, however, that this does not in any way diminish the seriousness of crimes that have been committed and documented in its report. Nor does it give any reason to assume that in the future the risk of grave crimes, including genocide, will inevitably be averted. In this regard it must be accepted that timely action taken by the African Union and French peace keeping forces as well as BINUCA-MINUSCA, and the Security Council resolution 2127 have been primarily responsible for the prevention of an even greater explosion of violence.

The Commission considers that in the context of the CAR conflict, it is not in a position to establish with any degree of accuracy the number of people who were

killed in the conflict, during the two years covered by the mandate. The difficulties of collecting accurate data in this regard are due to various reasons, including the practice of Muslim communities to bury their dead almost immediately and the difficulty of getting access to mass graves, especially in the countryside and forests, in the midst of continuing conflicts. The various estimates so far available during this period range from 3,000 to 6,000 people killed, but the Commission considers that such estimates fail to capture the full magnitude of the killings that occurred.

The report of the Commission ends with recommendations made to the National Transitional Government of the CAR, MINUSCA, the Security Council, the Secretary-General, the United Nations Office of the High Commissioner for Human Rights, the United Nations Human Rights Council, and the relevant regional Organizations (AU, EU, ECCAS and OIF).

## I. Introduction and methodology

1. This second and final report of the Commission of Inquiry is submitted pursuant to paragraph 25 of Security Council resolution 2127 of 5 December 2013 by which the Council requested the Secretary-General to report to it on the findings of the Commission one year after the adoption of the resolution.

### A. Mandate

2. The Commission's mandate is contained in paragraph 24 of Security Council resolution 2127 (2013). Acting under Chapter VII of the Charter of the United Nations, the Council requested the Secretary-General to rapidly establish an International Commission of Inquiry to investigate reports of violations of international humanitarian law, international human rights law and abuses of human rights in the Central African Republic (CAR), by all parties since 1 January 2013, compile information, help identify the perpetrators of such violations and abuses, point to their possible criminal responsibility, and help ensure that those responsible are held accountable. The Council also called on all parties to cooperate fully with the Commission.

3. On 22 January 2014 the Secretary-General appointed three high-level experts as members of the International Commission of Inquiry for the Central African Republic: Jorge Castañeda (Mexico), Fatimata M'Baye (Mauritania) and Bernard Acho Muna (Cameroon). Mr Muna was appointed Chair of the Commission. In March 2013 Mr. Castañeda resigned, for personal reasons. On 18 August 2014 the Secretary-General appointed Philip Alston (Australia) as a member of the Commission.

4. The Council has mandated the Commission to consider reports of violations of international humanitarian law, international human rights law and abuses of human rights. In addition, international criminal law is a central frame of reference for this report. This reflects the fact that the CAR ratified the Rome Statute of the International Criminal Court (ICC) on 3 October 2001, thereby giving the Court jurisdiction over relevant crimes committed on the territory of the CAR or by its nationals since 1 July 2002. On 30 May 2014 the transitional government of the CAR referred the situation on the territory of the CAR since 1 August 2012 to the Prosecutor of the ICC, and on 24 September 2014 the Prosecutor of the Court indicated that she had determined that there is a reasonable basis, in accordance with Article 53 of the Rome Statute, to proceed with an investigation. That investigation is now underway.

### B. Methods of Work

5. The Secretariat of the Commission was based in Bangui, CAR. For the adoption of this second and final report, however, the three Commissioners and the Secretariat convened in November 2014 in Yaoundé because of the prevailing insecurity in CAR. The Commission is grateful to the Office of the High Commissioner for Human Rights and its Central African Regional Office for having provided the Secretariat, but wishes to underscore its independence from the Office as well as all other actors relevant to this situation.

6. The Commission's mandate limits its temporal focus to events that occurred on or after 1 January 2013, although this report takes note of earlier events where appropriate to an understanding of the situation during the period under review. The information contained in this report is current up to 1 November 2014.

7. At the outset of its activities, the Commission drew up an ambitious but realistic plan to undertake a range of investigative missions covering the key areas most affected by the violence, in the western part of the CAR. But following the shift of the conflict to the central part of the country, mainly to the Ouaka province, missions to that area proved not to be feasible due to the highly problematic security situation. Nevertheless, the Commission has received at least some information from various sources relating to violations and abuses that are alleged to have occurred in that area and these have been recorded in its database and taken into account in its report. The Commission recognizes, however, that future efforts will need to give particular attention to recording and following up on violations and abuses in the central part of the CAR but also to the east, where violence was also reported.

8. Therefore, the Commission's fact-finding activities were largely focused on events that occurred in the western part of the country. In that regard, missions of investigation were undertaken to Boali, Mbaiki, Boda, Bossembélé, Yaloké Gaga, Bekadili, Bossemptélé, Bozoum, Ngoutere, Bocaranga, Bohong, Bouar, Baoro and Tattale, Bossangoa and Zere. In addition to collecting information within the territory of the CAR, the Commission's investigators conducted missions to both Cameroon and Chad, particularly in order to be able to interview victims and witnesses who had fled from the violence and sought refuge in these neighbouring countries. The mission to Cameroon was very successful. Unfortunately, the mission to Chad, which commenced on 4 November 2014, was unable to undertake its work. While the investigative team received a visa to travel to Chad, its requests in Ndjamena to obtain the necessary authorization to visit the refugee camps were not approved.

9. In terms of material coverage, the Commission was mandated to investigate all abuses of human rights and humanitarian law, without any restriction as to their gravity or seriousness. But the Council also emphasized the task of identifying perpetrators, exploring criminal responsibility, and ensuring accountability. Given the large range of abuses committed over a period of almost two years, the Commission has unavoidably focused most of its efforts on the more serious violations, and especially those for which it is reasonable to expect that accountability might be exacted in the future.

10. In gathering information, the Commission has endeavoured to cast as wide a net as possible. It has met with many senior government officials, including the President of the National Transitional Government, the former and current Prime Ministers, the former and current Ministers of Justice and Defence, and the Ministers of Foreign Affairs, Health, Social Affairs and Education. It also spoke with senior members of the judiciary and prosecution service, and reviewed case files and other dossiers they provided.

11. The Commission's investigators have conducted some 910 interviews with victims, witnesses, family members, alleged perpetrators and other relevant individuals in the Central African Republic, as well as with those who have fled to Cameroon. Where possible these inquiries have involved on-site visits to locations in which the relevant incidents occurred. The Commission has also met with a large number of community and religious groups and their representatives, the Bar

Association and the Association of Magistrates, and with the leaders of different political parties and factions, as well as armed groups. These meetings have enabled it to take account of as many perspectives as possible and to corroborate or cast doubt on information collected from other sources.

12. The Commission and its investigators have also met with local and international non-governmental organizations, especially those that have been able to provide first-hand and other accounts of the events under review. It has thus been able to draw on the information provided in the detailed reporting of these diverse groups, while at the same time exercising its own judgment, based on all available sources, as to which accounts can be considered reliable and which would require further corroboration before being accepted.

13. The Commission met with the Special Representative of the Secretary-General and other senior officials of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), representatives of the African Union and of MISCA, and representatives of Operation Sangaris, as well as with interlocutors from the diplomatic community, and various international agencies.

14. The results of these wide-ranging consultations have been carefully recorded in an extensive database compiled by the Commission which seeks to track and document all known incidents involving alleged human rights or humanitarian law abuses, based on its own inquiries and interviews, open-source documents, material shared with it in confidence, and other appropriate material that it considers to be generally reliable.

15. The Commission has operated on the basis that the information provided to it must be assumed to be confidential, unless otherwise agreed by the relevant source. It is committed to protecting the particulars, the privacy and the security of information provided by those victims, witnesses and other sources who requested that their identity and particulars not be disclosed. Those requesting confidentiality are in a minority among the Commission's sources, but even the information provided on that condition has proven to be very useful both to inform the overall analysis and to furnish carefully anonymized examples of abuses.

16. The standard of proof applied by the Commission in its work is that there are "reasonable grounds to believe" that a particular incident occurred or that a given pattern of violations prevailed. The Commission has endeavoured to apply this standard with an appropriate degree of rigor, although the feasibility of different techniques of verification, cross-checking, and corroboration inevitably differs according to the context involved. This approach is fully consistent with that commonly used in international fact-finding inquiries of this sort<sup>1</sup>. In seeking to identify individual perpetrators, the same standard has been applied. This means that it does not rise to the level of proof beyond reasonable doubt that would be required to establish individual criminal responsibility in a court of law. This is because the Commission is neither a prosecutor nor a court. Instead, its task in relation to alleged

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<sup>1</sup> For a detailed comparative analysis, see Stephen Wilkinson, "Finding the Facts": Standards of Proof and Information Handling in Monitoring, Reporting and Fact-Finding Missions", Program on Humanitarian Policy and Conflict Research at Harvard University, February 2014, available at <http://ssrn.com/abstract=2400927>, pp. 8-11.

perpetrators is to marshal a reliable body of information, that is consistent with and supported by as many sources as possible, in order to provide the foundations for a full-fledged criminal investigation to be undertaken in the future by the appropriate national and/or international authorities.

17. The rigorous application of this standard of proof has meant, for example, that the Commission has not been able to make full use of some of the photographic and video materials to which it has been given access, because it has not been able to authenticate or situate the materials in accordance with the required standard.

18. Despite the breadth of its mandate and the large amount of information collected, the Commission has sought to limit the length of its report in line with United Nations resolutions on the control of documentation and word limits.

### C. Cooperation

19. The Commission expresses its gratitude to a large number of individuals and institutional actors who have cooperated with it to enable it to carry out its work. In addition to the Government of the National Transitional Authority, and the Government of Cameroon, the Commission has benefited greatly from the assistance of MINUSCA and its predecessors, and especially from the support of the Head of MINUSCA and Special Representative of the Secretary-General, Babacar Gaye. Various UN agencies, including UNICEF, UNHCR and UNHAS, have provided assistance, and UN Women which provided experts to work on issues relating to sexual and gender-based violence. The Office of the High Commissioner for Human Rights also provided important support for the work of the Commission. The Office of the Prosecutor of the international Criminal Court facilitated access to its open-source material. In addition, a great many community groups, civil society actors, and non-governmental groups provided very valuable information and insights into the situation.

### D. Challenges Faced by the Commission

20. The Commission faced significant challenges in carrying out its mandate. Being based in the CAR while the conflict was still on-going made the logistics especially complicated. Some of the parties to the conflict operated more like armed gangs, without any clear line of command, and violence could break out sporadically in any area, not only between the parties to the conflict but from time to time between the members of the same group.

21. Over the past year, there has been a consistent deterioration in the security situation in the CAR, sometimes resulting in the imposition of restrictions on the movements of the investigators and other staff.

Anti-balaka militias also targeted Muslims of all nationalities, even if they were United Nations staff members. On 9 June 2014, on their way to Boali, eight members of the Commission's investigation team<sup>2</sup> (including drivers and interpreters) were taken hostage for six hours during their first mission outside Bangui and faced death

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<sup>2</sup> Including staff members of the UNHCR and a local NGO

threats from the anti-bakala. On 12 October, seven members of the Commission including three WHO staff members and five members of the IRC were stranded in Boali because of the deterioration in the security situation. They were obliged to abandon their vehicles at the MINUSCA compound in Boali and return to Bangui in armoured vehicles. On two occasions, Muslim investigators working for the Commission were directly targeted by the anti-bakala. In some cases, they were forced to change their names when out on mission to gather information.

## E. Outcome

22. This final report on the work of the Commission responds to each of the different elements contained in the mandate provided by the Security Council. It thus undertakes a detailed and systematic review of the relevant abuses and violations that are reported to have taken place between 1 January 2013 and 1 April 2014. For reasons described above, the Commission could not conduct investigations in the central part of the Country, where focus of the conflict has shifted since May 2014. By definition, such a review cannot be comprehensive and the omission of unreported abuses should not be interpreted as diminishing their importance or of downplaying the need for those responsible to be held to account.

23. The report provides a detailed explanation of the applicable legal framework, it emphasizes the central importance of tackling impunity in the CAR, and it examines questions of criminal responsibility for the most significant abuses. It concludes with recommendations designed to enable the Security Council and Member States to assist the Government and the people of the CAR to ensure accountability for the past and to build meaningful and enduring institutions capable of helping to prevent recurrences of such events and of investigating, prosecuting and punishing those responsible for future abuses.

24. The Commission is not a judicial body but it views its work as a vital step towards encouraging and facilitating criminal investigations and prosecutions to be undertaken in order, as the Security Council's resolution put it, to "help ensure that those responsible are held accountable." In compliance with resolution 2127, the Commission has drawn up an annex which consists of the names of a significant number of individuals whom it has reason to believe should be the subject of criminal investigations, along with a statement of the crimes of which each is suspected, and an outline of the evidence against them that has been obtained by the Commission. This annex, along with accompanying evidence and other relevant materials, will remain confidential and will be submitted to the Secretary General of the United Nations.

## II. Historical Background and Political Context

25. In order to understand the current situation in the Central African Republic, it is necessary to take a brief look at the political evolution of this nation since it gained independence from France in 1960. The Central African Republic, a former colony of France, gained independence in 1960. During more than half a century of independence, the country has been ruled by military dictators for all but nine years. In the wake of these violent changes, corruption, the non-respect of human rights, repression of free political expression and nepotism, became institutionalized and

endemic. The only goal of successive corrupt governments was personal enrichment of the political leaders and members of their families through embezzlement of public funds, looting of public corporations, and illegal exploitation of precious minerals and other natural resources while a very large majority of the people lived in abject poverty.

26. When Michel Djotodia Am-Nondroko ousted President Bozizé and took power on 24 March 2013, many people rejoiced because they believed this would bring an end to their suffering. But their joy was short-lived because the foreign fighters which Djotodia and the Séléka coalition brought from Chad and Sudan and their local collaborators engaged in widespread violations and provoked sustained inter-ethnic, inter-tribal and inter-religious violence.

27. François Bozizé's ascent to power by means of a military coup in 2003, was strongly contested by civil society and the various political groups. This led to pressure from Economic Community of Central African States to organize transparent, free and fair democratic elections, although those that Bozizé held never met those conditions. In an attempt to work out a compromise and bring peace to CAR, ECCAS held many peace conferences mainly in Libreville between 2008 and 2011. Although these conferences produced agreements, none were ever implemented because of the intransigence of Bozizé. He was abandoned by his remaining supporters and Djotodia was allowed to take power and form a government of transition.

28. The wanton violence of the Séléka forces, especially after they had taken power, discredited the newly installed Djotodia regime. The anti-balaka militia, reinforced by elements of the disorganized and scattered FACA, organized themselves and carried out mass killings, looting and destruction of property under the pretext of retaliating for the violations against the non-Muslim and Christian communities by the Séléka forces. The latter responded with equal ferocity. The atrocities resulting from this explosion of violence, especially in Bangui, led ECCAS to compel Djotodia's resignation at a meeting in Ndjamena, on 10 January 2014.

29. After Djotodia's departure, the National Transitional Council was reconstituted and on 27 January 2014, a new National Transitional Government, headed by President Samba-Panza, was put in place. The transition is expected to be completed by August 2015, by which time the constitution will have been amended and local, legislative and Presidential elections organised.

### III. The Importance of Addressing Impunity in the CAR

30. In the same resolution by which it established the present Commission, the Security Council expressly underlined the importance of bringing the perpetrators of violations of international humanitarian law, international human rights law and of human rights abuses in the CAR to justice. It also called upon the Transitional Authorities to investigate alleged abuses in order to hold perpetrators accountable. Progress in this direction, however, has been slow, at best. In his report to the Security Council in August 2014 the Secretary-General observed that "[s]erious and unabated violations of human rights and international humanitarian law are committed

in a climate of total impunity.”<sup>3</sup> And, more recently, the President of the Transitional Authority in a major address to the nation observed that while insecurity continued to be the main problem in the country, impunity was the second greatest problem.<sup>4</sup> The nature and extent of this problem has also been extensively documented in the reports of a wide range of civil society organizations.<sup>5</sup> And it is also a major focus of the present report.

31. Impunity has a long and tragic history in the CAR. As President Samba-Panza noted, both political and common law crimes committed on a massive scale against innocent persons have remained unpunished for at least the past two decades. But even before that time the record was not good. When Jean-Bédél Bokassa was forced from power in 1979 there was little to suggest that he would subsequently be held accountable for the many crimes he committed while he held the posts of President and Emperor. But in December 1986 he was put on trial and in June 1987 he was convicted of a range of crimes including murder. The very public nature of his trial and the fact that a former Head of State was sentenced to life imprisonment for his crimes, should have sent an important message. But no senior members of his government or the armed forces were tried for their part in the many crimes committed, and Bokassa himself was released from prison in 1993, as part of a general amnesty.

32. Since that time, as the High Commissioner for Human Rights has noted, the CAR has “experienced a number of mutinies, rebellions and coups d’état, along with gross violations of international human rights law and international humanitarian law,” but “few of the suspected perpetrators have been prosecuted”.<sup>6</sup> Instead, the norm has been the adoption of amnesty laws such as those of 30 May 1996, 15 March 1997 and 13 October 2008, which have given formal legitimacy to a longstanding situation of de facto impunity.

33. The last of these amnesty laws, for example, provided an amnesty from prosecution not only for all members of the defence and security forces, but also for the leaders and members of political-military groups operating within or outside the CAR, as from 15 March 2003. In addition, former President Patassé, his Defence Minister, and Martin Koumtamadji (subsequently known as Abdoulaye Miskine), along with their colleagues and accomplices were also given amnesty for the theft of public funds, killings, and complicity in killings. Exceptions were made, however, for acts amounting to war crimes, crimes against humanity, or other crimes over which the International Criminal Court has jurisdiction. Nevertheless, it was reported in 2009 that “impunity is pervasive for unlawful killings, regardless of the perpetrator (security forces, rebels, or private persons) or the context (military operations, routine

<sup>3</sup> United Nations Security Council, Report of the Secretary-General on the situation in the Central African Republic, 1 August 2014, UN Doc. S/2014/562, [2].

<sup>4</sup> La Pr é s i d e n t e d e l a t r a n s i t i o n , C a t h e r i n e S a m b a - P a n z a , A d d r e s s t o t h e n a t i o n , B a n g u i , 22 O c t 2014.

<sup>5</sup> See, for example, Amnesty International, Central African Republic: Time for Accountability (2014); and International Federation for Human Rights [FIDH] and The Central African Observatory for Human Rights [OCDH], Central African Republic: “They Must All Leave or Die” (2014).

<sup>6</sup> Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Central African Republic, A/HRC/25/43 (19 Feb. 2014), § 34.

law enforcement, or detention).”<sup>7</sup> Even after a major effort was made which resulted in 250 cases of human rights violations being referred to the judiciary and 80 convictions recorded in 2009, the bottom line was that senior members of the military and of the Government had, without exception, escaped judicial scrutiny.<sup>8</sup>

34. It is important to recall this historical record in order to avoid under-estimating the extent of the challenge that lies ahead. In a country that has seen persistent and vibrant impunity, the task of rebuilding and mobilizing a justice system that has almost never been able to hold powerful offenders to account will be a daunting one.

35. But in devising an approach to overcome impunity in the future it is essential to understand both the mentality and the assumptions that have driven it in the past. The consistent use of pardons to ‘forgive’ those accused of serious crimes has not only meant that those individuals have escaped accountability, but it has sent a strong and consistent message to wrongdoers that they need not worry about being punished in the future. Even if the justice system succeeds in prosecuting and convicting a handful of individuals, those convicted can confidently expect, on the basis of past experience, that they will soon be pardoned and be free to resume their predations.

36. This self-defeating dynamic has been regularly reproduced in the wake of each of the country’s collapses from rampant corruption, the untrammelled exercise of both state and private power, and the abdication of proper governmental responsibilities. Each collapse is followed by an effort to put together a broad coalition of actors to help the country to recover, but the argument is always made that at least some of those responsible for egregious abuses will need to be included in the new coalition if it is to attract sufficient support from those who still wield power in the country in order to make it stick. Those individuals make it clear that they will repent of their old ways only if rewarded by appointment to a ministerial or other senior position in government. This strategy has been remarkably successful and is far from being absent today. The result is to provide a perverse incentive to wrongdoers to continue to behave badly in order to ensure that their participation in the new government will be considered indispensable to achieving a consensus outcome.

37. The Transitional Government, and indeed all domestic political actors, with the assistance of the international community, must work to break this cycle of impunity once and for all. The message needs to be sent that there can be no deals done in the future with those accused of serious crimes. There will always be suggestions that because the support of one individual or another is crucial in order to seal a deal, prosecutions should be abandoned or delayed or pardons issued. In the vast majority of cases, experience shows that such assessments will be greatly overstated, and no such deal should be made. In the handful of cases where this might not be the case, it becomes all the more imperative for the rule of law to prevail and for impunity to be rejected.

38. Thus a central goal of this report is to document the abuses and violations that have occurred and to begin the process of accountability by pointing to the criminal

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<sup>7</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Philip Alston, Mission to the Central African Republic, A/HRC/11/2/Add.3 (27 May 2009), § 52.

<sup>8</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Follow-up to the report on the mission to the Central African Republic, A/HRC/14/24/Add.5 (19 May 2010), paras. 45-47.

responsibility of perpetrators. As noted in section 6 below, the international community will need to play a crucial role if the necessary institutions are to be put in place and provided with the resources they need to begin to establish a new norm of accountability to replace the presumption of impunity, which continues to be alive and well in many respects.

## IV. The Applicable International Legal Framework

### A. Legal Classification of the Situation

39. International humanitarian law applies to the situation in the CAR at all times during which an armed conflict can be determined to exist under the applicable rules. These rules are complex and the pattern in the CAR during the period under review is a complicated one. The Commission has provided in Annex I below a full legal and factual analysis to justify the conclusions it has reached in this regard. In brief, the Commission has concluded that there was a non-international armed conflict taking place on the territory of the CAR from before 1 January 2013 and up until late March 2013, and again after 4 December 2013 until the present time. It thus applies the provisions of common Article 3 of the Geneva Conventions of 1949 in those contexts and, for the initial three-month period when the FACA was still functional, it also applies Additional Protocol II to the Geneva Conventions, relating to the Protection of Victims of Non-International Armed Conflicts. For the remaining periods covered by this report, the Commission analyses the various alleged abuses only in terms of violations of international human rights law and crimes against humanity under the Rome Statute.

40. The Commission also concludes that a separate non-international armed conflict also existed for most if not all of the relevant time between the armed groups operating in the country and the French forces making up Operation Sangaris, who arrived in December 2013.

### B. Bodies of Applicable International Law

41. The applicable law is also examined in detail in Annex I below. In brief, the Commission has applied three bodies of international law to the situation in the CAR. International human rights law, in the forms of both ratified treaties and customary norms, applied throughout the period covered by this report. In the context of an armed conflict, human rights law continues to be applicable, even if international humanitarian law might, under some circumstances, be considered to be the *lex specialis*. The Commission also adopts the widely accepted understanding that non-state groups that exercise de facto control over territory must respect human rights in their activities. As noted above, international humanitarian law also applies to those periods during which a non-international armed conflict existed. And international criminal law is applicable throughout the relevant period. It is also of particular relevance because the CAR ratified the Rome Statute of the International Criminal Court on 3 October 2001. The Commission thus considers the extent to which genocide, crimes against humanity, and war crimes may have been committed.

## V. Summary of Violations and Abuses of International Human Rights Law and International Humanitarian Law

42. Annex II of this report provides a detailed description and analysis of the violations and abuses committed by all of the principal actors during the almost two year period covered by this report. In many instances, these abuses rose to the level of international crimes. The description that follows is designed to give a brief overview of the Commission's detailed analysis of the relevant events.

43. Long before 1 January 2013, which is when the Commission's mandate begins, the CAR was involved in a non-international armed conflict between the government and the Séléka coalition. There was widespread repression of the government's political opponents and ordinary citizens, especially those of Muslim origin who were suspected of having close ties to the Séléka. Under the command of President Bozizé, the FACA and the Presidential Guard conducted extrajudicial killings and arbitrary arrests and illegally detained and tortured political opponents. In addition, the final months of the Bozizé Government saw a sudden surge in hate messages directed against the Muslim population.

44. The Séléka coalition, led by Michel Djotodia, took over Bangui on 23 March 2013 after a successful coup d'état. The coalition was mainly composed of fighters of Muslim faith, many of whom were from Chad or Sudan and did not speak Sango. Under the orders of the new government, they immediately sought to find and execute people loyal to the former regime, especially former politicians and FACA soldiers. Numerous rapes and widespread looting were reported in the neighborhoods of Bangui where the supporters of former President Bozizé lived. Similar violations occurred in many towns where the Séléka were present. Thousands of houses were also burnt or destroyed, and some churches were targeted. At the same time, the regime created the *Comité extraordinaire de défense des acquis démocratiques* (CEDAD) at whose base political opponents were illegally detained, tortured and killed.

45. Former president Francois Bozizé former FACA soldiers, former *gendarmes*, politicians and others from Bozizé's inner circle met in Cameroon from June 2013 to plan a return to power. Most of them were Gbaya, Bozizé's ethnic group. Together they planned the attack on Bangui on 5 December 2013 and reached out to self-defense groups that were already present in the western part of the CAR, Bozizé's stronghold, to join the common purpose.

46. The first series of attacks by the anti-balaka were carried out in Bossangoa and surrounding areas in September 2013, resulting in dozens of civilian casualties. The Seleka retaliated by killing non-Muslims.

47. On December 5 2013, an attack was conducted by the anti balaka in Bangui. It deliberately targeted the Muslim population. The seleka was able to repel the attack, and thereafter went door-to-door killing hundreds of non-Muslim civilians suspected of being anti-balaka.

48. The next month witnessed a series of attacks by the anti-balaka and retaliatory attacks by the Séléka against the civilian population. Although Djotodia resigned on 10 January 2014, the anti-balaka continued to target the Muslim population, and the Séléka continued to kill non-Muslims.

49. The anti-balaka deliberately killed members of the Muslim population and on many occasions told the Muslims to go away and not come back. Their houses, as well as their mosques, were burned or destroyed. Muslims who tried to flee were frequently killed, whether in the towns, the bush, or in convoys that were taking them to refuge outside the country. Those Muslims who could not escape were forced to stay in enclaves under the protection of international forces. Surrounded by the anti-balaka, they were deliberately prevented from accessing food, water and medical care, thus reducing their living conditions to a deplorable state.

50. Thousands of people died as a result of the conflict. Human rights violations and abuses were committed by all parties. The Séléka coalition and the anti-balaka are also responsible for war crimes and crimes against humanity. Although the Commission cannot conclude that there was genocide, ethnic cleansing of the Muslim population by the anti-balaka constitutes a crime against humanity.

## VI. The Road to Accountability

51. The Commission has noted above the critical importance of putting an end to the impunity that has for so long characterized official responses to violations of human rights and international humanitarian law in the CAR. If accountability is to be achieved in the months and years ahead it will require concerted and complementary efforts by diverse actors. Several considerations should guide these efforts.

52. First and foremost is the concern to ensure that the perpetrators are systematically held to account, including in particular those responsible for the most serious violations.

53. Second, the prosecutions that take place must be, and be seen to be, fair and in compliance with international standards of justice.

54. Third, the system that is put in place for tackling past impunity must be capable of continuing to function as an effective and impartial deterrent to future violations. This means that the challenge should not be seen as a temporary one, and that the judicial institutions that will be called upon to try those accused of crimes over the almost two year period covered by the present report are supported in such a way as to build and strengthen their capacity to continue to uphold the rule of law in the CAR in the years ahead. This consideration will pose a particular challenge, given that a central part of the strategy that is currently being put in place is premised on the notion that the measures are urgent but also temporary, under the mandate provided by the Security Council for MINUSCA to adopt “urgent temporary measures.” We return to this issue below.

55. In this section, the Commission considers: the current capacities of the judicial system in the CAR and the extent to which they can be expected to make an important contribution to putting an end to impunity; the role to be played by the Special Criminal Court that the authorities are in the process of establishing; the contribution of the Security Council’s Sanctions Committee; and the role of the International Criminal Court. Based on this survey of the principal accountability mechanisms the Commission then draws some conclusions.

## A. The CAR Legal System

56. In 2009, it was reported that the criminal justice system in the CAR was widely considered to be dysfunctional:

*The justice system is plagued by a lack of resources, severely limiting its capacity to address impunity. Human resources are minimal in the capital, and nearly non-existent in the rest of the country. In Bangui, the public prosecutor's office has just two prosecutors for criminal cases. ... Across the country, there are not enough buildings to house courtrooms and offices of judges and key personnel. Basic equipment is in short supply.*<sup>9</sup>

57. Over the past two years, however, an already entirely inadequate and dramatically under-resourced legal system was further degraded and undermined. Police and judges were attacked and often forced to flee, some were even killed,<sup>10</sup> facilities were ransacked, equipment stolen or destroyed, and many of the official police and court records were intentionally destroyed. These attacks on the personnel and physical infrastructure of the justice system have further exacerbated the deeper structural problems that have, according to most observers and participants with whom the Commission spoke, long afflicted the judiciary. These include the tendency to select and appoint judges on the basis of their tribal or other affiliations and connections to the powerful, and an arbitrary approach to the careers of judges and prosecutors based on favouritism and rewards. The system is also rife with corruption at all levels, from the police and gendarmes who fail to collect evidence or later make it disappear, to the prosecutors, through the highest levels of the judiciary.

58. In addition, the past two years have seen a further diminution in the already very limited reach of the judicial system outside of Bangui. Similarly, the police and gendarmerie are barely present in the rest of the country. One knowledgeable observer of the justice system told the Commission that “in the interior of the country, nothing is working. The situation is chaotic due to the complete absence of authorities and respect for law and order.” The Bar consists of a total of 122 registered lawyers, all of whom are based in Bangui. In addition, the detention and prison systems were almost totally destroyed during the past two years, and the few facilities that currently exist are managed by or with the strong support of, the international forces.

59. This brief overview illustrates the nature and extent of the challenges that must be tackled by those seeking to build a system capable of attacking impunity. During the period under review, several attempts have been made to reinvigorate the justice sector, but they have had very limited success to date. Decree No. 13-100 of 20 May 2013 created a mixed commission of inquiry to investigate crimes and human rights violations committed since 2004. But this initiative was widely criticized because the commission's independence was not guaranteed, and it was not given the resources or premises needed to carry out its work.<sup>11</sup> It was reported to have received dozens

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<sup>9</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Philip Alston, Mission to the Central African Republic, A/HRC/11/2/Add.3 (27 May 2009), § 59.

<sup>10</sup> On 16 November 2013, the Director-General of Judicial Services, Judge Modeste Martineau Bria, was killed by unknown persons.

<sup>11</sup> Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Central African Republic, A/HRC/25/43 (19 Feb. 2014), paras. 37-38.

of complaints and requests for damages from victims, but it is not clear that it succeeded in dealing with any of these issues before it was disbanded.<sup>12</sup>

60. In April 2014, the Transitional authorities created by decree the *Cellule spéciale d'enquête et d'instruction* (CSEI, or Special Investigation and Instruction Unit) to investigate and prosecute those responsible for serious crimes since 1 January 2004. Under the direction of the Prosecutor-General of the Court of Appeal, the Unit should be composed of judges and prosecutors, as well as twenty judicial police officers from the Gendarmerie and the national police. This initiative was widely welcomed by civil society and the legal profession, but the Prosecutor-General told the Commission in late August 2014 that no resources had been allocated to enable him to begin his work.

61. Several conclusions suggest themselves to the Commission. First, there is a genuine commitment on the part of some actors at the national level to tackle the impunity that has characterized the past decade. Second, there is a small group of judges and prosecutors who would be capable of contributing significantly to these initiatives. Third, the lack of resources and material support has, so far, been fatal to the initiatives that have been taken. It seems clear therefore that the support of the international community will be indispensable going forward.

## B. The Special Criminal Court

62. Among the Security Council's priority concerns in creating MINUSCA were the protection of civilians and the provision of support for national and international justice and the rule of law. The Council thus provided that MINUSCA may, "within the limits of its capacities and areas of deployment, at the formal request of the Transitional Authorities and in areas where national security forces are not present or operational, adopt urgent temporary measures on an exceptional basis ... to maintain basic law and order and fight impunity." The measures were, however, to be limited in scope, time bound and consistent with the overall objectives of the mission.

63. Pursuant to this authority, a Memorandum of Intent was signed on 5 and 7 August 2014 by the Minister of Justice of the CAR and the Special Representative of the Secretary-General which commits the Government to establishing, by law, a Special Criminal Court. The court's jurisdiction will apply throughout the CAR and its remit is to conduct preliminary investigations and judicial examinations to try "serious crimes, including serious violations of human rights and international humanitarian law, including conflict-related sexual violence as well as grave violations of the rights of the child, that constitute a threat to peace, stability or security" in the CAR.<sup>13</sup>

64. The agreement does not envisage the creation of a new international court, but rather a special court within the legal system of the CAR, according to the modalities specified in the memorandum, and pursuant to necessary legislative and regulatory measures to be adopted by the Government. It spells out the composition of the court,

<sup>12</sup> "CAR: The Search for Justice", Irin, 30 October 2014, at <http://www.irinnews.org/report/100773/car-s-search-for-justice>

<sup>13</sup> Memorandum of Intent between the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic and the Government of the Central African Republic (August 2014), § 4.

and especially the balance between national judges and prosecutors and international appointees.

65. It is not for the Commission to comment on the details of this agreement, but several observations are in order. The memorandum does not specify the jurisdiction *ratione temporis*, and could thus be interpreted as suggesting that no retrospective application is envisaged. This would prevent the court from contributing to efforts to ensure accountability for past crimes and is presumably not the intent of the agreement. Nor is the applicable law spelled out, which could be problematic to the extent that the existing CAR Penal Code does not mirror the provisions of the Rome Statute. But it may be presumed that the necessary legislative measures that are now being discussed will ensure clarity on this issue. Finally, the memorandum states that the arrangements shall be without prejudice to the jurisdiction of the International Criminal Court in current or future investigations. But there will still be a need to reflect on the most effective ways in which to ensure that these two undertakings complement one another.

66. In principle, the Commission considers that the proposal to create a Special Criminal Court is highly desirable. It seems clear from past experience with purely national accountability initiatives that they are unlikely to succeed in the absence of the various advantages that can be derived from a more internationalized or hybrid effort. But past experience also counsels that the provision of adequate resources, provided by the national authorities but especially by the international community, will be a *sine qua non* for the success of the Special Criminal Court.

### C. The Sanctions Committee and the Panel of Experts

67. By the same resolution that established this Commission, the Security Council imposed a sanctions regime on the CAR, and established a Sanctions Committee and a Panel of Experts to monitor and report on implementation of the sanctions. The resolution envisaged the imposition of targeted measures, including travel bans and assets freezes, against individuals who act to undermine the peace, stability and security, including by engaging in acts that threaten or violate transitional agreements, or by engaging or providing support for actions that threaten or impede the political process or fuel violence, including through violations of human rights and international humanitarian law, the recruitment and use of children in armed conflict in violation of applicable international law, sexual violence, or supporting the illegal armed groups or criminal networks through the illicit exploitation of natural resources, including diamonds, or by violating the arms embargo.

68. The Panel of Experts has submitted two reports in the course of 2014.<sup>14</sup> As of 4 November 2014 the Committee had imposed sanctions on three individuals: François Bozizé, Lévy Yakobé and Nourredine Adam.<sup>15</sup>

69. While the reports of the Panel are immensely helpful in understanding what is happening in the CAR, and the steps taken by the Sanctions Committee are important

<sup>14</sup> S/2014/452 (1 July 2014); and S/2014/762 (29 October 2014).

<sup>15</sup> “The list established and maintained by the 2127 (2003) Committee”, at <http://www.un.org/sc/committees/2127/pdf/2127.pdf>

in a variety of ways, these measures are no substitute for the criminal accountability that is the focus of the present report.

#### D. The International Criminal Court

70. As previously noted, the Prosecutor of the International Criminal Court has concluded that there is a reasonable basis, in accordance with Article 53 of the Rome Statute, to proceed with an investigation of crimes committed since 1 August 2012. Article 1 of the Statute provides that the Court's jurisdiction shall be complementary to that of national criminal jurisdictions, and Article 5 specifies that it shall be limited to the most serious crimes of concern to the international community as a whole.

71. It is not for the Commission to undertake a detailed analysis of the relationship between the work of the International Criminal Court and that of the Special Criminal Court. On the one hand, the latter will be able to try many more alleged perpetrators, has the advantage of being closer to the local population, and will be able to establish important precedents that should continue to guide future judicial efforts to ensure accountability. On the other hand, it will not be ideally situated to handle some of the most controversial cases involving the most serious crimes and there are many reasons why the ICC should assume jurisdiction over that handful of cases. Suffice it to say that there are important precedents which demonstrate that the ICC and national courts can effectively and constructively share the responsibility for attacking impunity in such situations. In any event, it is clear that if the State, on the basis of the work of the Special Criminal Court and other relevant judicial bodies, can be deemed to be unwilling or unable genuinely to carry out the investigations or prosecutions required, the ICC will be empowered under article 17 of the Rome Statute to step in.

#### E. Drawing Conclusions

72. Several conclusions emerge from this overview of the existing justice system and of the arrangements that are in place or being set in train to strengthen and complement it. First, while noting the devastation of the policing, judicial, and prison systems that occurred over the past two years, it is essential to acknowledge that the CAR has a core group of trained lawyers, prosecutors and judges who are capable of forming the backbone of a newly revitalized system. The Commission emphasizes the importance of building upon this foundation, rather than seeking to go around it.

73. Second, in looking ahead, there is a need to strike a balance between the roles to be played by domestic and international actors. There are strong reasons why there needs to be an international component and these should not be under-estimated. But there are also strong reasons why the domestic judiciary needs to be strengthened, to be consulted and fully involved, and to emerge from the process in a way that ensures that it is capable of maintaining the legacy of accountability beyond the stage at which the international community is no longer integrally involved.

74. Third, impunity will not be overcome unless both the Transitional authorities and the international community are prepared to pay for it. In April 2014, the UN High Commissioner for Human Rights, speaking in Bangui, concluded that there was "total impunity, no justice, no law and order apart from that provided by foreign troops".

She added that “[c]reating an effective justice system, prisons, police forces and other key State institutions, virtually from scratch, is a massive and complex enterprise that cannot be done on the cheap.” The international community has already made a major commitment to the CAR. It would be unfortunate if this did not include sufficient funds to enable the Special Criminal Court to work effectively and to develop in such a way that it contributes to the long-term strengthening of the country’s judicial system.

75. Fourth, any sustainable effort to ensure that impunity is eliminated will require that adequate attention is given to extending the reach of the justice system, broadly defined, well beyond Bangui and providing adequate coverage throughout the country as a whole. The Commission notes in that regard the proposal by the Panel of Experts for mobile courts.<sup>16</sup>

76. Fifth, the Commission perceives a gap between the commitments expressed by the Security Council and the needs identified by the Secretary-General, on the one hand, and the practical measures contemplated to date, on the other. The Secretary-General reported in November 2014 that the key antagonists “continue to operate in total impunity” in a situation that remains “highly volatile”. He notes that “tackling impunity remains imperative.”<sup>17</sup> But it is not clear that the urgent transitional measures upon which almost all hopes of tackling impunity seem to be pinned can be considered sufficient. The Transition in the CAR is scheduled to be completed by August 2015. By that time it is highly unlikely that many prosecutions will have been undertaken, let alone completed. The Commission therefore believes that it is essential for plans to be put in place urgently for a full-fledged hybrid court to take over from the UTM measures that are, by definition, required to be only temporary.

77. In conversations with some policy-makers and officials who are debating the shape of future arrangements, several arguments have been invoked to explain why the international community should not fund an ongoing internationalized judicial mechanism. One is that only a few thousand persons were killed. But this figure is certainly a gross under-estimate and entirely fails to capture the scope of the tragedy that has beset the CAR. Another argument is that such a mechanism would be immensely costly. It is true that other international mechanisms have not come cheaply, but impunity will not be ended in the absence of an effective and enduring mechanism, and ways of keeping the costs manageable could certainly be found.

## VII. Conclusions and Recommendations

### A. Conclusions

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<sup>16</sup> The Committee urge the transitional authorities of the Central African Republic, in cooperation with international partners and with the support of MINUSCA, to establish mobile legal courts in order to bring perpetrators to justice and fight impunity in the provinces. Panel of Experts, final report, § 223 (j).

<sup>17</sup> Report of the Secretary-General on the Situation in the Central African Republic, S/2014/857 (28 Nov. 2014), paras. 40, 65 and 70.

78. The Commission was established in response to horrendous abuses and to fears that the conflict in the CAR could turn into a genocidal killing spree. The fact that the Commission has concluded that the threshold requirement to prove the existence of the necessary element of genocidal intent has not been established in relation to any of the actors in the conflict does not in any way diminish the seriousness of crimes that have been committed and documented in this report. Nor does it give any reason to assume that in the future the risk of grave crimes, including genocide, will inevitably be averted. At the time of completion of this report there continues to be major instability in many parts of the country, including in Bangui. Acts of violence, including serious violations of human rights and humanitarian law, continue to be perpetrated and the principal actors clearly retain a significant capacity to reignite the situation and trigger a renewed cycle of killings as well as a range of other serious abuses. There is no doubt that the forceful action taken by the Security Council in the resolution by which it created this Commission, and the mandate that was subsequently given to MINUSCA, were essential in order to prevent an even greater explosion of violence than has been documented in this report. But continued vigilance is essential.

79. A question that inevitably arises in this context concerns the number of killings that have occurred in the course of the recent conflict. While various estimates are available in the public domain, usually ranging from 3,000 to 6,000 during the less than two years covered by the present report, the Commission wishes to underscore that any such estimates are unavoidably based on extremely limited and selective information.<sup>18</sup> The Commission considers that, under the circumstances, any such statistics must represent a radical under-estimate of the actual number of individuals who have lost their lives during this period as a result of human rights and humanitarian law abuses.<sup>19</sup> For those reasons the Commission has opted not to speculate on the numbers killed or the numbers subjected to other serious abuses. Narrowly-focused statistics of this sort cannot hope to capture the humanitarian disaster that has overtaken the CAR over the past two years, nor can they help to predict the scale of the continuing risks of large-scale violence.

80. The Commission wishes to underscore its conclusion that one of the most urgent tasks for the national authorities, working with the full support of the international community, is to end the impunity that has been enjoyed over many years by the vast majority of those who have committed serious violations of human rights law and international humanitarian law in the Central African Republic. This track record of consistent and uninterrupted impunity has established an expectation that perpetrators will not be punished. This in turn has provided an incentive for perpetrators to

<sup>18</sup> The Panel of Experts has also drawn attention to the chronic problems of underreporting, “largely due to the lack of presence of humanitarian and human rights organizations in large parts of the country ...,” and to the inability of local NGOs to register incidents that occur. S/2014/762, Annex 64, paras. 3, 7 and 11.

<sup>19</sup> One example must suffice. MSF undertook a thorough survey of the population of CAR refugees in a single refugee camp in Silo, in southern Chad in March-April 2014. Based on the testimonies of those in the camp, more than 57 per cent of whom were originally from Bangu, it was calculated that 2,100 family members of those in the camp had been violently killed (by bullets, knives, grenade explosions, or mortar fire. MSF, *Central African Refugees in Chad and Cameroon: “Suitcase or Coffin”* (2014).

remain active in order to demonstrate that their participation in a future government is a necessary reward to induce them to cease their predations. The notions that killings or other abuses can pave the way to cabinet portfolios or other rewards must be definitively put to rest.

81. Impunity cannot be brought to an end solely through the prosecution of a handful of perpetrators, no matter how highly placed they might be, how serious the crimes they are alleged to have committed, or how central they might have been in the running of the criminal networks.<sup>20</sup> Rather, it requires a systematic effort to prosecute as many as possible of those who carried out serious violations, as well as those who ordered such acts. It also requires the building up of a legal system in the years ahead that will be able to demonstrate its capacity and willingness to investigate, prosecute, punish and incarcerate human rights violators, as well as being able to instill a degree of confidence on the part of the populace that the rule of law prevails in general.

## B. Recommendations

### 1) To the National Transitional Government of the CAR

a) The Commission recommends that a high priority should be accorded to the rebuilding of all of the elements of an effective and functioning legal system. This includes a well-trained and well-armed police force, with a specialized investigative capacity, as well as an independent, qualified, and adequately resourced judiciary. The reach of these institutions must be national, and not confined solely to Bangui and its immediate surroundings;

b) The Central African Republic should become a party to both the Convention on the Prevention and Punishment of the Crime of Genocide, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, along with the Optional Protocol to the latter.

c) Another proven technique for establishing accountability and undermining impunity is to create a truth commission. Given that many crimes will inevitably go unpunished in the conditions that have prevailed in the Central African Republic in recent years, it is important to seek to produce a detailed accounting of the crimes and human rights violations that have been committed and to permit the victims and their family members to recount their stories. While more elaborate goals have additionally been entrusted to some truth commissions established in other countries in the past few years, it is not clear that these models are likely to be affordable or successful in the short-term in this context. The key is to initiate a sustainable process that will, over time, grow and evolve in ways that are meaningful to the Central African community, rather than imitating models that have been developed in very different contexts. The Commission recommends that the Government invite the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of

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<sup>20</sup> Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, analyzing “prosecutions as part of a comprehensive transitional justice policy.” A/HRC/27/56 (27 August 2014).

non-recurrence to visit and make recommendations as to the most effective strategy to be pursued under the circumstances.

d) Another transitional justice-related issue which is also directly linked to the fight against impunity concerns the possibility of vetting candidates for national political office, including for the office of President of the Republic. The Commission recommends that the transitional authorities consider requiring such candidates to make a formal statement attesting to the fact that they were not responsible for or complicit in, serious crimes or gross violations of human rights and humanitarian law. In the event that such a declaration is subsequently shown to be false, the candidate should be ineligible to stand for election and, if already elected, should be disqualified from office. Such a system would require the authorities to consider what mechanisms and procedures could best be adopted to ensure a fair and just process.

e) Rape and other forms of sexual and gender-violence has occurred in alarming numbers. The authorities should make a special effort to prosecute the perpetrators and police in particular females should be trained to provide support in such situations in the future. Top priority, however, for the local community with international assistance should be on the provision of health care, education, economic programmes, special attention to women who have given birth to children as a result of rape, and the provision of trauma counselling to assist the healing of the victims and their affected family members.

2) To the National Transitional Government of the CAR and the MINUSCA

a) The Commission recommends that the National Transitional Government of the CAR, in cooperation with MINUSCA, should develop and implement a policy for restoring the property rights of those who were forced to flee as a result of communal violence, and whose homes and land were subsequently taken over by others. If, for any reason, the full restoration of such rights is not possible, a comprehensive program of compensation should be put in place, along with appropriate grievance mechanisms.

b) The independence of the Prosecutor to be appointed pursuant to the MOU will be critical to ensuring the success of the Special Criminal Court. The Prosecutor should draw up a list of priority cases to be pursued in the short-term as well as a longer-term strategy for ensuring accountability for the serious abuses that have been committed in recent years.

c) The conflict in the CAR has witnessed a very high number of incidents involving obstruction of efforts to deliver humanitarian assistance, as well as a high level of attacks on, and the killing of, aid workers, including medical personnel. The Commission recommends that the Government of the CAR, along with MINUSCA, should develop a more concerted policy for responding to, and seeking to deter, such violations of humanitarian neutrality.

3) To MINUSCA

The Commission recommends that in order to avoid any appearance of condoning impunity on the part of members of the international peace keeping forces who commit any violations or crimes, victims of these violations and their families should be kept informed of the sanctions or punitive measures that have been taken against the perpetrators of such violations.

## 4) To the Security Council

a) One of the biggest challenges to securing accountability for human rights and humanitarian law violations will be the ability of the judicial system to ensure the protection of witnesses. Given the nature of the crimes, the passage of time, and the lack of forensic evidence in most cases, witness testimony will be key to building a strong case against alleged perpetrators. But in a country with extremely limited budgetary resources, and in which the extended family will also on occasion need some forms of protection, a major effort will be required to establish a witness protection program that meets the necessary criteria for success.<sup>21</sup> This will almost certainly require dedicated financial support from the international community, quite apart from any role that might be played in this regard by the International Criminal Court's witness protection program. Protecting witnesses also requires establishing strict confidentiality arrangements on the part of fact-finders and prosecutors.

b) The Commission considers that the agreement to create a Special Criminal Court is of major importance and it recommends to States and the international community to take all necessary measures, including the possibility of cooperating with existing international organisations, institutions, foundations, and non-governmental organizations in order to facilitate the successful establishment of the court, strengthen its capacity and reinforce its independence. The proximity of the national courts to the populace, their ability to send a meaningful message in relation to accountability, and their potential for dealing with a much larger number of perpetrators, argues strongly in favor of the international community making every effort to facilitate their primary role in upholding criminal accountability and providing remedies for victims.

c) The Commission also recommends that measures taken in 4 (b) above should be carefully designed, as far as possible, to make the maximum contribution to building up the capacity of the Central African court system. While there may be arguments for establishing a special court which is based outside the territory of the CAR, and thus away from the continuing instability and threats, such an initiative would not leave a lasting legacy in terms of a strengthened national legal system. Nor would it have the same impact as would a domestic tribunal that will demonstrate the capacity, independence and impartiality necessary to signal definitively that the days of impunity are over.

d) The Commission notes that the arrangements between MINUSCA and the CAR authorities to support the Special Criminal Court can only be of a temporary nature and that after August 2015, when the transition is to be completed, there is no assurance that such arrangements can or will be maintained. It also notes that the MOU establishing the SCC does not specifically give it retrospective application and focuses instead on future crimes rather than those of the past. The Commission therefore recommends that arrangements should be made to create an internationalized hybrid court, drawing on the experience in Sierra Leone and other States, to take the lead in establishing full accountability for the crimes described in this report.

e) The Commission notes that, after almost two years of analyzing the situation, the Prosecutor of the ICC announced on 24 September 2014 that she had concluded that there is a 'reasonable basis' to open an investigation into the situation in the Central

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<sup>21</sup> Chris Mahony, *The Justice Sector Afterthought: Witness Protection in Africa* (2010).

African Republic (“CAR II”). That investigation has now begun. The Commission considers that, under these conditions the principle of complementarity will be applied. It will be for the Central African courts, and particularly the Special Criminal Court, to show that they are both willing and able genuinely to carry out the investigation and prosecution of those alleged to have committed crimes against humanity or war crimes. In the event that the national courts are not able to satisfy this burden, the ICC should exercise its jurisdiction where appropriate.

f) If the ICC investigation is to be successful, it will need to be adequately resourced. The Assembly of the States Parties to the ICC should ensure that the necessary funds are available to undertake investigations that cover the alleged crimes of all of the parties to the conflict in the CAR.

The Commission is aware that a significant number of allegations have been made of violations of international humanitarian law and human rights on the part of members of the various international peacekeeping forces deployed at various times in the CAR. Although it endeavoured to investigate some of these incidents, it was not able to reach definitive conclusions with regard to any particular case. The Commission considers, however, that in view of both the potential for such violations to occur and of the significant number of allegations made, there is a strong need to put in place a more effective system than that which currently exists. In order to achieve this outcome, The Commission recommends that a mechanism be established to receive and consider complaints alleging human rights violations by UN peace-keeping forces. The process that was put in place in Kosovo could usefully be adapted for this purpose.

5) To the Secretary-General of the United Nations

a) The Secretary-General should ensure the full applicability in practice of the United Nations Human Rights Due Diligence Policy to the regional peace-keeping forces with which the UN cooperates.

b) The Secretary-General’s periodic reports on peace-keeping operations in the CAR should include an analysis of any violations that are alleged to have been committed by both UN peace-keepers and non-UN peacekeepers authorized by the Security Council.

c) The Commission leaves the Secretary-General the decision as to which judicial bodies, if any, should be provided with access to the confidential materials. It notes, however, that those materials could be of relevance to the inquiries undertaken by the Office of the Prosecutor of the International Criminal Court, the relevant prosecutorial authorities in the CAR, and any internationalized tribunal that might be created in the future to consider issues of criminal responsibility in the CAR during the period under review.

6) To the United Nations High Commissioner for Human Rights

a) The Commission joins the Panel of Experts in calling upon the OHCHR to collaborate more effectively in the future with investigations being carried out by other international actors. In particular, the Office should ensure that clear policy guidelines are in place to ensure that all relevant information can be shared with commissions of inquiries, panels of experts, and other comparable actors. To the extent

that issues of confidentiality are considered to arise, a protocol should immediately be developed to address this concern.

b) The United Nations has long had a presence in the Central African Republic, and in response to Security Council's request that steps be taken to increase the number of human rights monitors deployed in the CAR, the human rights division of MINUSCA has begun to grow considerably. The Commission believes that it is essential for this work to result in the publication of analyses and reports that are made public, as is routinely the case in similar situations in other countries. Where reports are produced solely for internal consumption there is a higher risk that their quality will be low, that they will have insufficient impact on internal deliberations, and that they will contribute much less than they could to shedding light on the human rights situation as it is unfolding.

c) As already noted, the Commission attaches a very high priority to the establishment of effective witness protection programs. An important first step in that direction would be MINUSCA in cooperation with OHCHR to ensure that a program is put in place to assist any witnesses and victims who may require protection as a result of cooperating with the Commission's inquiry.

7) To the United Nations Human Rights Council

The Commission recognises the vital role being played by the Independent Expert and therefore recommends that the mandate of the Independent Expert is extended to enable continuous monitoring and reporting to the Council on the situation of human rights in CAR.

8) To the Regional Organisations (AU, EU, ECCAS and OIF)

a) While recognising the important role played by the regional organizations in response to the CAR conflict, the Commission recommends that they continue to assist CAR in its effort to combat impunity, promote rule of law, rebuild the national administration, develop and strengthen national capacities for good governance and sustainable development. Of particular importance will be the provision of assistance in setting up functioning judicial mechanisms designed to end impunity and give reality to the rule of law

b) The African Union should finalize its draft Conduct and Discipline Policy in relation to peace-keeping forces. The policy should include both clear standards and appropriate implementation and complaints mechanisms.

*(Signed)* Bernard Acho Muna

*(Signed)* Fatimata M'Baye

*(Signed)* Philip Alston

## VIII. Annexes

### Annex A: The Applicable International Legal Framework

#### 1) Legal Classification of the Situation

82. The situation in the CAR during the period from the beginning of the Commission's mandate, 1 January 2013, until the cut-off date for the present report, 1 November 2014, is generally divided into three phases:<sup>22</sup>

- a) 1 January 2013 – 24 March 2013, when the Government of President François Bozizé was still in power and the Séléka offensive was in progress.
- b) 24 March 2013 – 11 January 2014, starting with Bozizé's flight and the coming to power of the Séléka under Djotodia, followed by the rise of the anti-balaka.
- c) 11 January 2014 – present, after Djotodia surrendered power to the National Transitional Council, and thereafter the interim President, Catherine Samba-Panza assumed the responsibilities of government.

83. These three phases, however, represent essentially the periods during which different actors were officially in power, and do not necessarily reflect the nature or intensity of the conflict that took place in the country during the relevant periods of time. Such a determination is necessary in order to reach a conclusion as to whether, and during what periods, a non-international armed conflict can be said to have existed in the CAR. Only during those periods would international humanitarian law, in addition to human rights law, be applicable to the events analyzed by the Commission.

84. The principle frame of reference in this regard is common Article 3 of the Geneva Conventions of 1949. This provision applies to "armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties," and includes armed conflicts in which one or more non-governmental armed groups are involved.

85. The CAR is also a party to Additional Protocol II to the Geneva Conventions, relating to the Protection of Victims of Non-International Armed Conflicts, which defines such conflicts as those "which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol." This provision reflects a narrower definition of what constitutes a non-international armed conflict since it introduces a requirement of territorial control, and applies only to armed conflicts between State armed forces and organized armed groups. During the period when the Central African Armed Forces ("FACA") constituted a coherent armed force, and up until the time that it was effectively disbanded in the face of the Séléka takeover, which for the purposes of this report means 1 January – 24 March 2013, Additional Protocol II can be considered to have been applicable to the non-international armed conflict that existed during that period. But the dissolution of the FACA after March 2013, and lasting until at least very recently, means that Additional Protocol II did not apply after that date.

<sup>22</sup> Note, however, that Article 53(1) ICC Report, § 51, identifies four different phases.

86. For common Article 3 to apply, the situation must involve more than either isolated acts of violence, a mere internal disturbance or riot. Rather, there must be protracted violence that reaches a certain level of intensity and the groups involved must reach a threshold of organization. International judicial bodies have identified a range of factors that can be considered in determining whether the violence has been sufficient to reach the level required for an armed conflict. They include: the seriousness of the attacks and their recurrence;<sup>23</sup> the spread of the armed clashes over territory and over a period of time;<sup>24</sup> whether the conflict attracted the attention of the Security Council, and whether resolutions on the matter have been adopted;<sup>25</sup> the extent of involvement of government forces;<sup>26</sup> the types of weapons used;<sup>27</sup> the extent to which the conflict led to the displacement of civilians;<sup>28</sup> and whether the armed forces of the State, as opposed to its police, were used to respond to insurgents.<sup>29</sup>

87. The Rome Statute provides no definition of the term “organized armed group,” but international judicial bodies have examined the issue in detail. Thus, it has been noted that it is not necessary for a group to be “sufficiently organized to carry out continuous and persistent military operations and to impose discipline on its troops.”<sup>30</sup> Instead, the following factors have been considered to be relevant in making a determination: the adoption of internal regulations; the nomination of a spokesperson; the issuance of orders, and of political statements and communiqués; the establishment of headquarters; the capacity to launch coordinated actions between groups; the establishment of military police and disciplinary rules; an ability to recruit and to provide military training; the use of uniforms and other equipment; and the ability to distribute weapons through channels.<sup>31</sup>

88. Given the complexity of the tests that have been identified, it is not surprising that there is room for debate as to the exact periods during which the rules of international law governing non-international armed conflict may be considered to have been applicable in the complicated circumstances that have prevailed in the CAR over the past two years. In its preliminary report to the Council in June 2014 the Commission expressed the view that there had been a non-international armed conflict in existence since at least the beginning of its mandate, 1 January 2013. This preliminary assessment was based on the limited information available to the Commission after being operational for only two months. It now considers that there

<sup>23</sup> Tadic § 565, Kordic trial § 29, Celebici trial, paras. 186-189.

<sup>24</sup> Tadic § 566,68; Kordic trial § 30, Kunarac Trial, § 567; Celebici trial, paras. 183-192.

<sup>25</sup> Tadic, para 567; Celebici trial, § 190.

<sup>26</sup> Limaj, paras. 146, 158-59.

<sup>27</sup> Id. paras. 136,138, 156, 159, 161, 164-66.

<sup>28</sup> Limaj § 167.

<sup>29</sup> See generally Sandesh Sivakumaran, *The Law of Non-International Armed Conflict* (Oxford University Press, 2012).

<sup>30</sup> Limaj et al. IT-03-66 § 89.

<sup>31</sup> Id.

is good reason to revisit this assessment, and to suggest a more nuanced and less definitive approach.

89. The Commission is aware that other actors with particular expertise in this regard have also been examining the matter, such as the International Committee of the Red Cross (ICRC) and the Office of the Prosecutor of the International Criminal Court. It is not clear, however, that the positions adopted by these different actors are consonant with one another. The ICRC does not make public on a continuing basis its own determinations of whether a given conflict has met the criteria that would warrant it being classified as a non-international armed conflict. Its press statements and annual reports do, however, provide pertinent information. The ICRC opened a delegation in the Central African Republic as long ago as 2007 in response to what it described as “the non-international armed conflict in the north.” But, at some point, this classification was changed. Thus, in its Annual Report for 2012, it observed that armed clashes and acts of banditry, leading to displacement and property damage had occurred in the north, and particularly the north-east. In December of 2012, after “the Séléka, an alliance of armed groups, took control of the north and centre of the country,” “the ICRC shared with the authorities its qualification of the situation as a non-international armed conflict.”<sup>32</sup>

90. In contrast, its Annual Report for 2013 suggests that a change in classification might have occurred at some undefined point. Thus, the report makes no mention of an ongoing non-international armed conflict, nor does it refer to the international humanitarian law obligations of the parties. Instead, it states that:

*The ICRC engaged in dialogue with all the authorities concerned and with weapon bearers, formally and orally reminding them of their obligation under international human rights law to respect and protect: civilians and their property, the wounded and sick, and humanitarian and medical personnel/infrastructure.*<sup>33</sup>

91. Although the ICRC has yet to publish its annual report for 2014, a press statement issued in April calls “on the parties to the conflict to obey the basic rules of international humanitarian law”, which is consistent with the re-emergence of a non-international armed conflict.<sup>34</sup>

92. For its part, in its Article 53(1) report, the Office of the Prosecutor (OTP) of the ICC has concluded that:

*The information available suggests that at least since 10 December 2012 a non-international armed conflict has taken place on the territory of the CAR involving government forces, the organized armed rebel coalition known as Séléka, and anti-balaka forces.*<sup>35</sup>

<sup>32</sup> ICRC Annual Report 2012, p. 111.

<sup>33</sup> ICRC Annual Report 2013, p. 124.

<sup>34</sup> ICRC Bulletin No. 04/2014, “Central African Republic: Continuing deep concern for civilians”, 7 April 2014, available at <http://www.icrc.org/eng/resources/documents/update/2014/03-07-central-african-republic-rising-violence.htm>.

<sup>35</sup> Article 53(1) Report, § 56.

93. This assessment cannot, however, be read to suggest that there was a single conflict across the entire two year period involving all three of these actors. First, as noted above, the government forces were not involved as such in the conflict after March 2013. Second, the anti-balaka forces did not emerge until the second half of 2013 at the earliest. The OTP statement would thus have to be interpreted as implying that the more disparate groups resisting the Séléka before that time could be classified as having sufficient organizational coherence as to constitute an armed group for the purposes of the law of armed conflict. The OTP report lays out a strong case, based on all of the evidence available in open-source documents, for considering that the Séléka and the anti-balaka (once formed) “each constitute an organized armed force for the purpose of article 8,” dealing with war crimes. When taken together with the information marshalled by the Panel of Experts in its final report of October 2014, and especially the information and analysis contained below in the present report, the Commission is convinced that both of these parties to the conflict met the degree of organization required for there to be an armed conflict. In the case of the Séléka, this was true for the entire period covered by this report, and in the case of the anti-balaka, it is true from sometime soon after its emergence around September 2013.

94. The Commission is less certain, however, that the level of hostilities throughout the period under review consistently met the required intensity. In the period from 1 January 2013 until the forceful ouster of President Bozizé on 24 March 2013, the Séléka were engaged in a systematic takeover of territory as they advanced from the northeast to close to Bangui. They were opposed during this time by the FACA, although most accounts suggest that the latter provided relatively little opposition. Despite this, the Commission is of the view that several considerations point to the existence of a non-international armed conflict during this period. They include: the extent to which the Séléka took control of key parts of the country, the belligerent intent manifested by its forces, its significant military capacity, its degree of organization, and its capacity to arrest members of the opposing forces.

95. In the following months, as Séléka were initially welcomed by significant parts of the population, they met no resistance from the effectively disbanded FACA. They steadily consolidated their power and control, and there was no other organized armed force capable of being considered to be in conflict with the Séléka. In addition, the level of violence did not reach the threshold degree of intensity that would have been required even if there were competing armed groups in existence. This began to change, slowly at first, after the anti-balaka emerged from the ranks of the diverse self-defense groups that had formed in different parts of the country. From September until the night of 4-5 December when serious hostilities erupted in Bangui, there were a number of isolated incidents, but it is not apparent that the overall situation reached the necessary intensity. The OTP report, along with the preliminary report of the Panel of Experts, place considerable emphasis on the “coordinated attacks” that anti-balaka forces conducted on the outskirts of Bossangoa on 6-7 September, but these were not followed by sustained violence there or elsewhere in the country until December. The level of hostilities that has been maintained since 5 December 2013 has been intense and there has been no fundamental abatement. Indeed, in the weeks leading up to the 1 November 2014 cut-off date for the present report, there has been a further flaring up of the conflict, including a significant number of killings and large-scale displacement.

96. The Commission’s conclusion is that the level of hostilities during the period from 24 March 2013 until early December did not reach the level required to conclude

that an armed conflict existed. If that assessment is correct, the law governing situations of non-international armed conflict would not be applicable in the relevant period of time. The Commission acknowledges that future analyses, based on more detailed accounts of all of the many incidents that occurred in this timeframe, might lead to a different conclusion.

97. For present purposes, however, the Commission considers that it is a more accurate reflection of the facts on the ground and of the careful and nuanced application of the relevant law to conclude that there was a non-international armed conflict taking place on the territory of the CAR up until March 2013, and again from 4 December 2013 until the present time. For the remaining periods covered by this report the Commission therefore analyses the various alleged abuses only in terms of violations of international human rights law and crimes against humanity under the Rome Statute.

98. In addition, the Commission observes that a separate non-international armed conflict also existed between the French forces making up Operation Sangaris, who arrived in December 2013, and the armed groups operating in the country. It is generally accepted in international humanitarian law that repeated military operations may potentially lead to the involvement of multinational forces in such a conflict, assuming that the criteria of organization and intensity are met, and even if the multinational forces are doing no more than retaliating against attacks.<sup>36</sup> The Panel of Experts reported that Operation Sangaris was involved in a number of major clashes, requiring the use of aerial support and leading to a significant number of casualties and population displacements in both May and August 2014.<sup>37</sup> Consistent with this assessment, the ICRC observed in October 2014 that it was in regular contact with the French Sangaris force, which it characterized as a party to the conflict.<sup>38</sup>

99. In reaching its conclusions on the qualification of the conflict, the Commission seeks to balance two competing considerations that it believes should guide its analysis. The first calls for caution in suggesting too many changes over time in the classification of the conflict. This has been well expressed by the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia, in the Gotovina case:

*Once the law of armed conflict has become applicable, one should not lightly conclude that its applicability ceases. Otherwise, the participants in an armed conflict may find themselves in a revolving door between applicability and non-applicability, leading to a considerable degree of legal uncertainty and confusion.*<sup>39</sup>

100. The second consideration is the need for some precision in the determination of the nature of the conflict in order to avoid the possibility that prosecutions will be

<sup>36</sup> Tristan Ferraro, "The applicability and application of international humanitarian law to multinational forces," 95 *International Review of the Red Cross* (2013), p. 561 at p. 579.

<sup>37</sup> S/2014/762, § 54.

<sup>38</sup> ICRC, "Central African Republic: A never-ending quest to promote humanitarian rules," 3 October 2014, at <https://www.icrc.org/en/document/central-african-republic-never-ending-quest-promote-humanitarian-rules>.

<sup>39</sup> Prosecutor v. Gotovina (2011), Trial Chamber Judgment, § 1694.

undertaken for war crimes, which will subsequently fail because the defence is able to show that there was no armed conflict in existence at the time the alleged offences were committed. This consideration is illustrated by the findings of the same judicial body in the Haradinaj case:

*The Chamber finds that the limited evidence is insufficient to support a conclusion that the conflict between the KLA [Kosovo Liberation Army] and the Serbian forces had the requisite level of intensity during the period between 1 March 1998 and 21 April 1998. The situation in Kosovo was indeed tense and [certain] incidents ... particularly exacerbated the situation. However, the Chamber can only view them as incidents that contributed to the escalation of the tension which had not yet reached the requisite level of intensity.*<sup>40</sup>

101. In balancing these two considerations, the Commission considers that it is best to err on the side of caution and to avoid blunt classifications that may provide a greater degree of legal certainty and facilitate the continuing and uninterrupted application of international humanitarian law but that do not accurately reflect the nature of the events on the ground.

## 2) Bodies of Applicable International Law

102. The Commission has applied three bodies of international law to the situation in the CAR: international human rights law, international humanitarian law, and international criminal law.

### i) International Human Rights Law

103. International human rights law has applied within the CAR throughout the period covered by this report. In addition to customary international law, the CAR is a party to a wide range of universal and regional human rights treaties. At the universal level, it is bound by: the International Covenant on Economic, Social and Cultural Rights,<sup>41</sup> the International Covenant on Civil and Political Rights,<sup>42</sup> the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>43</sup> the Convention on the Elimination of All Forms of Discrimination against Women,<sup>44</sup> and the Convention on the Rights of Child.<sup>45</sup> While it signed the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 27 September 2010, it has yet to ratify it. At the regional level, the CAR is

<sup>40</sup> Prosecutor v. Ramush Haradinaj, Idriz Balaj, Lahi Brahimaj, IT-04-84bis-T 29 November 2012, § 410.

<sup>41</sup> Acceded to by the Central African Republic on 8 May 1981.

<sup>42</sup> Acceded to by the Central African Republic on 8 May 1981.

<sup>43</sup> Ratified by the Central African Republic on 16 March 1971.

<sup>44</sup> Acceded to by the Central African Republic on 21 June 1991.

<sup>45</sup> Ratified by the Central African Republic on 23 April 1992.

a party to the African Charter on Human and Peoples' Rights<sup>46</sup> and the Convention Governing the Specific Aspects of Refugee Problems in Africa.<sup>47</sup>

104. The Security Council has underscored the primary responsibility of the Transitional Authorities to protect the population, including their obligation to ensure respect for international humanitarian law, human rights law and refugee law.<sup>48</sup> As a State party to these treaties, the CAR is bound to respect, protect, promote and fulfil the human rights of all persons within its jurisdiction, according to the provisions of the relevant instruments. This includes the right to an effective remedy for those whose rights have been violated, and the responsibility to investigate, prosecute and punish the perpetrators of human rights violations.<sup>49</sup>

105. The CAR has not notified the Secretary-General that it has declared a state of emergency, nor has it sought to derogate from its obligations under the International Covenant on Civil and Political Rights.

106. Although the Commission considers there to have existed a non-international armed conflict during parts of the period under review, it is accepted that international human rights law continues to apply in times of armed conflict, as well as during peacetime. Thus, as the International Court of Justice has observed, "[t]he protection offered by human rights conventions does not cease in case of armed conflict."<sup>50</sup> Instead, it continues to apply alongside international humanitarian law, although the latter is generally considered to be the *lex specialis* during times of armed conflict.

107. Non-state actors are not able to become parties to international human rights treaties and thus those operating in the CAR, such as the Séléka and the anti-balaka, cannot formally undertake to be bound by the specific obligations contained in those treaties. Debates that took place in the late part of the twentieth century as to whether such non-state actors are nevertheless bound by the standards of international human rights law,<sup>51</sup> have today been replaced by a general understanding that non-state groups that exercise *de facto* control over territory must respect human rights in their activities.<sup>52</sup> The Security Council acted consistently with this approach in

<sup>46</sup> Ratified by the Central African Republic on 26 April 1986.

<sup>47</sup> Ratified by the Central African Republic on 23 July 1970.

<sup>48</sup> Security Council Res. 2127 (2013), § 21.

<sup>49</sup> The Human Rights Committee in General Comment No. 31 on The Nature of the General Legal Obligation Imposed on State Parties to the Covenant (2004), paras. 15-19, stated that the duty to bring perpetrators to justice attaches in particular to violations that are criminal under domestic or international law, torture and similar cruel, inhuman and degrading treatment, summary and arbitrary killing and enforced disappearance.

<sup>50</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p. 178, paras. 105-106.

<sup>51</sup> These debates are analyzed in detail in Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford, Oxford University Press, 2006).

<sup>52</sup> See, for example, Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, A/HRC/17/44, § 72; and UN Secretary-General, Report of the Secretary-General's Panel of Experts on Accountability in Sri

relation to the CAR when it strongly condemned “the continued violations of international humanitarian law and the widespread human rights violations and abuses, perpetrated by armed groups”.<sup>53</sup> The ICRC has consistently adopted a very cautious approach to this issue, but it now accepts the view that “[a] group which by virtue of exercising stable control over territory is able to act like a state authority may be recognized de facto as having human rights responsibilities.”<sup>54</sup>

108. It is also relevant to note that some of the non-state actors in the CAR have acted consistently with this understanding by issuing formal declarations and statements affirming their commitment to respect human rights.<sup>55</sup>

109. This report therefore applies human rights standards in evaluating the conduct of the various non-state actors, or armed groups, operating in the CAR.

ii) International Humanitarian Law

110. International humanitarian law binds all parties to an armed conflict. The CAR is a party to the four Geneva Conventions of 12 August 1949 as well as Additional Protocols I and II to the Geneva Conventions.<sup>56</sup> As noted above, the provisions of Common Article 3 of the Geneva Conventions are of particular relevance to the situation in the CAR as are those of Additional Protocol II to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflict. In addition, the provisions of customary international humanitarian law are also binding on all parties to the conflict.<sup>57</sup>

iii) International Criminal Law

111. Although the Security Council resolution creating this Commission of Inquiry makes no specific reference to international criminal law, this body of law is an essential complement to both international human rights law and international humanitarian law, in that it establishes individual criminal liability for serious violations of those other two bodies of law. The Central African Republic ratified the

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Lanka, 31 March 2011, § 188, available from: [http://www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf).

<sup>53</sup> Security Council Res. 2127 (2013), § 17.

<sup>54</sup> Alexander Breitegger, “The legal framework applicable to insecurity and violence affecting the delivery of health care in armed conflicts and other emergencies”, 95 *International Review of the Red Cross* (2013) p. 83, at pp. 103-04.

<sup>55</sup> For the most recent example, see the Statut Juridique de l’Unité Pour la Paix en Centrafrique (UPC), Bambari, 25 October 2014, committing to “un ‘Etat’ Démocratique issu des élections libres et transparentes dans le respect des droits de l’homme et des libertés individuelles.” (article 3).

<sup>56</sup> The CAR ratified the four Geneva Conventions on 1 August 1966, and the Additional Protocols on 17 July 1984.

<sup>57</sup> See Jean-Marie Henckaerts and Louise Doswald-Beck for the International Committee of the Red Cross, *Customary International Humanitarian Law* (3 vols.), (Cambridge, Cambridge University Press, 2005).

Rome Statute of the International Criminal Court on 3 October 2001, thereby giving the Court jurisdiction over war crimes, crimes against humanity and genocide as defined in the Statute in relation to crimes committed on the territory of the CAR or by its nationals since 1 July 2002. On 30 May 2014 the transitional government of the CAR referred the situation on the territory of the CAR since 1 August 2012 to the Prosecutor of the ICC.

112. Genocide: Although the CAR is not a party to the Convention on the Prevention and Punishment of the Crime of Genocide, it is bound by the Rome Statute, article 6 of which defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

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

113. Crimes against Humanity: Under article 7 of the Rome Statute, crimes against humanity are committed when specified acts are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Such acts include: murder, extermination, enslavement; deportation or forcible transfer of population; imprisonment, torture; rape, group persecution on political, racial, national, ethnic, cultural, religious, gender, or other impermissible grounds, enforced disappearance of persons, and other inhumane acts. None of these acts needs to be linked in any way to an armed conflict for a crime against humanity to have been committed.

114. War Crimes: Article 8 of the Rome Statute lists in detail the acts that constitute war crimes in the context of a non-international armed conflict. These include serious violations of common Article 3, committed against persons taking no active part in the hostilities, such as violence to life and person, including murder, mutilation, cruel treatment and torture, and outrages upon personal dignity. In addition, Article 8 establishes criminal responsibility for other serious violations of the laws and customs applicable in non-international armed conflicts such as intentional attacks against civilians, intentional attacks against those involved in humanitarian assistance or peacekeeping missions, pillaging, rape, conscripting or enlisting children as soldiers, and ordering the displacement of the civilian population.

## Annex B: Violations and Abuses of International Human Rights Law and International Humanitarian Law

### I. The Armed Forces (FACA) and the Presidential Guard

#### Background

115. The FACA are the main security force of the Central African Republic. At the time of Bozizé's downfall, they were estimated to be about 8,000 strong. The FACA has been dominated by the tribe of the president in power during the different regimes. Under Bozizé the FACA were mostly made up of soldiers from the Gbaya tribe. To maintain control, he pursued a dual strategy. On the one hand he appointed loyal friends and family members to the key positions.<sup>58</sup> On the other hand, he built up a powerful Presidential Guard which included the Young Patriots.<sup>59</sup> They served as a check on the power of the FACA and provided close personal protection.

#### A. Violations by the Armed Forces and the Presidential Guard

116. The Commission gathered information about alleged violations perpetrated by Bozizé's government, particularly the FACA, the Presidential Guard. These allegations were contained in various open source reports, including notably the report of the Office of the High Commissioner for Human Rights on the Central African Republic.<sup>60</sup> The available information describes violations such as extrajudicial killings, arbitrary arrest and illegal detention, torture carried out in facilities such as the Central Crime Control Centre and detention facilities such as the prison in Bossembélé,<sup>61</sup> commonly known as Guantanamo, enforced disappearances, theft and confiscation of property, incitement to ethnic hatred, and incitement to commit crime. The reports also described widespread repression, including witch-hunts against political opponents and ordinary citizens, especially those of Muslim origin who were accused of having close ties to the Séléka. It is alleged that some of President Bozizé's children were also directly involved in some of these violations.

117. The information gathered by the Commission indicates that in the years preceding 2013, the Government of President Bozizé was responsible for a wide range

<sup>58</sup> UNHCR, Fiche Pays République Centrafricaine, Jan 2005. P 16-17.

<sup>59</sup> The Young Patriots was the name given to the fighters who helped Bozizé take power in March 2003. They provided his close protection, with the assistance of foreign military contingents, and were frequently accused of serious human rights violations. Because of their favoured position, they were assured of total impunity.

<sup>60</sup> Report of the UN High Commissioner for Human Rights, Situation of Human rights in the Central African Republic, A/HRC/24/59, 12 September 2013. Human Rights Watch Report "I can still smell the dead" pp. 64-66.

<sup>61</sup> International Crisis Group, «Central African Republic: Priorities of the Transition», 11 June 2013, p 15. République Centrafricaine, Ministre de la Justice au Procureur Général près de la Cour d'Appel de Bangui, Crimes de la Bozizie : Le ministre de la justice instruit le Procureur Général au sujet des crimes de sang et crimes économiques de Bozizé et ses acolytes. N0. MJRJ.13, Bangui 30 Avril 2013

of serious violations of human rights, as well as violations of international humanitarian law. Far from diminishing during the first quarter of 2013 as the Government struggled to hold on to power, these violations were exacerbated.<sup>62</sup>

#### A. Extrajudicial Killings

##### i. Introduction

118. During the period from 1 January to 24 March 2013, the Government pursued a strategy of targeting members of the opposition and other civilians suspected of having links with the Séléka.<sup>63</sup> This led to extrajudicial killings involving both targeted and indiscriminate attacks.

##### ii. Factual Findings

119. The Commission gathered information from witnesses alleging that such killings were carried out by the Presidential Guard, soldiers of the FACA and young militiamen belonging to the Organizing Committee for Community Action and the Coalition against Armed Rebels.<sup>64</sup>

120. These executions were sometimes carried out in the presence and with the knowledge of State authorities. The Commission interviewed a witness who was able to provide information of violations carried out by both the FACA and the Presidential Guard.<sup>65</sup>

121. The Commission was informed that on 23 March 2013, more than 13 people were killed in Nderes cemetery by an officer of the FACA.<sup>66</sup>

122. The Commission interviewed detainees from the ‘Guantanamo’ illegal detention facility in Bossembélé who had been tortured and who described conditions of near starvation and constant ill-treatment inflicted upon them and other prisoners by the Presidential Guard. These witnesses stated that they saw two of Bozizé’s children leading the torture of alleged opponents and that on two occasions President Bozizé himself had visited the Bossembélé prison. Information collected by the Commission mentioned that senior officers with close ties to President Bozizé were responsible for several summary executions and had allegedly masterminded the death of many people perceived to be members of the opposition. It was alleged that dozens of dissidents were brutalized or killed.

##### iii. Applicable Law and Legal Findings

<sup>62</sup> Ibid, p.2, 3, et 5. «Libreville : Mémorandum de l’Opposition Démocratique » *Journal Le confident* (Bangui), 11 Janvier 2013 N°3130, page 9&10, Assingambi Zarambaud, «Arrestations, Enlèvements, Gardes à vue, Détenions, Séquestrations et Radio Mille Collines » *Journal Le Confident* (Bangui), 16 janvier 2013, N°3132, p.57.

<sup>63</sup> Human Rights Watch, “I can ...” op.cit p.66.

<sup>64</sup> /HRC/24/59, Situation of Human rights in Central African Republic, Human Rights Council, 12 September 2013, para 27.

<sup>65</sup> N0. MJRJ.13 opcit.

<sup>66</sup> N0. MJRJ.13 opcit.

123. Extrajudicial killing is a violation of the right to life under article 6 of the International Covenant on Civil and Political Rights (ICCPR). If they occur in the context of an armed conflict, such killings can also fall under the Rome Statute, in particular article 7 (crimes against humanity) and article 8 (war crimes).

124. These acts can constitute crimes under common article 3 of the Geneva Conventions and article 4 of Protocol II.

125. Although the information provided to the Commission about extrajudicial killings that took place at the ‘Guantanamo’ detention facility came from a limited number of witnesses, the Commission considers the sources to be reliable. While it has not been able to independently verify or corroborate the veracity of all of the allegations, it notes that the information gathered is consistent with, and not contradicted by, other information available to it. Based on these sources of information, the Commission concludes that these killings could not have happened without the knowledge and approval of the command structure of the FACA and the Presidential Guard, and thus of the President.

## B. Arbitrary Arrests and Unlawful Detention

### i. Introduction

126. The Commission gathered information that the security forces of the Bozizé Government, notably the FACA and the Presidential Guard, systematically and arbitrarily arrested people.<sup>67</sup> Some of the victims were detained in ‘Guantanamo’, the unlawful detention centre described above. Most of the detainees were arrested in 2012 and remained in detention until March 2013 when they were released by the Séléka upon their takeover of Bossembélé

### ii. Factual Findings

127. The Commission was informed by a witness with detailed knowledge of the practices carried out by the FACA and the Presidential Guard that many (at least 200 according to his statement) political opponents of Bozizé were illegally detained in Bossembélé prison. The centre was run by two Belgian colonels whose next in command were two Central African captains. When the town of Bossembélé was taken over by the Séléka, the following persons were still in prison:

128. As noted above, the Commission was told that on 10 March 2013, President Bozizé’s men allegedly selected some detainees, who were executed allegedly in his presence. Following these events, General Bozizé made a speech calling on his supporters to take up any weapons they could lay their hands on, to fight the Muslims, who were described as their enemies and their cousins.<sup>68</sup> A witness also said that, as

<sup>67</sup> *Journal Le Confident* 16 janvier 2013, opcit 5 -7 5 ; *Journal Le confident* 16 janvier 2013, N°3133, pp 56 ; *Le Confident*, Paul Gové « Camp de Roux, les détenus sont au supplice », *Journal Le confident* 16 janvier 2013, (Bangui) 12 février 2013 p.6 and John Smith, « Les Détenus Politiques Libérés » *Journal Le confident* (Bangui) du 22 mars 2013, N°3180, page 7. International Crisis Group Report, Central African Republic: Priorities of the Transition », opcit, p.26.

a result of this public exhortation of 15 March 2013, Muslims were tracked down, arrested and detained and allegedly executed at the colline des panthères. The witness was one of the soldiers who patrolled Bangui, with the aim of tracking Muslims. It is alleged that the Presidential Guard, under the auspices of General Bozizé had compiled a list of Muslim dignitaries to be detained and later executed.

129. The Commission also obtained information from a witness who was arrested on 14 August 2012, by the Presidential Guard and held in ‘Guantanamo’ until his release on 23 March 2013, by the Séléka. The witnesses provided the Commission with elaborate description of the circumstances of his arrest, detention and subsequent release at the Service des Enquêtes, de la Recherche et de la Documentation (SERD). He also described the torture he was subjected together with other detainees while in custody.<sup>69</sup>

130. A witness managed to reach an authority of the town who phoned a top leader of the Séléka. As a result, on 23 March 2013, when the town was taken over by the Séléka, the witness and his fellow inmates were freed by a Séléka general who had received specific instructions to free the detainees. Upon his release from prison, the witness asked the public prosecutor about his arrest and was informed that the prison in Bossembélé was totally out of his jurisdiction. President Bozizé had refused the public prosecutor access to the facility. He was later informed that he was suspected of complicity with someone who was plotting a coup d’état. He was also accused of defending a group of 17 youths who were side-lined from the entrance exam for admission to the gendarmerie and the 16,000 youths who had each paid CFAF 5,000 to be recruited into the armed forces. The witness was also accused of masterminding a strike by the youths. He learnt that he was suspected of going to Dakar to rally and bring soldiers to stage a coup d’état that was being hatched, but insisted that he was only going to Dakar to visit his wife.

### iii. Applicable Law and Legal Findings

131. Article 9 of the ICCPR prohibits unlawful arrest and illegal detention. According to this article “no one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.” Under Article 9(2) the person “shall be informed, at the time of arrest, of the reasons for his arrest”. Article 9(3) provides that “anyone arrested or detained on a criminal charge shall be brought promptly before a judge,” and article 9(4) states that “anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court.”

132. Based on the information collected, the Commission has reasonable grounds to believe that members of the Bozizé regime arbitrarily arrested and detained significant numbers of innocent civilians in unlawful detention facilities, in violation of international human rights law.

## C. Enforced disappearance

### i. Introduction

<sup>69</sup> See *Journal Le Confident*, 11 January 2013, opcit p.6 and p.9 and 10.

133. The Commission received allegations that some persons arrested and detained by the security forces under the command of President Bozizé have not been accounted for. Their fate is still unknown, although allegations of enforced disappearances were consistently denied by the government authorities.

ii. Factual Findings

134. Many victims were arrested by Bozizé's close aides. In particular, a number of civilians arrested by FACA in the 8th district of Bangui simply disappeared and remained unaccounted for. A witness provided reliable information that some detainees were taken out of detention and executed. Their bodies were disposed of in valleys as well as in ditches that were dug for that purpose. The Commission was informed by witnesses of the existence of two mass graves inside the prison in Bossembélé. Although, those killings occurred between 2010 and 2012, a period which is prior to the start of the Commission's mandate, there are reasonable grounds to believe that similar violations continued to take place in the first quarter of 2013, before the takeover by the Séléka on 24 March 2013.<sup>70</sup>

iii. Applicable Law and Legal Findings

135. The CAR is a party to the ICCPR, the provisions of which have been authoritatively interpreted as prohibiting all forms of enforced disappearances. The Human Rights Committee has stated that these practices "violate numerous substantive and procedural provisions of the Covenant, and constitute a particularly aggravated form of arbitrary detention."<sup>71</sup> In addition, enforced disappearances can constitute a crime against humanity under article 7(1) (i) of the Rome Statute. While the CAR has neither signed nor ratified the International Convention for the Protection of All Persons from Enforced Disappearance, the definition provided therein is relevant for present purposes. "Enforced disappearance" is defined in Article 2 of the Convention as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."

136. The most thoroughly documented case of enforced disappearance under the Bozizé Government is that of Charles Massi who disappeared in 2010.<sup>72</sup> Although the Commission received a number of allegations that would indicate that similar cases took place throughout the period up until the Séléka takeover on 24 March 2013, it was not in a position to carry out a thorough investigation of these particular allegations.

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<sup>70</sup> NO. MJRJ.13 opcit

<sup>71</sup> Human Rights Committee, General comment No. 35 (28 October 2014), Article 9: Liberty and security of person, § 17.

<sup>72</sup> Witnesses provided specific information on the death of Charles Massi, a prominent member in Bozizé government who later became a member of the opposition in 2010. Most of the witnesses with interviewed by the President.

## D. Pillaging and Destruction of Property

### i. Introduction

137. The Commission received reports and information drawn from open-source material that the FACA and the Presidential Guard looted public and private property before the S<sup>d</sup>ka takeover on 24 March 2013. Witnesses interviewed by the Commission corroborated many of the reported incidents of looting in Bangui.

### ii. Factual Findings

138. In addition to Bangui, the Commission gathered information indicating that there was consistent looting of properties by the FACA in the provinces of Lobaye, Sangha-Mbaere and Membre-Kadei before the fall of the regime<sup>73</sup>. The properties of international humanitarian organizations were also looted.

139. On 8 January 2013, a magistrate sent a letter to the Minister of Justice and Keeper of the Seals, calling on him to publicly condemn such acts by the FACA and the Presidential Guards. This angered soldiers who stormed the magistrate's house to arrest him. In response, on 11 January 2013, the Union of Magistrates released a statement condemning the actions by the security forces and accusing the Government of using Stalinist methods. They also called for strict respect for and protection of magistrates in the exercise of their duties and for protection of their families.<sup>74</sup>

140. A witness informed the Commission that the FACA looted the Bank of Africa before the arrival of the S<sup>d</sup>ka in Bangui in March 2013.

### iii. Applicable Law and Legal Findings

141. Under international humanitarian law, destruction and pillage of property are prohibited during both international and non-international armed conflicts.<sup>75</sup> Under the Rome Statute, article 8(2)(e)(v) prohibits pillaging and article 8(2)(e)(xii) prohibits the destruction of property in non-international armed conflicts.

142. For the crime of pillaging it must be showed that the perpetrator intended to deprive the owner of the property and to take it for private or personal use without his or her consent.<sup>76</sup> Although it has been established that the property must be of a certain value, the valuation will be made on a case-by-case basis, taking into account the general circumstances of the violation.<sup>77</sup> When a large number of people are deprived of their belongings, the overall effect on the civilian population and the multitude of offences committed can make the violation more serious.<sup>78</sup>

<sup>73</sup> /HCR/24/59, opcit, §32, Annex I.

<sup>74</sup> Communiqué édu Syndicat national des magistrats, 11 janvier 2013.

<sup>75</sup> Customary International Law Vol. 1 (Rules), pp. 176 and 182.

<sup>76</sup> Element number 2 of section 8(2)(e)(v) of the Elements of Crimes.

<sup>77</sup> Dario Kordic et al., Case No. IT-95-14/2-T, Trial Judgement, § 82.

<sup>78</sup> Dario Kordic et al., Case No. IT-95-14/2-T, Trial Judgement, § 83.

143. Unless required by military necessity, the property of the civilian population should not be destroyed or seized.

144. Such conduct also could be viewed as a violation of the right to property (article 17 UDHR and article 14 ACHPR).

145. Based on the above information, the Commission has reasonable grounds to believe that that pillaging and destruction of property was perpetrated during the conflict by the FACA from 1 January 2013 to 23 March 2013. These may constitute war crimes.

## E. Torture and Other Cruel, Inhuman or Degrading Treatment

### i. Introduction

146. The Commission gathered information from witnesses as well as open-source material that showed that the FACA and the Presidential Guards detained and tortured civilians perceived to be members of the opposition, and especially members or sympathisers of the Sđđka.<sup>79</sup> According to the reports, some of the victims died as a result of the cruel, inhuman and degrading treatment to which they were subjected. Some simply disappeared and were never heard from again.

### ii. Factual Findings

147. Abuses committed by the Bozizé Government were widely reported.<sup>80</sup> The Presidential Guard and FACA detained and tortured opposition members at the Bossembđé prison.<sup>81</sup> This included many Muslims, with real or alleged links to the Sđđka.<sup>82</sup>

148. According to information gathered from a witness interview and open sources,<sup>83</sup> an alleged plan by a rebel leader to overthrow President Bozizé was discovered. As a result, 150 alleged supporters or sympathisers of the Sđđka were arrested and systematically tortured. A witness disclosed to the Commission that the alleged ring leader was taken to Bossembđé prison. The witness reveals the names of those involved in the plot. The victim was subjected to torture for a whole day in the presence of a senior officer who was close to President Bozizé

149. The Commission also notes that various reports have recorded the widespread and consistent use of torture by the security forces as a routine matter during the Government of President Bozizé. A Special Rapporteur noted in 2009 that deaths in custody, preceded by torture, were widespread. In general, arrested suspects were

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<sup>79</sup> NO. MJRJ.13 opcit

<sup>80</sup> A/HCR/24/59, opcit.

<sup>81</sup> Human Rights Watch Report 2013, opcit p 65.

<sup>82</sup> Ibid

<sup>83</sup> Ibid.

said to be tortured as a routine matter.<sup>84</sup> Based on other open-source materials available to the Commission, there is no indication that these practices improved in any respect during the period under review.

iii. Applicable Law and Legal Findings

150. CAR is not a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but is a party to the ICCPR. Under international human rights law, there is a clear prohibition of torture and other forms of cruel, inhuman or degrading treatment. For instance article 7 of the ICCPR states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Torture is also prohibited under article 7 (crimes against humanity) and article 8 (war crimes) of the Rome Statute.

151. Information collected and documented by the Commission indicates that torture was systematically used by the Bozizé Government both as a routine matter in connection with the overall activities of the police and security forces, and also as a tool used specifically against members of the opposition or those alleged to have close ties to the Séléka, sometimes to inflict pain on the victims or force them to confess to crimes they did not commit.

F. Freedom of Expression

i. Introduction

152. Open-source material and reports examined by the Commission indicate that the right to freedom of expression was systematically curtailed by the Bozizé Government. This manifested itself through threats to journalists and to political leaders.

ii. Factual Findings

153. Testimony received by the Commission indicates that the Bozizé Government frequently resorted to action aimed at restricting the dissemination of information by the media. Several journalists were targeted and many were regularly monitored by government officials. Freedom of expression was always under attack by the Bozizé Government. Much of the targeting of journalists and their equipment was undertaken by pro-government militia. The Commission recorded testimony from two journalists who detailed violations that had been committed against journalists. The Commission also noted that some of the local media, encouraged by members of the government, contributed to fuelling anti-Muslim feelings. Overall, under Bozizé the media was systematically muffled and constrained as a result of the control exercised over journalists by the government.

iii. Applicable Law and Legal Findings

154. According to article 19(2) of the ICCPR, “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart

<sup>84</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Philip Alston, Mission to the Central African Republic, A/HRC/11/2/Add.3 (27 May 2009), § 52.

information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

155. Based on the information available to it, the Commission concludes that there are reasonable grounds to believe that the Bozizé Government threatened civilians, opposition leaders and journalists in order to prevent them from enjoying their right to freedom of expression. Some journalists were threatened in order to compel them to change their reports of violations alleged to have been committed in the CAR.

## G. Incitement to Ethnic Hatred

### i. Introduction

156. It derives from the review of open-source material and information gathered from interviews of witnesses that the period was allegedly marked by serious violations of international humanitarian law by the armed forces and the presidential guard.<sup>85</sup> It is reported that these violations of international human rights law were committed by many members of the Bozizé’s regime.<sup>86</sup>

### ii. Factual Findings

157. Towards the end of the Bozizé Government, there was a sudden surge in the number and strength of hate messages emanating from the members of the government.<sup>87</sup> These hates messages were directed at minority groups, such as people from the Peulh ethnic group, as well as other Muslims.<sup>88</sup>

158. Staunch supporters of the Bozizé Government used the national radio, and especially popular programmes, to defend the government and call for its opponents and others accused of conniving with the Séléka to be attacked, and even lynched.<sup>89</sup>

159. In a speech on 15 March 2013, President Bozizé urged Central Africans in the different neighbourhoods of the city to be vigilant, especially in relation to ‘foreigners’.<sup>90</sup> He identified areas that required greater vigilance, namely the shores of the River Oubangi, Mougoumbo, Damala, Boeing, and the 8<sup>th</sup>arrondissement. He placed special emphasis on the Mboko neighbourhood in which there were said to be many foreigners. This public call for hatred, fuelled by religious discrimination, undermined national unity and sought to pit citizen against citizen to further narrow partisan political interests. The enemy identified was the Muslim community, a large proportion of whom were living in the areas named. In his speech, President Bozizé

<sup>85</sup> Fridolin et Renaldi Wengué «Des éléments de l’UPC sèment la panique à Bangui » *Journal Le Confident* (Bangui) 25 janvier 2013 p 2.

<sup>86</sup> Amnesty International, République Centrafricaine, «La crise des droits humains devient incontrôlable », Octobre 2013, pp.15-16.

<sup>87</sup> John Smith «Bozizé invite le peuple à la vigilance » *Journal Le Confident* N°3124 (Bangui), 3 janvier 2013 p 7 and 8. A/HRC/24/59, opcit p 9, para 34, N0. MJRJ.13 opcit.

<sup>88</sup> N0 MJRJ.13 opcit.

<sup>89</sup> Ibid.

<sup>90</sup> *Journal Le Confident* N°3124, opcit.

purported to grant special authority to citizens of the CAR to “arrest members of the opposition and those with close ties with the Séléka and hand them over to the police or gendarmerie”. It is also worth noting that in a statement delivered a week earlier, on 8 March 2013,<sup>91</sup> President Bozizé had already stressed the need for Central Africans to remain vigilant towards the advancing ‘enemy’.

160. According to information gathered by the Commission, the attack by the anti-balaka against the Muslim civilian population on 5 December 2013 was a deliberate act planned by the Bozizé family and their accomplices. The actions of the anti-balaka groups who committed the attacks were monitored and directed by Bozizé and his aides who worked behind the scenes. The large-scale killing of Muslims and looting of their properties resulted from decisions taken by Bozizé’s men.

161. Three government officials were alleged to have been especially prominent in the campaign to manipulate the population on the basis of religious hatred. These officials provided funding to selected groups to set up roadblocks in order to check the movement of the population. They distributed deadly weapons such as spears and machetes to young supporters of the Bozizé Government. Machetes that had been provided to the government for agricultural purposes were instead distributed to supporters of Bozizé, presumably to be used for very different purposes.<sup>92</sup> The founders of the Citizens’ Coalition against Armed Rebels (COCORA) were in charge of the distribution.

162. The Commission has received reliable information that an adviser to President Bozizé played a crucial role in these efforts to pit the different communities against one another. In 2012, this adviser created the COCORA militia, whose aim was to stop the advancement of the Séléka. The COCORA leader took advantage of rallies and the national radio to make public statements that sought to provoke sectarian violence. His statements focused on violent propaganda which called for community vigilance, and promoted hate and discrimination against one segment of the national community. The adviser, known for his unorthodox methods, ran COCORA with an iron hand.

163. Another officer of FACA contributed significantly towards the mobilization of youth groups in the name of ‘vigilance’. He also arrested several persons wrongly accused of conniving with the Séléka. He was one of the founders of COCORA.

164. On 29 May 2013, the Prosecutor-General of Bangui issued an international warrant for the arrest of the former President Bozizé for crimes against humanity and incitement to genocide.<sup>93</sup>

### iii. Applicable Law and Legal Findings

165. Article 20(2) of the ICCPR states that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” A person may be found guilty of the crime of direct and public

<sup>91</sup> Discours de Bozizé Président de de la RCA à Bangui du 8 mars 2013.

<sup>92</sup> N0. MJRJ.13 opcit

<sup>93</sup> Central African Republic «Central African Republic: Priorities of the Transition» opcit p 29 . Monde du 31 Mai 2013 sur le mandat d’arrêt international lance contre le Président déchu.

incitement to commit genocide if he or she directly and publicly incited the commission of genocide and had the intent to directly and publicly incite others to commit genocide. Such intent in itself presupposes a genocidal intent.<sup>94</sup>

166. The information gathered by the Commission tends to suggest that there was an intention on the part of members of the Bozizé Government to commit or abet the commission of crime through the distribution of machetes to mostly non-Muslims youths. These machetes became the main weapons used by the anti-balaka in the killings of people of Muslim religion. The Commission did not find sufficient information at this stage to link the distribution and the usage of machetes by the anti-balaka. However, the Commission believes that this would provide a fertile ground for further investigation by the prosecutor or any judicial institution that will be established.

## II. The Séléka

### Background

167. After François Bozizé took power in a military coup in 2003, he came under pressure from the people of CAR and the ECCAS to organize elections, which he eventually did in 2005. The elections were considered by other political parties as fraudulent. These parties arranged violent protests all over the country and from then on, various attempts to overthrow Bozizé by force were made between 2006 and 2011. As a result, various rebel groups came into existence during this period, the principal ones being: L'Armée Populaire pour la Restauration de la Démocratie, (APRD), Union des Forces Démocratiques pour le Rassemblement (UFDR, led by Michel Djotodia Am-Nondroko) and Front Démocratique du Peuple Centrafricain (FDPC).

168. These and other parties<sup>95</sup> came together and formed a coalition called Séléka which came into existence in 2012. Their ideology originally called for the respect and the inclusion of political dialogue, recommended by the conference of 2008 held in Bangui, for reconciliation following the 2007 Peace Agreement<sup>96</sup>, in order to ensure the smooth organization of elections in 2010. The Séléka had previously demanded financial compensation for the rebels, the release of prisoners, and investigation into past crimes, notably the enforced disappearance of a prominent opposition leader, Charles Massi.

169 In January 2013, the Libreville agreement between the Seleka and the Bozizé government, aimed at producing a roadmap for political transition and the cessation of hostilities failed. In February 2013, Michel Djotodia was appointed Deputy Prime Minister and Minister of Defense. However, in March 2013, the two sides resumed fighting, which led to the takeover of Bangui by the Séléka later that month.

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<sup>94</sup> Kalimanzira, judgment para 155, Bikindi, judgment par 135, Nahimana et all judgment para 677.

<sup>95</sup> Convention Patriots for Justice and Peace (CPJP), the Patriotic Convention for the salvation of Kodro (CPSK), the Union of Democratic Forces for Unity (UFDR) and, the Union of Republican Forces (UFR) and the Alliance for Renaissance and Refoundation (A2R).

<sup>96</sup> On 13 April a Peace Agreement reconciliation was signed between the government and the UFDR in Birao.

## Violations Perpetrated by the Séléka Forces

170. The Commission gathered information from reliable sources describing a wide range of alleged violations of human rights and international humanitarian law committed after Michel Djotodia and the Séléka forces took over the government of the CAR in March 2013. The Commission also collected information of violations allegedly perpetrated by the Séléka coalition, which were detailed in reports prepared by diverse national and international non-governmental organizations, and reinforced and corroborated by information gathered from witnesses and victims.<sup>97</sup> These violations include extrajudicial executions, attacks on civilians and protected objects, torture and other forms of ill-treatment, arbitrary arrest and illegal detention, pillaging and destruction of property.

### A. Extrajudicial Executions

#### i. Introduction

171. The Commission gathered information on extrajudicial executions which occurred from 24 March 2013 after the departure of Bozizé from the CAR, to 10 January 2014. Throughout this period the Séléka coalition took control of the state apparatus and exercised all powers conferred upon it by the state authority.<sup>98</sup> The body of information documented in relation to this period concerns arbitrary arrests, illegal detention in unlawful detention facilities, torture and extrajudicial executions. Having received credible information regarding the existence of killing fields and the locations of mass graves which were discovered in the Colline des Panthères, Camp Beal and BSS,<sup>99</sup> the Commission undertook investigations in those areas.

172. Eye-witnesses who were interviewed provided reliable information which was later corroborated by other witnesses. The physical assessment of some of these sites confirmed the consistency of the testimonies documented by the Commission. Many of the victims of the violations observed had been suspected of having ties to, or collaborating with the Bozizé Government. Some were also suspected of being members of the FACA or the Presidential Guard, or members or sympathisers of the anti-balaka.

#### ii. Factual Findings

##### a. Camp de Roux and the Colline des Panthères in Bangui

<sup>97</sup> Rapport du Secrétaire Général sur la République Centrafricaine établi en application du paragraphe 22 de la Résolution 2121 (2013) du Conseil de Sécurité S/2013/677, OHCHR, Situation of human rights in the Central African Republic, A/HRC/24/59, 12 September 2013 ; Report of the Secretary-General on the situation in the Central African Republic, S/2013/787, 31 December 2013; Amnesty International, *République Centrafricaine: la crise des droits humains devient incontrôlable*, octobre 2013.

<sup>98</sup> Rapport du Secrétaire Général sur la République Centrafricaine établi en application du paragraphe 22 de la Résolution 2121 (2013) du Conseil de Sécurité S/2013/677 p.3 & 8.

<sup>99</sup> Bataillon de Soutien et des Services (BSS) is a military camp in Bangui the capital of CAR

173. Séléka officers arbitrarily arrested and illegally detained many persons at Camp de Roux during the period from November 2013 to January 2014. Some of these victims and witnesses were interviewed by the Commission. According to their testimonies, detainees were tortured and ill-treated, and some were executed with machetes either inside the Camp de Roux or at the Colline des Panthères.

174. Two survivors interviewed by the Commission stated that while in detention at Camp de Roux for a period of six days, eight detainees were taken out and killed each night. The Séléka officers usually came and told them that their companions had been killed and that they should wait for their turn.

175. Two other survivors interviewed informed the Commission that on 8 December 2013, they were brought before President Djotodia in the presence of the international media. Present at the scene was the Prosecutor of Bangui, the Director of CEDAD,<sup>100</sup> the Director of Presidential Security and other senior military officers. When addressing the detainees, President Djotodia said this “Ah non! Pourquoi vous faites ça? Pourquoi vous sacrifiez votre vie pour une cause aussi floue”. He then turned to the Prosecutor and said : « Mon frère, il faut voir, s’il faut les libérer, vous les libérez ; ce que vous allez faire ; la justice n’a qu’à faire son travail »<sup>101</sup>.

176. According to the survivors, the members of the group who had been presented to the media were kept in detention at Camp de Roux and killed one by one on the direct instructions of the Séléka military commanders.

177. Some of the detainees interviewed by the Commission survived the killings that took place inside Camp de Roux, behind the office of the “Chef d’Etat-Major.” Others survived when they were taken to the Colline des panthères to be execution. The modus operandi of these executions consisted of stabbing them with a knife and leaving them bleed to death at the crime scene. Miraculously, some of these detainees survived these deadly ordeals. One of them explained to the Commission that on the night of 16 December 2013, he was saved by another detainee who managed to untie him after they had been left for dead. Unfortunately, his saviour did not survive. The survivor went to hide under a tree after the Séléka officers left the scene. The next day he struggled to reach a nearby radio station where he explained his ordeal to the security officer who informed the Central African Red Cross. The Red Cross agents came and took him to the Community Hospital where he received treatment before being transferred to another hospital where he was treated by doctors of an international NGO until his discharge. Two survivors of the killings which took place inside the Camp de Roux on 13 December 2013 also provided the Commission with a full account of their story. Out of the eight detainees who were stabbed that night, the two who survived managed to crawl out until they reached the Red Cross Office. The Red Cross agents took them to the hospital which was managed by an international NGO.

178. On 24 December 2013, a total of 31 bodies were discovered in a valley at the Colline des Panthères. They were buried in a mass grave by the Central African Red

<sup>100</sup> Comité Extraordinaire pour la Défense des Acquis Démocratique.

<sup>101</sup> Canal Plus documentary, ‘Special Investigation’ by Canal plus from January 2014. It showed Djotodia addressing some detainees at Camp Roux, 8 December 2013.

Cross at the Zila cemetery in the district of Bimbo, located at about 12 km South West of Bangui.<sup>102</sup>

179. The official residence of President Djotodia and that of the Chief of the Armed Forces were located in the same premises of Camp de Roux. The Commission noted that the killing field was situated near their residences. This proximity raises the question of whether the frequent summary executions that were being carried out could have gone unnoticed by President Djotodia and his Chief of the Armed Forces.

180. Although the Commission could not confirm whether these two officials were aware of the extrajudicial executions that were actually taking place inside the Camp de Roux. Information received by the Commission coupled with other information gathered, point to the fact that the Séléka leadership was in total control of the State at the time and should therefore bear responsibility for all such violations committed during this period. Based on the evidence gathered, the Commission has reasonable grounds to believe that the highest State authorities were aware and had in fact aided and abetted the commission of these violations, and that they did not do anything within their powers to prevent or punish those who committed such violations.<sup>103</sup>

b. Camp Beal and BSS<sup>104</sup> in Bangui

181. On 14 February 2014 following an investigation by the national prosecutor of Bangui, thirteen bodies were discovered in the former fuel cellar of the military Camp BSS. Nine other bodies were found in a mass grave at Camp Beal not far from the BSS. The Red Cross reburied all of them at the Zila cemetery in Bimbo. The bodies showed signs of torture, with the victims' hands tied behind their backs (known as the Arbatachar position). Some of the victims had been killed and thrown into the grave, whereas others had been tied up and thrown into the grave alive but later died.<sup>105</sup>

182. The Commission's investigations revealed that Camp Beal had been occupied by Séléka officers since March 2013. A former non-Muslim member of the Séléka stated that he was at Camp Beal since 24 March 2013. The Commanding officers were a General and a Colonel of the Séléka. The main entrance of Camp Beal was managed by another Colonel who commanded twenty-one men. Non-Muslim civilians who had been arrested were detained in containers inside Camp Beal. The Séléka Commanders allegedly executed their victims and threw their bodies either into the fuel cellar of Camp BSS or into a mass grave inside Camp Beal. According to a testimony received by the Commission, a former member of the Séléka stated that he was targeted by a senior military of the rank of Colonel at Camp Beal, but managed to escape by using a hand grenade.

183. The bodies found within Camp BSS were reportedly those of the people killed by Séléka officers at Camp Beal, which had been under the authority of the Séléka commanders since March 2013.

<sup>102</sup> The Commission received with a note from a medical personnel of an NGO which was found in a case file provided by the Prosecutor.

<sup>103</sup> The Commission has a video which shows the President Michel Djotodia addressing the detainees.

<sup>104</sup> Bataillon de Soutien et des Services (BSS) is a military camp in Bangui the capital of CAR.

<sup>105</sup> Note Provided by the Prosecutor, opcit

c. Other extrajudicial Executions

184. The Commission analyzed a wide range of reliable reports<sup>106</sup> describing intentional extrajudicial executions which were organized and perpetrated by the Séléka military commanders. Many of the victims were perceived to be close to the Bozizé Government, or were members or sympathizers of the anti-balaka. The Commission received additional information from the national prosecutor of Bangui regarding the assassination in Bangui on 16 November 2013 of a magistrate, Martineau Modeste Bria, in the vicinity of a bar in Bangui.<sup>107</sup> The Commission collected reliable information on the case through interviews with senior members of the national judiciary and of the National Association of Magistrates. The information indicates that Martineau Modeste Bria was assassinated by Séléka officers. Among the possible motives behind his assassination is the fact that he was from the same ethnic group as President Bozizé.

185. The Séléka upon their arrival immediately started to hunt down supporters of Bozizé in order to kill them. Interviews conducted by the Commission suggest that the Séléka soldiers targeted FACA elements, members of the gendarmerie and police officers, in general, but particularly those who were considered to be pro-Bozizé.<sup>108</sup> Politicians and their family members were specifically targeted by the Séléka because of their connection to the regime.

186. The Commission was able to confirm that FACA soldiers were targeted by the Seleka.

187. For instance, a person who was forced to be the personal driver of a Sudanese Seleka Colonel in Bangui told the Commission that he witnessed numerous killings by soldiers under the Colonel's command. According to him, they would drive around neighbourhoods in Bangui in a pick-up truck, with a heavy military escort, looking for FACA soldiers or going to the homes of FACA soldiers to target them or their family members. The events that he described occurred in March and April 2013. One day they stopped six men who were walking on the street and said they came from the Boy-Rabé neighborhood. A woman dressed in a military uniform, who was always in the car with the Colonel, said they must be FACA and shot them with an AK-47.

188. According to the same person family members of FACA soldiers were also killed. On one occasion, the Seleka went to the house of a FACA soldier but when they discovered he was not there, the Colonel ordered his men to kill the soldier's wife and two young children.

189. The witness also mentioned an attempt to kill a FACA captain at his house. But when the Seleka tried to enter, he fired at them and they had to retreat. When they

<sup>106</sup> Situation of human rights in the Central African Republic, A/HRC/24/59, 12 September 2013, p. 12, § 52.

<sup>107</sup> A case file in relation to the murder of Martineau Modeste Bria was provided to the Commission by the Prosecutor

<sup>108</sup> A/HRC/24/59, op cit., p. 52, "...some killings targeted soldiers from the FACA and the Presidential Guard, while others were committed in retaliation against perceived resistance from civilians..."; See also, Report of the Secretary-General on the situation in the Central African Republic, S/2013/787 p. 6, §29.

came back at night with reinforcements, international forces were stationed close to the captain's house, so they could not make a second attempt.

190. The witness said that he saw many people get killed in circumstances similar to those described above over a period of approximately two weeks. Although the Colonel had ordered a subordinate to kill the witness, he was instead let go and told to leave Bangui.

191. Another case involved the kidnaping by the Seleka of a former FACA on 17 April 2013. The next day, the father of the victim was informed by the local Red Cross that he could come to collect the body. According to the father, the victim's body had clear signs of torture.

192. A man named Regis Mamadou was killed on 17 April 2013 because he was identified as a member of FACA.

iii. Applicable Law and Legal Findings

193. The killings described may be classified as extrajudicial executions. During President Djotodia's rule, the Séléka officers were the only official military, police and gendarmerie authorities in the CAR. As such, they were obligated by law to bring any suspected persons to the court and put them on trial. But this generally did not happen, and instead civilians were arbitrarily arrested, tortured and executed because they were suspected of being members of the anti-balaka militia or pro Bozizé sympathizers.

194. Moreover, some of these crimes involved people who had been presented to President Djotodia in the presence of the national prosecutor and the international media at Camp de Roux, where Djotodia resided.

195. Under international human rights law which applies to the relevant period of time these extrajudicial executions constitute violations of the right to life, specifically article 6 of the ICCPR. These acts also constitute a violation of article 4 of the African Charter of Human and Peoples' Rights (ACHPR). The provisions of the Constitution of the CAR, promulgated on 27 December 2004 and amended in 2010, are also violated. Articles 1, 3 and 4 provide that the human person is sacred and inviolable and that Central African citizens have the right to life and physical integrity.

196. And to the extent that these crimes were committed within the context of a systematic attack against a civilian population, and there is a strong argument that the attacks meet both criteria, the killings amount to a violation of article 7 of the Rome Statute relating to crimes against humanity.

197. Considering that international humanitarian law applies from 4 December 2013 until the present in the CAR, the fact that most of these executions took place on or after 5 December 2013, coupled with the fact the victims of the mass executions and those found in mass graves were mainly civilians who were not involved in the conflict, these executions fall under the ambit of Common article 3 of the Geneva Conventions.

## B. Attacks on Civilians and Protected Objects

### i. Introduction

198. Reliable reports point to an abundance of alleged attacks on civilians and civilian objects during the conflict in the CAR.<sup>109</sup> According to those reports, these attacks involved intentional, targeted or indiscriminate attacks. The Commission interviewed a total of 99 persons, in four IDP camps in Bangui. Additional information was also gathered from witnesses in other towns including Boali, Bossangoa, Boda, Baoro, Bouar, Bozoum, Yalok é Bossempt é é Bocaranga, Bohong and Ngoutere.

### ii. Factual Findings

#### a. Intentional and Indiscriminate Attacks on Civilians

199. In retaliation for attacks conducted by the anti-balaka militia on 5 December 2013, Séléka officers, joined by Muslim youths, launched indiscriminate attacks on non-Muslim civilians throughout the country. These attacks which lasted until 31 January 2014 triggered the displacement of a very large number of civilians.<sup>110</sup> According to Amnesty International, more than 210,000 people fled their homes in Bangui during this period and more than 700,000 people fled their homes across the country as a whole.<sup>111</sup> The Commission visited four IDP camps in Bangui, at FATEB, Bimbo Padre Pio, Airport Mpoko, and Parish St-Jacques de Kpetene. Witnesses and victims explained the circumstances under which they left their houses and were forced to become IDPs.

200. The Commission gathered information from fifteen IDPs who claimed to have witnessed the killings of their family members by Séléka soldiers and Muslim civilians during those two days.

201. The Seleka allegedly went door by door in certain neighborhoods, looking for anti-balaka to kill. Many of the witnesses the Commission met explained how the Séléka killed their family members or people on the street.

202. For instance, in the 3<sup>rd</sup> district, killings and the destruction of houses by the Seleka were reported to the Commission. Armed men in military uniform in a four wheeled pick up vehicle entered the neighborhood, and then came on foot, breaking down doors. Two people entered the house but the person inside managed to hide. But the witness was able to see how the armed men killed a neighbor.

<sup>109</sup> Report of the Secretary-General on the situation in the Central African Republic, S/2013/787, 31 December 2013, p. 1-2, §2-5; See also A/HRC/24/59, *op cit.*, p. 9, §35.

<sup>110</sup> S/2013/787, *ibid.*, p.1, §2-3.

<sup>111</sup> Amnesty International, "None of us are safe": War crimes and crimes against humanity in the Central African Republic, 19 December 2013; see the UNICEF's situation report on CAR as of 17 December 2013. UNICEF's Humanitarian Situation Report of 7 November 2014 on Central African Republic, an estimated 489,000 people are internally displaced, with 63,000 in Bangui including 3,000 newly displaced due to recent clashes. According to the UNHCR Regional update on 30 October, the total number of refugees in the neighboring countries (Cameroon, Chad, Republic of Congo and DRC) is 418,962 people.

203. In the 4<sup>th</sup> district a retired soldier saw some young Muslims kill five young men and loot all the products in a store. They then tried to shoot at him but their AK-47 did not work. He was beaten until he passed out and woke up at a health center.

204. In the 5<sup>th</sup> district, men were calling on all Muslims to ensure that all the Christians in the neighborhood were chased out. They started shooting and two sisters aged 16 and 18 years old who tried to run were among those killed. Three men were also killed on the street. The armed men also entered a house and asked a woman where her sons were.

205. Also, after Sangaris forces sought to disarm the Seleka following clashes, the Seleka later returned to the area and accused the population of assisting Sangaris. They reportedly killed a number of Christians in retaliation. Some were dressed in uniform while others were in civilian clothing. Some of the alleged perpetrators were from the neighborhood.

206. In the PK5 neighborhood, young Muslims in a four-wheeled drive vehicle started shooting at non-Muslims. A person met by the Commission provided a list of names of the alleged perpetrators, who were all residents of the PK5.

207. Some witnesses claimed that on 5 December 2013, when moving from their house to the IDP site of St-Jacques in the Kpetene area in Bangui, they were chased by Séléka elements, and their 35 year old nephew was killed. The perpetrators cut off his sexual organ and went away with it. Another witness testified that, under the instructions of a Séléka General, the Séléka soldiers shot dead a Christian man in front of his mother on 5 December 2013.

208. According to information gathered by the Commission, the Séléka elements were killing any Christians or non-Muslims they met on their way. Many of the perpetrators were dressed in military attire, while others were in civilian clothes. Some of the killers lived in the same neighborhood as their victims. One witness's elder brother was killed by a stray bullet on 22 December 2013. As a result of the continuous insecurity, he fled his house and settled in the FATEB IDP camp on 3 January 2014.

209. On 5 December 2013, a man, his three brothers and their mother were at home when a group of young Muslims arrived. They were forced to their knees, and the assailants shot dead the elder brother who was 25 years old. The mother pleaded for the lives of her remaining children. They were spared by another member of the Séléka who convinced his colleagues to stop the killing and leave the scene. Immediately after the incident the witness and his family settled in the IDP site of St-Jacques in the Kpetene area the same day that his dead brother was buried.

210. The vast majority of the bodies were brought to the morgue of the Hôpital communautaire, but also to other hospitals. The normal practice would be to register and proceed to the identification of the bodies that are brought to the morgue but it could not be done because of the high numbers of casualties. It is estimated that about 95% of the people that were killed by the Séléka were men. A staff from the Hospital told the Commission that there were pregnant women and children amongst the dead and that the majority were civilians.

211. The Commission interviewed a humanitarian worker who confirmed that numerous bodies were brought to the morgue of the hospital. He took some pictures and provided copies to the Commission.<sup>112</sup>

212. The Commission was not in a position to accurately determine the exact death toll and the actual number of people injured. But the morgue received a total of 161 bodies between 5 and 7 December 2013. And according to a Humanitarian source, a total number of 736 bodies were recovered between December 5 and 31 December of 2013.<sup>113</sup>

213. Information available from reliable open-source material indicates that around 1,000 people were killed on the 5 and 6 of December, that figure included both Christians and Muslims victims.<sup>114</sup> The same report highlights that many families buried the victims next to their houses because they could not reach the morgue.<sup>115</sup>

214. Interviews with relatives of the deceased reveal that they had collected the bodies themselves from the sites where the incidents occurred, and not from hospitals. As a result, they had not reported the deaths of their loved ones to any other official sources, which would have facilitated their documentation. Another reputable source estimated that about 459 people were killed.

215. The rest of the country, outside Bangui, was not spared. Information gathered from reliable open-source material and from Commission-recorded testimonies attest to widespread killings, including the following incidents.

216. Witnesses provided information on the killing of five men in Boali, on 3 December 2013. One of them was killed in his house at night and the others on their farms. In Boali, the Séléka hunted down many people, some of whom were killed in the bush. Most were civilians who were considered to be anti-balaka. The Séléka elements were assisted by local Muslim residents who helped them to identify the houses where Christian neighbors were residing. The Séléka also targeted the homes of those who were identified as anti-balaka. They were assisted by Muslims living in the neighborhood who identified the houses of alleged members or sympathizers of the anti-balaka. On 3 December 2013, in Boali a village head named Wabangi Fidel and his four brothers who were accused of being members of the anti-balaka were all killed.

217. In Bossemptélé the Commission gathered information on the case of a pastor who was killed by the Séléka with the assistance of some Muslims who considered him to be a sympathiser of the anti-balaka. In another case, a teacher was killed together with his wife and two children when they were found in the village. In other instances, people with machetes who were going to the farms were assumed to be anti-balaka and were killed.

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<sup>112</sup> See Annex IV, p. 127

<sup>113</sup> The number of casualties does not include the bodies that were brought to the Mosque.

<sup>114</sup> Amnesty International Report of 19 December 2013, in which it is estimated that between 800 and 1,200 people were killed in and around Bangui on 5 and 6 December 2013, the vast majority of whom were men.

<sup>115</sup> Ibid.

218. In another case in the town of Bossemptélé information was also gathered on indiscriminate killings by the Séléka. On 6 December 2013, after the anti-balaka attack of 5 December 2013, the Séléka killed civilians indiscriminately. They chased many people into the bush and killed them. Some died of their injuries while others died as a result of infections. According to information gathered in one case, five people died as a result of infections while they were being treated in the hospital.

219. In Yaloké the situation was no different from other towns. Upon arrival the Séléka targeted the local officials. One victim witnessed the killing of many people by the Séléka, and was arrested and tortured himself, before managing to escape with the help of a friend who was a member of the Séléka. Such indiscriminate killings were confirmed by the officials of the city. The Séléka claimed that the anti-balaka were hiding within the population, but they made no effort to differentiate the anti-balaka from the civilian population.

220. In Bossangoa<sup>116</sup>, on 8 September 2013, the head of the Séléka took into custody the Chief of a particular zone called 'Fulbe'. The Séléka elements tied his hands according to the "Arbatachar practice" and killed him in front of the town hall of Bossangoa. It is alleged that about 11 "chefs of zone" were killed that day by the Séléka. The perpetrators were members of the Fulbe community and other Séléka elements acting under the direct instructions of a senior officer of the Séléka. On 16 September 2013, Séléka elements stopped a FOMAC vehicle, forced the occupants to get out and killed them. It was reported that, in September 2013, the Séléka coalition indiscriminately killed non-Muslim men wherever they were caught. They also threatened the Minister of Defence. According to witness testimony, the Séléka also attempted to kill the Prefect of Bossangoa after she assumed office in July 2013. Witnesses confirmed that the Séléka carried out systematic assassinations of non-Muslim civilians in Bossangoa during their rule. Information provided to the Commission reveals that hundreds of people were killed and many houses were burnt down in Bossangoa during this time.

221. In Boda, on 20 August 2014, a 14 year old Muslim boy was reportedly shot dead by the anti-balaka close to the 'red line' separating the Muslim enclave of Boda. The Muslim population of the enclave became agitated and wanted to take revenge. Some Muslims managed to get out of the enclave that day and killed about 12 Christians, including children and a pregnant woman. The non-Muslim community of Boda believes that, the Muslims of Boda had been armed by the Séléka.

222. In Baoro, the Séléka carried out killings against local authorities and non-Muslims during Djotodia's rule. A pharmacist witnessed the public execution of an unidentified person by Séléka elements. In another case, a man was killed by the Séléka in the street along Baoro-Bozoum Road while returning from a funeral. Other witnesses testified that while they were at the Séléka base, they saw a person from Zawa village being burnt alive after the Séléka men had taken a reasonable amount of money and unprocessed gold from him. Between April 2013 and January 2014, the Séléka arrested and tortured several non-Muslim people in Baoro. On 23 January 2014, some Muslim men from Baoro who worked with the Séléka arrested and killed the Court Registrar, the Secretary General of the province of Baoro, and the Chief of Forestry Cantonment. Their bodies were buried by the Red Cross. In January 2014, the

<sup>116</sup> Human Rights Watch, They came to kill: Escalating atrocities in the Central African Republic, p.30-33

Séléka intervened in clashes between Christians and Muslims in Baoro and killed many people. The Séléka also killed a pregnant woman whose body was disposed of in a pit, which once served as a toilet, behind their base. It was alleged that these killings were carried out under direct instructions by a Séléka military leader in Baoro of the rank of a Colonel.

223. In Bozoum, a young Christian from the village of Tattale came to Bozoum to buy cartridges for hunting. He was identified and pointed out to a Séléka Colonel by a Muslim. He was then arrested, tortured, and killed. His body was placed in a plastic bag and thrown in the Ouham River.

224. Two other Christians were killed in a similar way and their bodies were also disposed of in the Ouham River. The Séléka also killed the Director of the school at a village called Voudou situated at about 65 kms from Bossangoa. More than twenty Christian men were reportedly assassinated in Bozoum between March and April 2013. From July to September 2013, the Séléka also started killing many people at Ouham-Bac, which is 75 km from Bossangoa. The bodies of these murdered persons were later found in the Ouham River. The Commission received a report on the killing by an anti-balaka of a Séléka element, which triggered retaliation attacks from the Séléka. In the period from July to September 2013, the Séléka attacked civilian populations in the villages surrounding Bozoum, in Voudou, Bossa, Badali, Bou é and Badali VI. As a result, many people fled and took refuge in Bozoum. Testimonies received by the Commission also indicate that there was complicity between some members of the Muslim population and the Séléka.

225. In Bocaranga, on 20 September 2013, the Séléka killed a boy in a village called Herba, which triggered a revolt of the people of Herba. From 21 to 22 September 2013, as a result of the rising tensions between the Séléka and the people of Herba, the Séléka went on to burn most of the houses in Herba.

226. In Bohong<sup>117</sup>, on 20 September 2013, the Séléka killed 19 Christian civilians. These killings triggered tensions between the Christian and Muslim communities. On 12 December 2013, the anti-balaka killed indiscriminately several Muslims and the Séléka in return killed 32 Christian civilians including a pastor, his wife and, Mr. Jean Nguerembe, chief of the ‘quartier’ called Joli soir.

227. On 26 October 2013, in Bouar<sup>118</sup>, Séléka elements killed 18 persons, of whom ten were women and eight were men. They used heavy and light artillery in the Christian majority neighborhood of Gogo. Séléka elements also killed a number of persons in Ngoutere in October 2013.

**b. Attacks on Places of Worship**

228. On 14 April 2013, during mass in the “Eglise des Frères” at the Cité Jean XXIII in Bangui, Séléka soldiers threw a bomb into the church, resulting in four people killed and 23 seriously injured.

<sup>117</sup> S/2013/787, *Op cit.*, p. 9, §43, “...from August to September 2013, close to 70 people were reported killed and 191 wounded as a result of clashes between Séléka and local self-defence groups...”.

<sup>118</sup> S/2013/787, *Op Cit.*, p.10, §45. Secretary-General’s report of 31 December 2014 of the situation in the Central African Republic, 20 people were killed and eight other wounded by gunfire.

229. On 5 December 2013, inside the “Eglise ELIM”, the Séléka shot dead a pastor who was on his knees praying. They also killed the pastor’s nephew and wounded his son.

230. On 28 May 2014, a group of armed Muslim youth attacked the “Notre Dame de Fatima” in Bangui at PK5. The attack might have been in response to the 26-28 May 2014 attacks perpetrated by anti-balaka forces against the Muslim community in PK5. The Commission gathered information that at least 10 people were killed including a parish priest by the name of Père Nzale, and several others were wounded.

### iii. Applicable Law and Legal Findings

231. In times of armed conflict, international humanitarian law is generally assumed to be the *lex specialis*. That body of law prohibits the intentional targeting of civilians,<sup>119</sup> and indiscriminate attacks against the civilian population.<sup>120</sup> The persons taking direct part in hostilities are required to distinguish between civilian and military targets, and deliberate attacks on civilian objects are prohibited. Civilian objects include houses, private dwellings, schools, shelters, hospitals, churches, mosques, museums, and works of art that neither serve nor are used for military purposes.

232. In addition, international human rights standards prohibit arbitrary deprivation of life, and acknowledge the right to the highest attainable standard of physical and mental health, the right to an adequate standard of living, freedom of religion and the right to participate in cultural life.

233. International humanitarian law also incorporates specific protections for persons and objects. Of particular relevance in the current conflict is the prohibition of attacks directed against historic monuments, works of art or places of worship which constitute part of the cultural or spiritual heritage of the peoples. Attacking, destroying, removing or otherwise rendering useless objects which are indispensable to the survival of the civilian population is prohibited. Sieges must still allow for vital foodstuffs and other essential supplies to be delivered to the civilian population. Parties to a conflict are obliged to allow and facilitate the unimpeded passage of humanitarian relief for civilians in need. Humanitarian relief personnel must be respected and protected as well as objects used for humanitarian relief operations

234. Under the Rome Statute, there is a wide variety of war crimes which corresponds to breaches of many of the international humanitarian law guarantees. These include war crimes resulting from intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; intentionally directing attacks against civilian buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives; intentionally directing attacks against medical units and transport, and

<sup>119</sup> P II Article 13 (1): “The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations”. See also APII Article 13 (2): “The civilian population, as such, as well as individual civilians, shall not be the object of attack”. The Common article 3 prohibits “violence to life and person, in particular murder of all kinds” against persons taking no active part in hostilities.

<sup>120</sup> See ICRC Study on Customary International Humanitarian Law, Rule 11, p. 37.

personnel using the distinctive emblems of the Geneva Conventions in conformity with international law in addition to the war crimes representing serious violations of Common Article 3. The foregoing acts may also amount to crimes against humanity, in particular murder, torture and other inhumane acts if committed as part of a widespread or systematic attack against any civilian population

235. In light of the above factual findings and the applicable legal provisions, the Commission has reasonable grounds to believe that the Séléka forces committed prohibited attacks on civilians and against protected objects. Those attacks directed against churches, especially after 4 December 2013 till present constitute breaches of international humanitarian law and international human rights law.

236. Regarding attacks against civilians and attacks on places of worship which occurred before 4 December 2013, only international human rights law applies, especially the ICCPR provisions. These attacks constitute violations of the right to life, and specifically of article 6 of ICCPR. Article 4 of the ACHPR could also be applied in the situation.

237. Such killings can also fall under article 7 (crimes against humanity) if they are widespread or systematic.

### C. Torture and Other Forms of Ill-Treatment

#### i. Introduction

238. The Commission received reports concerning the use of torture and other forms of ill-treatment by the Séléka. As part of its investigation, the Commission interviewed many victims and witnesses in Bangui. It also interviewed other witnesses and alleged victims of torture and ill-treatment during its inquiry missions to the interior of the CAR.

239. The Commission received a number of testimonies by detainees and victims of torture at CEDAD (Comité extraordinaire de défense des acquis démocratiques). These persons stated that they were arrested because of their alleged relationship with the Bozizé family and they were accused of planning a rebellion against the Djotodia regime. Many of them were also accused of inciting people to revolt while others were accused of organizing meetings to discuss the alleged rebellion. The detainees at CEDAD included custom officers, military elements, police officers, tailors, merchants, footballers, civil servants and pastors.

240. While detained at CEDAD, these persons were repeatedly tortured. The detainees were beaten with wood, cables, cords and belts and they were burnt with hot irons. Their hands and feet were tied up for hours. After being tortured they were left under the sun with their heads covered with a dark cloth. In some instances, the victims were tortured with their heads covered. Sometimes, they were threatened with guns during interrogation and offered the choice to confess or be killed.

#### ii. Factual Findings

241. The Commission gathered testimonies describing the arbitrary manner in which the victims and witnesses were arrested, detained and tortured by the Séléka at CEDAD. Many of the witnesses and victims were later transferred from the CEDAD to

the SERD facility (Section d'enquête, de recherche et de documentation) where their detention continued until their release.

242. The earliest date of detention of the interviewed witnesses was 16 September 2013 and the latest day of release was 3 December 2013. The average period of detention at the CEDAD and SERD ranged from a minimum of twenty two (22) days to a maximum of sixty (60) days.

243. The witnesses stated that they were arbitrarily arrested while they were at home or while walking in the street. They were arrested either by persons in civilian clothes or by police officers who travelled aboard white pick-up trucks with dark windows or in 4x4 Toyota Land cruisers. The persons who arrested them spoke mostly Arabic, although some spoke Sango and French and they were armed with pistols and Kalashnikovs.

244. In a typical scenario, upon arrest the victim was forced into a car, a cover was put on his head and his hands were cuffed behind his back. The perpetrators usually drove around for about an hour, probably to disorientate their victims before taking them to CEDAD.<sup>121</sup> While driving around, the victims were threatened, intimidated at gun point and threatened to be killed if they did not confess.

245. Torture was repeatedly practised at CEDAD. Some victims claimed that almost every day their captors took away a few detainees allegedly to be liberated. These detainees were never seen again. Guards at the CEDAD facility sometimes brought food for the detainees and provided them with telephones to communicate with their families. Some guards also tried to negotiate their freedom without the knowledge of their military commanders. The Commission received testimonies regarding the arrest of two of these guards who were betrayed by their colleagues. They were arrested and tortured at the same facility by their own colleagues. One was severely tortured and died of his injuries in the cell while the other was tortured but survived. According to testimonies received, the Séléka took inmates from the CEDAD facility and from other detention centres in Bangui and executed them at the Colline des Panthères and other areas.

246. Documented testimonies indicate that a very senior officer of the Séléka was either present at the time of the arrest of these detainees, or present at the time of interrogation. The same officer was present in the CEDAD facility during the period that they were detained. He was considered to be responsible for the management of the CEDAD facility at that time.

247. Documentary evidence shows that convocation letters were signed by the same senior military officer in his capacity as Director General of the CEDAD. He was also a Minister in the Djotodia Government.

248. Survivors of Camp de Roux and of the Colline des Panthères confirmed that they were tortured repeatedly each night for the whole period of their detention. They were beaten with electric cables and wood. Victims were stripped of most of their clothes. The Commission is in possession of photographic evidence of the clothes left behind by the victims in front of their cells at Camp de Roux. Detainees were given very little food and water.

<sup>121</sup> The CEDAD facility is close to the Air France building in Bangui.

249. One of the survivors stated that Séléka officers put some pieces of burning charcoal in the underwear of his cellmates during the nights. The charcoal was burning their sexual organs since they were forced to keep it there until it burned out. As a result, the detainees were in great pain and suffering from the injuries provoked by the charcoal.

250. When the detainees were taken to the Colline des Panthères to be killed, the Séléka officers tied their hands behind their back according to the 'Arbatachar' practice. Some corpses of the victims at the Colline des Panthères were still tied up with solid cords. Site visits of the Commission revealed evidence of the cords that were used to tie up the victims. The scars from torture are still visible in the bodies of the survivors interviewed by the Commission.

251. Acts of torture were committed at these camps to force victims to admit that they were anti-balaka, or that they were hiding stocks of arms in their houses or that they were providing arms to anti-balaka members.

252. Apart from these organized acts of torture which mostly targeted those who were considered to be political opponents, the Séléka also tortured civilians for financial reasons.

253. In June 2013 five Séléka assisted by a Muslim man who lived at Boy Rabé went to that neighbourhood to the house of a person who used to work in the mines. The Seleka killed the man and tortured his wife in order to force her to tell them where her husband had kept the money and the diamonds. The woman was too weak to talk after being shot and the Seleka asked some neighbours to take her to the hospital. While the victim was being treated at the hospital, some Seleka threatened the doctors asking them to release her. The victim managed to escape into the bush with the help of some family members.

254. The Commission has also received extensive testimonies on torture perpetrated by Seleka outside of Bangui. The Seleka were reportedly using the practice of arbitrary arrests, detentions and torture as a way of extorting money from civilians. The families of the civilians had to pay a ransom to the Seleka so that their relatives would be released.

255. The Commission received numerous statements from victims of torture at Bozoum and Baoro. It has also visited the buildings where the Seleka had their military camps as well as the detention and torture areas in these towns.

256. The Commission received testimonies that in June 2013 a 35 year old man was tortured in Bossemptélé. His hands were tied up for a week which severely interfered with the circulation of blood. This led to paralysis of both hands.

257. The Séléka were looking for people who had money or anything of value. In the towns of Bossemptélé, Yaloké and Gaga, they looked for those who worked in the gold mines. They were assisted in the process by the Muslim residents of the same neighborhood. This facilitated the process of identifying their victims' houses.

258. On 4 November 2013, in Bozoum, a 42 year old man was arbitrarily arrested. A sum of money and his motorbike were seized by the Séléka. He was accused of being a brother of Bozizé because of his physical appearance and the fact that he was from the same tribe (Gbaya). On 5 November 2013, he was tied up and beaten with cables. Burning nylon was dropped on his body and his tendons were severed by the

perpetrators. The victim also heard of incidents of rape and assassinations in the Séléka base at Bozoum. He was later released after paying a ransom.

### iii. Applicable Law and Legal Findings

259. The CAR has the responsibility to comply with its international obligations which consist of respecting, protecting and fulfilling the human rights contained in the international human rights instruments, notably in the International Convention on the Elimination of All Forms of Racial Discrimination (1971)<sup>122</sup>, the International Covenant on Economic, Social and Cultural Rights (1981)<sup>123</sup>, the International Covenant on Civil and Political Rights (1981)<sup>124</sup>, the Convention on the Elimination of All Forms of Discrimination against Women (1991)<sup>125</sup>, to which it is a party.

260. CAR is also a party to some human rights treaties of the African Union such as the African Charter on Human and Peoples Rights and the Convention Governing the Specific Aspect of Refugee Problem in Africa<sup>126</sup>.

261. Furthermore, the CAR is also bound by international customary law and the “Jus Cogens” norms protecting human rights.

262. Article 3 of the Constitution of the Central African Republic also states that “No one may be subjected either to torture, or to rape, or to cruel, inhuman, degrading or humiliating acts or treatment”.

263. Given that the non-derogatory rights include but not limited to, rights to life, the prohibition of torture or cruel, inhuman or degrading punishment, and freedom of thought, conscience and religion, and the fact that article 2(2) of the Convention against Torture states that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture”; the Commission has reasonable grounds to believe that under the leadership of Djotodia, some Séléka officials allegedly committed torture and other cruel, inhuman and degrading treatment or punishment upon many persons during the period from November 2013 to January 2014 at Bangui, in and out of Camp de Roux and Camp Beal. The acts of torture described above constitute a breach of article 7 of the ICCPR, articles 5 and 6 of the African Charter on Human and Peoples Rights, and article 7(1)(f) of the Rome Statute.

## D. Arbitrary Arrests and Illegal Detention

### i. Introduction

264. The Commission received Documents regarding the illegal detentions of persons by the Séléka. Particular groups, which were subjected to such treatment, include those associated with the Bozizé Government and the anti-balaka. The Commission held

<sup>122</sup> Ratified on 16 March 1971.

<sup>123</sup> Acceded to, on 8 May 1981.

<sup>124</sup> Acceded to, on 8 May 1981.

<sup>125</sup> Acceded to, on 21 June 1991.

<sup>126</sup> Ratified 23 July 1970.

over fifty interviews with witnesses and victims with respect to cases of arbitrary arrest<sup>127</sup> and illegal detention in unlawful detention centres during the rule of the Séléka. The Commission has also been provided with reliable information from a wide range of human rights organisations.<sup>128</sup> However, not all the cases could be independently verified by the Commission.

## ii. Factual Findings

265. Most of the interviewed victims and witnesses of extrajudicial executions and torture stressed that they were arbitrarily arrested and illegally detained in unlawful detention facilities. Two journalists who were interviewed by the Commission, for instance, stated that they were arrested and intimidated at the CEDAD following their publication of an article denouncing violations perpetrated by the Séléka during the reign of Djotodia. Most of the victims interviewed mentioned that they were never informed of the reason of their arrest or presented before a judicial authority. The victims were detained in deplorable conditions of detention at CEDAD and many other facilities in the CAR which were used as detention centres by the Séléka.<sup>129</sup> The witnesses stated that they were detained in overcrowded cells. They were forced to stand up or sit in the same position for long or handcuffed. Witnesses' testimonies revealed that in one instance about thirty-three (33) people were detained in a very small cell. The detainees were given very little food and water, usually two or three times a week on their palms, t-shirts, underwear or even on their sandals.

## iii. Applicable Law and Legal Findings

266. Article 9 of the ICCPR prohibits arbitrary arrest or detention of individuals. It provides that "no one shall be deprived of liberty except on such grounds in accordance with such procedures as are established by law." Persons arrested are to be informed at the time of arrest of the reasons for the arrest and immediately informed of any charges. Anyone arrested or detained on a criminal charge is to be brought promptly before a judge or other officer authorized by law to exercise judicial power and is entitled to trial within a reasonable period or release. Persons have a right to take proceedings before a court for the purposes of reviewing the lawfulness of detention and to be released if the detention is unlawful. Lawfulness is to be assessed both in relation to domestic and international law standards. Arbitrariness is assessed in terms of appropriateness, proportionality and reasonableness.

## 3. Pillaging and Destruction of Property

### i. Introduction

<sup>127</sup> Rapport du Secrétaire General sur la situation en République Centrafricaine, S/2013/261, 3 mai 2013, p.5, §25 ; p.7-8, §38.

<sup>128</sup> Report of the Secretary General on the situation in the Central African Republic, S/2013/470, 5 August 2013, p.7, §30. See also, A/HRC/24/59, op cit. p.12 §56-59.

<sup>129</sup> The detainees were kept in military camps such as the Camp de Roux and Camp Beal. Within the interior of CAR, the Séléka used abandoned buildings, government offices or hotels as detention centres. This was the case in Yaloké Bossempé, Bozoum, Baoro and other cities.

267. Testimonial and documented information<sup>130</sup> received by the Commission from national and international organizations reported cases of pillaging and destruction of properties both in Bangui and beyond. This was perpetrated by the Séléka forces when they took over the CAR in March 2013. To test the veracity of the information the Commission conducted 120 interviews with victims and witnesses in relation to these alleged violations.

ii. Factual Findings

268. Based on the documented testimony and evidence gathered, the Commission was able to find that there was an established modus operandi, which was followed by the Séléka for the looting. This meant that members of the Séléka usually arrived in a particular area with many cars and in large numbers. They often started by shooting in the air in order to intimidate the population before starting to loot by moving from door to door. They also broke down doors and smashed windows to enter closed houses. They then proceeded to loot all the belongings while intimidating the occupants and neighbours. In many instances, the Séléka members targeted and killed the male residents of the house as well.

269. Numerous witnesses confirmed to the Commission that the majority of Séléka members spoke no French or Sango but only Arabic. Those who engaged in looting were usually dressed in military attire and wore turbans which often covered their faces. When the Séléka's members arrived in a location the males had to flee to avoid being targeted and killed. Women and girls who did not flee were sometimes raped during the attacks.

270. The cases of pillage described above took place from 24 March 2013 to 10 January 2014. The Commission was not in a position to document all cases of pillage that occurred in CAR. However, these incidents show a pattern of lootings and a standard modus operandi used by the Séléka. Based on its review, the Commission has reasonable grounds to believe that the pillaging and destruction of properties were widespread and systematic.

271. The Séléka also confiscated the property of very large numbers of non-Muslims. They seized anything of value, including money, livestock and anything else they could lay their hands on. They were assisted by Muslim residents who identified the houses of rich Christian especially those who worked in the mines. Their homes were thereafter attacked and in some circumstances, victims who tried to resist were killed.

272. In Bangui, the district of Boy Rabé was the area most affected by the pillaging and the destruction of property committed by the Séléka elements.<sup>131</sup> In many cases, pillaging was accompanied by killings or rapes that took place in the victims' residences. For example, on 14 August 2013, in the district of Boy-Rabé,<sup>132</sup> an adult woman was at home with her family when ten (10) Séléka elements in military uniform and armed with weapons arrived in vehicles. Her father and mother were

<sup>130</sup> S/2013/261, *ibid*, p.5, §26; §32.

<sup>131</sup> International Crisis Group, *Central African Republic: Priorities of the Transition*, Africa Report N°203, 11 June 2013, p.26.

<sup>132</sup> *Ibid*, p.18, "...They targeted the Boy Rabe district, where Bozize's ethnic group is well represented, and villas belonging to leading figures of the former government..."

killed because they did not have money to give. She was raped and some personal items such as a cellular phone and everything of value that belonged to them were looted.

In May 2013, in the Lando neighborhood in Bangui, a woman's house was broken into by the Séléka and her property, included, clothes, refrigerators and other goods were taken away. The Séléka proceeded to destroy all the doors, windows and the roof of the house before leaving the scene.

273. In January 2014, after the resignation of Djotodia, the Séléka attacked the Catholic Church compound in Bossemptélé as they were departing from the town. They took away two cars which belonged to the church and a motorbike which they used to transport members of the Séléka and the things they had looted. Pillage and destruction of property also took place in Gaga, Yaloké, Bocaranga and in many other towns. In Bossangoa, the Séléka burned the house of a woman who was reportedly related to President Bozizé. They also burnt many other houses around her house.

274. In Bogoura, the situation was highly unusual. Muslim residents who had collaborated with the Séléka decided to leave for fear of revenge attacks by Christians and the anti-balaka. Before leaving, they destroyed their own houses and properties.

### iii. Applicable Law and Legal Findings

275. Pillage and destruction of property which were carried out by the Séléka forces during the period from 24 March 2013 to 3 December 2013 are governed by international human rights law. Such conduct could be viewed as a violation of the right to property (article 14 ACHPR) for those which occurred from 24 March to 3 December 2013. The Commission also considers that, in this period, acts of looting perpetrated by the Séléka forces constitute a violation under article 11 of the ICESCR.

276. Under international humanitarian law which applies during the period from 4 December 2013 until the present destruction and pillage of property are prohibited during a non-international armed conflict.<sup>133</sup> Under the Rome Statute, article 8(2)(e)(v) prohibits pillaging, and article 8(2)(e)(xii) prohibits the destruction of property in such conflicts.

277. For the crime of pillaging it must be shown that the perpetrator intended to deprive the owner of the property and to take it for private or personal use without his or her consent.<sup>134</sup> Although it has been established that the property must be of a certain value, the valuation is made on a case-by-case basis, taking into account the general circumstances of the violation.<sup>135</sup> When a large number of people are deprived of their belongings, the overall effect on the civilian population and the multitude of offences committed can make the violation more serious.<sup>136</sup>

278. Unless required by military necessity, the property of the civilian population should not be destroyed or seized.

<sup>133</sup> Customary International Law Vol. 1 (Rules), pp. 176 and 182.

<sup>134</sup> Element number 2 of section 8(2)(e)(v) of the Elements of Crimes.

<sup>135</sup> Dario Kordic et al., Case No. IT-95-14/2-T, Trial Judgement, § 82.

<sup>136</sup> Dario Kordic et al., Case No. IT-95-14/2-T, Trial Judgement, § 83.

279. Based on the above information, the Commission has reasonable grounds to believe that widespread pillaging and destruction of property was perpetrated during the conflict by the Séléka, and that some of these constitute crimes under international humanitarian law, while others amount to violations of international human rights law.

### III. The Anti-balaka

#### Background

280. During the second phase of its investigation, the Commission was able to gather additional information on the activities of the anti-balaka. Many individuals associated with these groups met in Yaoundé the capital of Cameroon, to discuss how to remove the Séléka from power. There was also an underlying objective, which was to avenge the deaths and suffering being inflicted on the civilian population. Individuals not of Muslim faith were the main targets of both the Séléka and those parts of the Muslim population who joined the ranks of the Séléka or assisted them in the commission of crimes against non-Muslims.

281. Starting in June 2013, meetings were held by individuals looking to overthrow the Djotodia regime, which included former politicians under the Bozizé Government, former FACA officers, former gendarmes and also civilians.<sup>137</sup> Following the military coup on March 24, 2013, many of the FACA soldiers had fled to the north-west of the country, and then crossed over to Cameroon.<sup>138</sup>

282. Meetings were also held in Paris, France. This was confirmed by the coordinators of the anti-balaka, who said the meeting was organized by a lawyer. Former President François Bozizé was present in both locations, but also travelled to other countries in the African continent, looking for support. The main objective was to plan a return to the CAR in order to take back the country from the Séléka. The meetings were held while the Séléka was in power and were committing abuses against the civilian population. Because many members of the Muslim population were suspected of collaborating with the Séléka, hatred was also directed towards the Muslim population as a whole. According to a witness, Bozizé is alleged to have told his supporters at one of these meetings that they should kill the Muslim population.

283. Even before the Séléka came to power in March 2013, self-defence groups already existed in numerous parts of the country. For an extended period of time, the State barely had a presence outside of Bangui and most of the country was neglected. It was left to the people themselves to fight bandits and coupeurs de route. As a result, self-defence groups were created throughout the territory of CAR. But the Commission was not persuaded that such groups, which operated separately from one

<sup>137</sup> A senior member of the anti-balaka confirmed to the Commission he was in Yaoundé during the period the meetings were held. He also mentioned that he saw former president Bozizé a few times, but he denied that those meetings were about the anti-balaka.

<sup>138</sup> As explained above, former FACA and politicians loyal to François Bozizé were persecuted and killed by the Seleka.

another and were in charge of protecting individual villages and their inhabitants, were capable of coordinating attacks across half of the territory of the CAR.<sup>139</sup>

284. From Yaoundé links were established between the anti-balaka and the self-defence groups. Most of the exiles and others meeting in Yaoundé were from Bozizé's ethnic group, the Gbaya. They had close ties with the population living in the western part of the country which is where most of the Gbaya live.<sup>140</sup> It was Bozizé's stronghold, as well as that of many former FACA who were subsequently integrated into the anti-balaka groups.

285. In Yaoundé one person was in charge of liaising with the self-defence groups, while another was responsible for reaching out to the former military.

286. The first traces of the anti-balaka were seen in the town of Bossangoa, in September 2013. But it was only on December 5, 2013, when they attacked Bangui, that the anti-balaka demonstrated that it had the capacity to conduct a military attack. Although they lost the battle against the Séléka, the attack was clearly organized by individuals with military expertise and background.

287. The arrival of the French forces in the form of Operation Sangaris and the deployment of MISCA troops following the adoption of Security Council resolution 2127 (2013) led to the effective neutralization of the Séléka in Bangui. The anti-balaka, who had lost the initial battle in the capital, benefited from the situation and gradually began to take control of Bangui and to attack towns in other parts of the country as well.

288. This series of attacks led to reprisals as many of the towns attacked by the anti-balaka were then targeted by the Séléka. Both sides mainly targeted the civilian population and hundreds of them died as a direct consequence.

289. Sangaris and MISCA played a deterrent role following their deployment, but only in the locations in which they were present. Their presence was limited to Bangui and some of the major towns. They did not have the necessary manpower to protect the civilian population in all the areas where civilians were being killed.

290. With no one to protect them, the Muslim population had no choice but to leave their villages. They sought refuge in IDP camps in Bangui and other towns, but also fled to neighbouring countries, mainly to Cameroon and Chad. Many of those escaping the violence walked for weeks in the bush until they were able to reach the border. Others were transported by convoys in order to cross over. In both situations, many of those fleeing were targeted and killed by the anti-balaka.

291. Political pressures lead to the resignation of Michel Djotodia as President of the CAR on 10 January 2014. For the next ten days Alexandre-Ferdinand N'Guendet served as President. He was succeeded by Catherine Samba-Panza as the head of the Transitional Government starting on 20 January 2014.

292. Many believed that with the Séléka no longer in power, the violence would gradually cease. But the anti-balaka kept targeting the Muslim population and the

<sup>139</sup> The militia group referred to themselves as anti-balaka, there is not one armed group under a clear command structure. For a comprehensive description of the different factions, see both reports of the Panel of Experts (S/2014/452, annex 5 and S/2014/762, §47).

<sup>140</sup> See map on the different ethnic groups in the CAR, annex C, p.

Séléka responded by killing non-Muslim civilians. The Muslim population therefore continued to flee the country, even with the newly elected government and the presence of international forces in place. To this day, although few in numbers, the Muslim population is still being targeted.

## 1. Intentionally Directing Attacks Against the Civilian Population

### i. Introduction

293. When the Commission started to analyse the violations committed by the anti-balaka, it was able to establish clear patterns of violations in different parts of the CAR. In other words, the same crimes were committed, usually in the same way, by the same armed group. The intensity of these attacks was particularly high during the period between the attack on Bangui on December 5, 2013 and the numerous attacks that followed in many towns in which the Muslim population were targeted, mainly until March 2014. Muslims continued to be targeted after that date, but with most of the Muslim population outside of the country in refugee camps, the dynamics of the conflict changed, and thus attacks followed different patterns.

294. During the period from December 2013 to March 2014, the anti-balaka attacked villages even after the Séléka were no longer present, making it clear that the objective was not a military target. They would look for and kill members of the Muslim population, even when those individuals were trying to run away. Sometimes only the men were killed, but that also included minors. The intentional targeting of Muslims took place throughout the western and central parts of the CAR, where the vast majority of the attacks took place. Hundreds of Muslims were killed<sup>141</sup> and hundreds of thousands were forcibly displaced.<sup>142</sup>

295. In many cases, villages were attacked by individuals who were residing in the same village. It was not uncommon for the Commission to hear that victims knew the attackers because they used to be neighbours or because they had gone to school together.

296. The first attacks by the anti-balaka were reported in the vicinity of Bossangoa, located 300 kilometers from Bangui, in September 2013.<sup>143</sup> But the attack on Bangui on 5 December 2013 marked the beginning of a sustained series of attacks that targeted Muslims in many towns.

<sup>141</sup> The Panel of Experts Report, S/2014/762 (29 October 2014), § 190. The report estimated that 861 were killed between 5 December 2013 and August 2014.

<sup>142</sup> For the number of forcibly displaced, see UNHCR fact sheet of 31<sup>st</sup> March 2014, <http://www.unhcr.org/51498a7d9.pdf>.

<sup>143</sup> The Commission conducted a mission to Bossangoa but had to promptly return to Bangui because of security concerns. It was then the intention of the Commission to interview the refugees who had fled Bossangoa and had crossed over to Chad, but unfortunately, investigators were not allowed to visit the refugee camps although they were provided with visas. The attacks on Bossangoa and its surrounding areas have been well documented by HRW in its report, *They came to kill: Escalating atrocities in the Central African Republic, 2013*, pp.17-28.

## ii. Factual Findings

297. The Commission, having conducted numerous interviews in Bangui, undertaken various field missions to different locations in the CAR, and visited refugee camps in Cameroon, was able to establish that serious attacks were conducted against the Muslim population.

## a. Attack of 5 December 2013, in Bangui

298. To the Commission's knowledge, the attack on Bangui in the morning of December 5, 2013 is the only operation conducted by the anti-balaka that was essentially military in nature. It was carefully prepared by individuals with a military background and it involved specific military targets. The objective was to take control of the capital from the Séléka with the intent of reclaiming power for Francois Bozizé.

299. The attack started at around 4am. The population was awakened by the sound of gunfire, including the use of heavy weaponry. The attack began in the Ngaragba and Boeing neighbourhoods where the Séléka had a base, at Camp Kassaï but also in places of strategic significance that included the National Assembly and areas where the anti-balaka had greater support (Boy-Rabé and Fou neighbourhoods). The Chadian forces present in Bangui managed to repel the attack in front of the National Assembly. The anti-balaka then fell back to the Boy-Rabé and Fou neighbourhoods.

300. The attack at Camp Kassaï resulted in many casualties. It is alleged that around 60 unarmed recruits were present at the military base. A former anti-balaka officer stated that the attackers knew that Christian recruits were present at the camp but they were considered traitors because they had joined the Séléka.

301. The attacks in the Boy-Rabé and Fou neighbourhoods started at around five in the morning. They were led by anti-balaka, many of whom were wearing voodoo amulets known as gris-gris, but civilians also participated in the killings of members of the Muslim population. Mosques as well as houses and businesses owned by Muslims were targeted. Men were particularly targeted but women and children were also reportedly killed. At least two children were killed in the Boeing neighborhood and three in the Yassmandji neighborhood, in the 5<sup>th</sup> district.

302. Witnesses interviewed by the Commission described several killings of Muslims in different neighborhoods of Bangui. Thirty-one victims were identified following interviews, but many more were killed that day. For instance, it is alleged that many Muslim businessmen were killed in the Boeing neighborhood. Also, at the morgue for the Muslim community, which is located in the Ali Babolo mosque, they reportedly received between 58 and 65 death bodies following the clashes.<sup>144</sup> But it is important to underline that a few Séléka fighters wearing uniforms were among those victims as

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<sup>144</sup> According to an interview conducted by OHCHR with a doctor who visited the Mosque December 7, 2013 there were more than 100 dead bodies, included women and children. Many of the victims had their limbs cut out. She was also able to observe that the breasts of women had been cut. Another witness interviewed by OHCHR said that she saw the dead bodies of her two brothers and two sisters at the morgue. One of his brothers had his hands and testicles cut and had wounds probably caused by machete cuts. One of her sisters also had cuts on her body, probably from machete wounds, and her breasts had also been cut off.

well, so not all of the victims were civilians. The Commission has obtained pictures showing the dead bodies that were brought to the mosque after the attack. The pictures show that most of the victims were men, some of them wearing uniforms. It can clearly be seen that many of the victims had been slashed with machetes.

303. Although the attack can be described as an armed conflict between two armed groups, the fact remains that both sides deliberately targeted the population, resulting in the killing of hundreds of civilians that day. It is clear that the victims were not collateral damage but were intentionally killed. The Séléka killed anyone they believed to be anti-balaka. For their part, the anti-balaka killed Muslims in different circumstances: traveling by motorcycle, inside their houses, in front of the mosque or on the streets.

b. Attack on the Town of Ngoutéré

304. The town of Ngoutéré was allegedly attacked on December 7, 2013 and it is reported that 7 persons were killed, of whom 3 were identified by a witness.<sup>145</sup> The attack occurred early in the morning and the assailants came from different directions. Some of them were wearing a military uniform and others were in civilian clothes. They had machetes and AK-47s. The bodies were collected the following day by Séléka fighters coming from Bocaranga. They were then buried in that location.

c. Attack on the town of Tattale

305. Numerous witnesses stated that an attack by local anti-balaka on the town Tattale was carried out very early on a Saturday morning, very likely on December 7, 2013. The target of the attack was clearly the Muslim population of the town. Many were allegedly killed. Various witnesses identified the leader of the anti-balaka and they said he was from their village.

306. When the Commission conducted a field mission to the north of the CAR, it was able to interview an anti-balaka from Tattale who claimed to be the leader. He confirmed that the attack on Tattale took place. He also explained how the self-defence group had been created from the time Bozizé had brought the Chadians to the CAR. According to him, the Chadians were committing crimes against the population. But with the arrival of the Séléka, they had to turn in their weapons. The Séléka started to take the cattle, torture people and one person was allegedly killed because he was a former member of the local militia. He said that the arrival of the Séléka ruptured the fairly good relationship that had previously existed between Muslims and Christians.

d. Attack on the Town of Bohong

307. Before the attack by the anti-balaka, the Séléka was present in Bohong and they were accused of harassing the population. On December 11, 2013, the anti-balaka carried out an attack against this town, located in the Ouham-Pendé Province.

<sup>145</sup> Another witness reported that 15 Muslims were killed in Ngoutéré but she could not provide the date of the attack. Her brother was among the victims. Another witness who was in the town of Bocaranga alleged that she saw 14 bodies being brought from Ngoutéré to the Mosque in Bocaranga. Her brother was among the victims.

Between 25 and 29 Muslim civilians were allegedly killed, of whom 16 were identified by name. The attack started early in the morning. Anti-balaka went to the mosque and killed the men who were praying there. Bodies were seen inside and outside the mosque and the dead were subsequently buried in the cemetery.

308. Three witnesses identified the leader of the anti-balaka responsible for the attack. When the Commission conducted a field mission to Bohong, it was able to interview him and he confirmed the attack took place. But according to him, the attack against Bohong was to liberate the town from the Séléka. He said that civilians might have been killed but that he did not witness such incidents. He further stated that he could not know everything that had happened on that day.

309. The attack was launched by some men wearing uniforms and some in civilian clothes. They were armed with firearms as well as machetes.

310. During the attack, many houses were burned. A Muslim was thrown inside a house that was set on fire by the anti-balaka. The victim sustained injuries but was able to come out of the house. The anti-balaka saw him emerge from the house and threw him in a deep hole. He sustained heavy injuries because of the violence. His assailants left him for dead but he was later found and rescued. He spent many months in a hospital and when the Commission met him, he was paralyzed. He indicated that he had recognized many of the anti-balaka as they were from Bohong.

311. Other killings by the anti-balaka were also reported in Bohong. One witness stated that both her husband and son were killed by armed men in their home. Although she cannot remember the specific date of the incident, she stated that the killings took place shortly after the Séléka had left the village.<sup>146</sup>

312. In the weeks following the attack, the Muslim population left Bohong because the anti-balaka declared that they would kill all the Muslims until they all left.

e. Attack on the Town of Boyali

313. On January 8 2014, the anti-balaka attacked the town of Boyali, allegedly killing at least 36 people, including women and children.<sup>147</sup> A humanitarian source recorded a total number of 47 Muslims killed and 9 wounded during the attack. Statements taken from witnesses describe brutal killings against the Muslim population, including those who were inside the mosque. A survivor who was in the mosque when the anti-balaka started shooting had to pretend he was dead in order to stay alive. He stayed next to the cadavers until the assailants left the mosque. The anti-balaka were touching the bodies to verify whether people were dead or not and one survivor was killed as a result. The Imam and his wife were also allegedly killed during this attack. The number of casualties was also registered by a humanitarian organization, who indicated that 47 Mboro were killed and 9 wounded. 3 Christians were also killed.

<sup>146</sup> The witness then left with other people to go the Ngawi village but they were intercepted by anti-balaka. They killed the only man who was with them and took her cattle.

<sup>147</sup> FIDH Report, "They Must All Leave or Die, 24 June 2014, p. 20 and Amnesty International, Ethnic Cleansing and Sectarian Killings in the Central African Republic, February 2014, pp.12-14.

314. Around 300 anti-balaka took part in the attack, which started around 10 in the morning and lasted until 2 in the afternoon. The population had fled the clashes by hiding in the bush but they came back when the Séléka returned from Bossembélé. The bodies of the people who were killed were brought by the Séléka to Boali and Bossembélé to be buried. A total of 26 victims were identified.

f. Attack on the Town of Boali

315. On 17 January 2014, Sangaris arrived in the town of Boali to clear the road and disarm the Séléka and the anti-balaka. A small number of Séléka soldiers agreed to be disarmed, but the majority, around 30, went to the bush. After the Séléka left Boali, around 300 armed anti-balaka, entered the town. They looted 3 mosques, killed at least 4 civilians and wounded around 20 more.<sup>148</sup>

g. Attack on the Town of Bossemptélé (18 January 2014)

316. The Séléka left the town on 17 January 2014. The next day, a meeting was held at the customs office between the anti-balaka and representatives of the Muslim community. The anti-balaka asked the Muslim business men to bring coffee. Some agreed and others refused. It is not clear from the different accounts heard whether the killings started after a man who refused took his weapon and fired in the air or whether it started when an anti-balaka refused the coffee and threw the sugar on the ground. But the anti-balaka began killing Muslims, allegedly resulting in dozens of civilians being killed, including all those who attended the meeting at the customs office.<sup>149</sup> They were wearing civilian clothes and many had gris-gris.

317. The local leader of the anti-balaka was identified by different witnesses. Former gendarmes were also recognized among the attackers. An anti-balaka allegedly cut off the hand of a man and two women, all Muslims. The two women were subsequently stoned to death. An anti-balaka allegedly killed a Muslim by shooting him in the mouth.

318. A man saw five members of his family get killed while they were attempting to run away. His wife was also killed by the anti-balaka. One survivor helped carry 8 bodies to bury them and another 6 wounded were taken to the chef de quartier. Only men were killed and he was able to recognize 3 of them.

319. Other witnesses described an attack on the town of Bossemptélé but were unable to provide a specific date. According to one witness, two of her brothers were killed by the assailants.

<sup>148</sup> Also, according to a humanitarian organization, 5 people were killed, including 2 women. Seventeen Muslims were injured during the attack. FIDH also interviewed witnesses regarding the attack. See FIDH report “They Must All Leave or Die”, p. 21. See also African Union, 1<sup>st</sup> progress report of the Commission of the African Union on the Situation in the Central African Republic and the activities of the African led International Support Mission in the Central African, § 66. FIDH and the African Union also reported another attack in Boali by the anti-balaka on 2 December 2013.

<sup>149</sup> See also Amnesty International’s report “Ethnic Cleansing and Sectarian Killings in the Central African Republic”, February 2014, pp.10-12.

320. The Muslim population was given a clear choice by the anti-balaka leader. They could leave their homes or prepare for war.

321. The commission was handed a document containing a list of Muslim victims who were allegedly killed by anti-balaka. The list, which was established by a member of the Muslim community, contains 81 names. A humanitarian worker told the Commission that he buried 81 bodies, including women. Most of the dead were Muslims. Additionally, 30 people were treated at the private hospital for injuries.

h. Attack on the Towns of Gaga, Zawa, Békadili and Baoui

322. In January 2014 the anti-balaka attacked the towns of Gaga, Zawa, Békadili (Ombella M'Poko Province) and Bouai (Nana-Mambéré Province).

323. The attack on the town of Gaga was conducted on a Friday morning in the month of January 2014, most likely on 17 January. The anti-balaka, armed with traditional weapons, AK-47s, and rocket propelled grenades, first targeted the Séléka base in which approximately 15 soldiers were positioned. The Séléka allegedly ran away. It is also reported that the anti-balaka went looking for the Commander of the Séléka, Colonel Tidjani, but since they were not able to find him, they allegedly killed his wife. Subsequently, the anti-balaka attacked the town of Gaga and allegedly killed several Muslims. A humanitarian worker reported to the Commission that, on 10 January 2014, following the fighting between Séléka and anti-balaka, 36 bodies of Muslims and Peuhls were recovered.

324. Zawa was attacked on 20 January 2014 at around 1pm.<sup>150</sup> The anti-balaka fighters came from the surrounding villages and combined their efforts to attack Zawa. It is alleged that more than a hundred anti-balaka took part in the attack. Some were wearing military uniforms while others were dressed in civilian clothes. They were armed with traditional weapons, AK-47s and rocket propelled grenades. The anti-balaka allegedly burned many houses in Zawa.

325. Following the attack on Zawa, the Muslims decided to leave for Baoui, located 10 kilometers away. But the attack was said to have continued in the bush, where many Muslims were killed and their cattle taken.

326. The anti-balaka attacked the town of Békadili on a Sunday at around 5am and at least 6 persons were reportedly killed. One witness stated that he saw his father-in-law, who was 70 years old, being cut into pieces. Following the attack, the Muslims fled to Baoui, where the Muslims from Gaga and Zawa had also gone to seek refuge.

327. Following the attacks on the villages in the surrounding areas, around 1,500 Muslims converged on Baoui. But when they arrived, the Christian population fled to hide in the bush. The anti-balaka then attacked Baoui many times but the Muslim population was armed and able to defend themselves. Since they were running out of food and water, the Muslims had to leave eventually. They left in convoys to go to Bangui and Chad.

<sup>150</sup> The previous day, it is alleged that the anti-balaka demanded the payment of 20 million CFA from the Muslim community, but their leader refused to pay because the community did not possess this amount of money.

i. Attack on the Town of Baoro

328. Witnesses described two attacks on Baoro between January and February, after the Séléka had left the town. Although the witnesses interviewed by the Commission were unable to provide the investigators with specific dates, a reliable source asserted that the attacks were conducted on 22 and 29 January 2014.<sup>151</sup> A witness provided the names of 13 people killed by the anti-balaka, of whom 12 were men. Another witness provided the name of 5 members of her family who were killed in front of her, including three children. She was also wounded when the anti-balaka were shooting indiscriminately at the population. An Imam of Baoro was also killed during the first attack on the town. A witness saw 6 people he knew taking part in the attack. According to a document obtained by the Commission, there were a total of 75 Muslims killed in Baoro in the month of January, and 54 non-Muslims.

329. During a second attack, a person described how the anti-balaka were going door-to-door, looking for Muslims and killing them. Around 45 Muslims, all males, were killed. Boys under the age of around 8 to 10 years old were not targeted.

330. Another attack occurred in February, during which the anti-balaka targeted the Muslim population.

331. According to a witness, 15 Muslims were killed during an attack on Baoro, but he did not specify the date of the attack.

332. Following the attacks, many Muslims fled to other towns or to the bush, while others sought refuge at the Catholic Church. A humanitarian source present in Baoro assessed the number of casualties to be 132.<sup>152</sup>

333. Up until January 2014, the population of Baoro was 8,000 half of whom were Christians, and half Muslims. At the time of the interview there were about 4,000 inhabitants, because all of the Muslims had left. The mosque was the first place that was destroyed, followed by the houses of Muslims, all of which were destroyed except for those that the Gbaya protected so they could live there themselves.

j. Attack on the Town of Bouguéré

334. Two attacks were reported between January and March 2014 in the town of Bouguéré located in the Province of Lobaye (65 km from Mbaiki).<sup>153</sup>

<sup>151</sup> See also Amnesty International, *Ethnic Cleansing and Sectarian Killings in the Central African Republic*, February 2014, pp.19-22.

<sup>152</sup> Of those 132, 78 were Muslims. Of the 78 Muslims, 3 were seleka fighters. It is not known whether there were anti-balaka among the non-Muslim victims.

<sup>153</sup> A total of 14 witnesses described at least one attack, but most of the witnesses met by the Commission were present during the two attacks. A few witnesses reported that the second attack took place in March 2014, but the vast majority said that it was conducted in February 2014. Also note that Amnesty International traveled to Bouguéré to investigate the first attack, but on their arrival they saw many dead bodies, as a result of the second attack: "We arrived in Bouguéré on 13 February to investigate a massacre that had taken place some three weeks earlier. More than 40 people had been killed by anti-balaka militias and most of the town's Muslim residents had fled. But on arrival in the town nothing prepared us for what we found. The streets were littered with

335. The first attack was allegedly carried out in January 2014, when a few Séléka soldiers were still present in town. It was reported that the anti-balaka first killed the Séléka commander which made the other Séléka soldiers run away. The anti-balaka then targeted the Muslim residents of Bouguéré and reportedly killed at least 28 of them.<sup>154</sup> Many claimed to have seen victims been cut by machetes.

336. The second attack took place in February 2014, a few weeks after the Séléka had left Bouguéré.<sup>155</sup> Dozens of people were reportedly killed as others were able to escape. The anti-balaka killed their victims using machetes, but many witnesses also reported that Muslims were burned inside their houses.<sup>156</sup> Two days after the attack, the population came back and buried 33 Muslims next to the mosque.

337. For both attacks, anti-balaka fighters were wearing gris-gris and the vast majority of killings that were described were committed by machetes. It was reported that among the victims there were women and children.

338. There were also reports of Muslims killed in the outskirts of Bouguéré but the Commission is not in a position to say if they are among the number of victims provided above.

k. Attack on the Town of Niem

339. An attack on the town of Niem (Nana-Mambéré Province) was reported by two witnesses, who stated that 7 persons were killed by the anti-balaka and buried the next day. According to one of the witnesses, the attack took place on February 10, 2014. The anti-balaka came from different directions. They also looted and destroyed the houses belonging to Muslims.

l. Attack on the Town of Berbérati

340. In February 2014, after the departure of the Séléka, the anti-balaka arrived in Berbérati (450 km from Bangui).<sup>157</sup> They came from other towns in the area and

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bodies. We counted 21 including three women and even a baby. Dogs were feeding on some of the corpses. Some of the male victims were partially burned. The feet of one man had been tied together, evidence that he had been taken prisoner before being executed. The residents said that there were more in the outskirts of the town. They had all been killed in an attack by anti-balaka militias on the morning of 10 February, just days before we arrived.” See *Life in the midst of horror in the Central African Republic* at <http://www.amnesty.org/en/news/life-midst-horror-central-african-republic-2014-02-18>.

<sup>154</sup> According to Amnesty International, at least 40 people were killed during the first attack. See “Life in the midst of horror in the Central African Republic”.

<sup>155</sup> According to Amnesty International, the attack took place the 10 of February 2014.

<sup>156</sup> Amnesty International investigators also saw male victims partially burned. See “Life in the midst of horror in the Central African Republic”

<sup>157</sup> Three witnesses interviewed by the Commission could not specifically provide the date of the killings, but it likely occurred in the month of February 2014. According to the AFP, the anti-balaka attacked was conducted on the 8 of February 2014. See <http://reliefweb.int/report/central-african-republic/christian-militias-invade-second-city-c-africa>.

since no Séléka soldiers were present in Berbérati, they entered unopposed. The non-Muslim population knew that the anti-balaka were coming to Berbérati and some of them even warned the Muslim community in advance. Upon their arrival, they started searching houses belonging to Muslims, pretending to search for weapons. But instead, they reportedly started killing Muslims. Among the perpetrators, a witness recognized a former FACA soldier and the leader of the anti-balaka.

341. On the day of the attack, a witness saw four bodies being transferred to the mosque. It was also alleged that the anti-balaka fired at those who were trying to escape. At least 18 Muslims were killed, many with a bullet under the chin, and the bodies were then transported to the mosque in a truck.

342. In line with other attacks by the anti-balaka described in this report, some of them were in military uniform while others were wearing civilian clothes, and some had machetes while others had firearms.

m. Attack on the Town of Guen

343. In February 2014, the anti-balaka attacked the Village of Guen (Mambéré Kadei province).<sup>158</sup> The anti-balaka forced approximately fifty Muslim men to lie down before being killed by the anti-balaka. There are some discrepancies as to how they were killed. A witness said that they were all shot whereas another stated that some were shot but others were finished off with machetes. Only men were targeted by the anti-balaka.

344. It was reported that the anti-balaka cut off the ears of their victims and later showed them to the victims' wives. It is alleged that they killed 29 more men with machetes as they were trying to escape. Another witness testimony referred to 25 men who were injured by bullets and finished off with machetes.

345. Some of the anti-balaka were not from Guen but came from surrounding villages. One witness identified the leader of the anti-balaka and said that he was from another village. It is alleged that some of the fighters originated from the town of Zawa (Ombella M'Poko Province). It was reported that the attackers were wearing uniforms.

n. Attack on the Town of Yaloké

346. Witnesses described two attacks on the town of Yaloké in February 2014, a few days after the Séléka had left the town.<sup>159</sup> The alleged first attack was conducted on a Wednesday at around 1.30pm. Four people were allegedly killed in the first attack.

347. The second attack started around noon, when the Muslims were praying in the mosque. The anti-balaka targeted the mosque and many people were allegedly killed outside the entrance. A man who was praying at the mosque started running back to

<sup>158</sup> According to HRW, the anti-balaka conducted an attack on Guen on February 1<sup>st</sup>, 2014. See <http://www.hrw.org/news/2014/04/03/central-african-republic-massacres-remote-villages>.

<sup>159</sup> Not all the witnesses were able to provide a date, but most mentioned a Friday, in the month of February 2014. The first attack would have occurred on a Wednesday according to some witnesses. But according to another witness, numerous Muslims were killed Thursday 16 January 2014 by the anti-balaka, including his 4 brothers. He was also able to identify the leader of the attack.

his neighborhood when he heard shots being fired. He saw four men being killed in the streets, and a woman get hit in the neck with a machete, and then disemboweled by the anti-balaka. They also tried to destroy the mosque, but international forces arrived at that moment. The anti-balaka left the area but continued their attacks in other parts of the town. Houses were burned during this attack. All the dead bodies were

buried in the morgue of one of the mosques in Yalok é

348. Another witness told the Commission that members of the Muslim community regrouped themselves around the Central mosque under the protection of Sangaris troops. According to him, most of the members of the Muslim community left Yalok é between 15 and 22 February 2014.

### iii. Applicable Law and Legal Findings

349. For reasons described above, the Commission concluded that a non-international armed conflict was taking place in the CAR from December 5, 2013 onwards. This qualification of the conflict is necessary in order to be able to conclude that violations committed by any of the parties amounted to war crimes.

350. In accordance with all of the applicable law, attacks against the civilian population are clearly prohibited<sup>160</sup>

351. Targeting the civilian population can constitute a war crime under the Rome statute.<sup>161</sup> It will be considered as such when it is the perpetrator's intent to direct an attack against a civilian population or against individual civilians not taking direct part in hostilities.

352. This also applies when unarmed fighters, not taking part in the hostilities, are targeted by the enemy. Thus, the alleged killings of unarmed recruits mentioned in paragraph 299 at Camp Kassa could be considered a war crime.

353. Such killings also violate the right to life, as recognized in the various international instruments to which the CAR is a party.

354. As previously indicated, the anti-balaka's stated common purpose was to remove the Séléka from power, but it is also clear that they were motivated by a desire to kill as many Muslims as possible because some of them had allegedly collaborated with the Séléka. They wanted to avenge the victims of the Séléka and they considered the Muslim population to be complicit in the killings and to be responsible for committing other violations. They did so by targeting the Muslim population in the above mentioned attacks on different towns, but only after the Séléka had left.

<sup>160</sup> See for instance ICJ, *Nuclear Weapons case*, Advisory Opinion (pars. 61 and 434); ICTY, *Tadic case*, Interlocutory Appeal (§ 435), *Marti c case*, Review of the Indictment (pars. 437 and 552) and *Kupreskic case*, Judgement (pars. 441 and 883); Inter-American Commission on Human Rights, *Case 11.137 (Argentina)* (pars. 64, 443 and 810).

<sup>161</sup> Article 8(2)(c) of ICC Statute p. 8

o. Attacks Against the Muslim Population in the Bush

i. Introduction

355. A clear pattern that emerged from the Commission's investigations was the killings of Muslims when they were escaping from the violence in the towns. Because the roads were controlled by the anti-balaka, many victims decided to walk in the forest in order to cross the border to Chad or to Cameroon. Whenever they encountered the anti-balaka, the latter would try to kill them. The trek through the bush was already a perilous journey because of the lack of food, water and medicine, but it became truly dangerous because they were still being killed by the anti-balaka. Many people had to walk for 4 to 5 weeks in the bush before being able to cross the border.

ii. Factual Findings

356. The Commission interviewed a total of 53 witnesses who alleged that Muslims were deliberately attacked in the bush, after they had escaped attacks in their villages. Most of the witnesses were interviewed in the refugee camps in Cameroon.

357. These incidents occurred in different provinces of the CAR, at different times between December 2013 and March 2014. It seems clear from the evidence that these were not isolated incidents, and that they were not committed by just one group.

358. Attacks were reported in the forest near Baoro and Baoui (Nana Mambéré province), Boda and Bougéré (Lobaye province), Bossangoa and Boguera (Ouam province), Bossemptéré Tattale, Bohong, Bocaranga and Ngoutéré (Ouham Pendé province), Bossembéré Damara, Gaga, Zawa and Yaloké (Ombella M'Poko province), Carnot, Guen (MambéréKaké province).

359. A woman who was part of a group that fled Bossemptéré after the attack on 17 January 2014 explained how the anti-balaka killed 7 people, including her four children. The anti-balaka only targeted the boys, leaving alive the girls.

360. After they had fled the attack on the town of Tattale, 2 men were allegedly killed by arrows in the bush between Tattale and Bohong.

361. After an attack on the town of Bouda (located between Bangui and Damara), many Muslims fled into the bush but were nevertheless killed by anti-balaka wearing uniforms. At least 5 persons were killed. In another attack in the bush, the wife of a witness and his 1 year old baby were killed. He had to walk in the bush for two months before reaching the border.

362. Muslims who escaped an attack in Bossemptéré and walked for over a month to get to the border saw the dead bodies of 4 women and 2 girls with machete wounds. They knew they were Muslims because of the way they were dressed and because someone who was with the witness recognized one of them. They also had to leave some of their family members behind because they were unable to continue walking.

363. A witness reported an attack that took place in the forest near Baoro. The witness was not sure of the date but believed it occurred on a day in March 2014 at noon. The anti-balaka were wearing military and civilian outfits and carrying AK47s and traditional weapons. The witness was injured and pretended to be dead. Four people were killed, one being his son aged 17.

364. In January or February 2014, following an attack by the anti-balaka against the village of Bouguéré Muslims fled to the forest where they continued to be pursued by anti-balaka. The anti-balaka attacked them and killed two women and two men with machetes. Three of the victims were members of the same family and the fourth one was an Imam. Many dead bodies were seen in the bush, including those of women and children.

365. One witness reported that they fled the anti-balaka attack on his village near Damara and went to the bush where many were killed. His wife and 1 year-old son were among the victims.

366. After the attack on Gaga, a group of 14 people escaped to the bush. But 12 of them were allegedly then killed with machetes or firearms. One of the survivors went to the town of Guen and another was in a refugee camp in Cameroon at the time of the interview.

367. After the attack on Zawa, many escaped to the bush where a witness saw numerous dead bodies of Muslims (foulbé). It was obvious they were foulbé because of the way they were dressed and the type of shoes they were wearing.

368. There were also several reports of attacks by the anti-balaka in the bush close to Carnot. The attacks took place between January and February 2014 and, from the information gathered by the Commission, it appears that around 24 people were killed.<sup>162</sup>

### iii. Applicable Law and Legal Findings

369. The applicable law is the same as described in paragraphs 348 to 352 since the facts described also constitute attacks against a civilian population. The attacks were conducted in different circumstances, mainly after a town was attacked and people ran to the forest.<sup>163</sup>

#### p. Attack on Convoys

##### i. Introduction

370. Many Muslims who sought to escape the violence decided to travel to neighbouring countries in convoys. But, in many cases these convoys were attacked and many of those seeking refuge died as a result. Even when the convoys were less than 50 kilometers from the border with Cameroon, the anti-balaka would still try to kill the would-be refugees. This happened even when they were being escorted by international military forces.

<sup>162</sup> The first attack would have occurred near Bossemptéré where they all originated from and four people were killed. A second attack near Bossemptéré occurred and 10 persons were then killed. A third attack occurred near Carnot and 5 persons were allegedly killed.

<sup>163</sup> Other reports have mentioned attacks in the bushes by the anti-balaka. See Amnesty International, *Ethnic Cleansing and Sectarian Killings in the Central African Republic*, February 2014, pp.12-14 and FIDH, *Central African Republic: They must all leave or die*, June 2014, N°36a, pp. 23-25.

ii. Factual Findings

371. In an attempt to save their lives, thousands of Muslims were forced to leave their homes. Those who could afford to pay for transportation did so and left in small or large convoys. Sometimes those convoys were escorted by international forces, but others travelled unprotected and tried to reach the border on their own. The Commission has received testimony from 13 witnesses concerning attacks by the anti-balaka against such convoys.

372. The majority of the witnesses interviewed by the Commission were in the refugee camps in Cameroon and they described how their convoys had come under attack while they were traveling.

373. A truck transporting Muslims from Bohong to Bouar was allegedly attacked by anti-balaka while crossing the village of Kiladoko (40 Km from Bouar). According to witnesses, a total of thirteen persons died and a significant number were injured during the attack. A medical source working at the hospital in Bouar indicated to the Commission that 22 persons had been killed and 30 wounded following this incident.

374. Also, a convoy of around 150 cars, escorted by MISCA troops from Burundi, was attacked between the towns of Galo and Bouar. Four people were killed and many injured.

375. A witness stated that a convoy of approximately 18 cars with an escort was attacked by the anti-balaka. They were shot at when the convoy reached Bossembélé and also on another occasion near Boali. Two persons were allegedly killed in the car in which the witness was traveling.

376. Lastly, a convoy traveling to Yaloké was first attacked in the town of Zawa and a second time in the town of Tedoua. A witness interviewed by the Commission stated that a man and a woman were killed in the second attack.

377. Humanitarian organizations have on occasion organized convoys to help the population at risk to seek refuge on the other side of the border. In a number of such instances, these convoys were also attacked by the anti-balaka.

378. On 27 April 2014, the anti-balaka attacked a convoy of 18 trucks that was transporting 1,259 Muslims. This convoy, which was accompanied by humanitarian organizations and escorted by MISCA, left Bangui in the direction of the towns of Kabo and Moyenne Sido (Ouham Province). The convoy was first attacked near Garafondo, when a grenade was thrown at the convoy and shots were also fired. But no one was injured during the attack. The following day, anti-balaka elements fired at the convoy while it was leaving Dekoa in the direction of Kaga Bandoro. This attack allegedly killed two civilians and injured several others.

379. The Commission has also consulted reports and press releases emanating from humanitarian organizations and information published by local media. On 25 February 2014, for example, UNHCR issued a press release indicating that a convoy transporting people who had left Bangui was attacked by the anti-balaka.<sup>164</sup> According to UNHCHR, 21 men were killed and 19 women and 119 children were forced to seek refuge in a nearby village. The alleged attack appears to have

<sup>164</sup> See UNHCR press release on 25 February 2014, available at <http://www.unhcr.fr/print/530cb470c.html>.

occurred on 7 February 2014 in a village called Ombela. The truck was heading towards Chad but was attacked after it was involved in an accident. The anti-balaka allegedly took all the men away and killed them.

380. Though no general statistics are available concerning the number of attacks that have taken place and the number of victims, it is worth mentioning that a medical organization, using only testimonies collected in Chad's refugee camps, stated that out of 322 persons who died during the journey, 78% of deaths were due to violence.

381. These attacks against convoys were more than just isolated incidents since they occurred on many occasions, in different provinces, and were undertaken by different elements of the anti-balaka.<sup>165</sup>

### iii. Applicable Law and Legal Findings

382. It is clear from what has been described above that the anti-balaka actively sought to kill as many members as possible of the Muslim population in different parts of the territory. Based on its analysis, the Commission finds that the attacks committed by the anti-balaka in Bangui, the attacks against all of the villages mentioned above and those against Muslims fleeing through the bush or travelling in convoys could be considered as direct attacks against a civilian population.

### iv. Intentionally Directing Attacks Against Buildings Dedicated to Religion

#### i. Introduction

383. Mosques were targeted during many of the attacks by the anti-balaka on Bangui and other towns. They were sometimes targeted because the Muslims took refuge in them or because they had gathered around them in proximity to IDP camps. But many were also looted and destroyed, even when they were uninhabited.

#### ii. Factual Findings

384. Many individuals met by the Commission witnessed how the anti-balaka attacked or destroyed mosques. In Bangui, when the anti-balaka noticed that the Muslims were seeking refuge in the mosques from their would-be killers in mosques, they decided to target them there as well.

385. The vast majority of mosques in Bangui have been destroyed, many of them following the attack of 5 December 2013. According to interviews conducted by the Commission, at least one mosque was destroyed in Boy-Rab éon the day of the attack. The mosque located in the 4th District was destroyed on 7 December, 2013. The mosque in the Ngaragba neighborhood, located in the 7<sup>th</sup> district, was also destroyed in December 2013. All of the mosques in the Miskine neighborhood have allegedly been destroyed. A mosque in the 4<sup>th</sup> district, in the Fou neighborhood, was destroyed on 8 December 2013. A mosque in the Ngaragba district was destroyed on 28 January 2014.

<sup>165</sup> FIDH also reported attacks on convoys of displaced persons and refugees. See "They Must All Leave or Die", p. 23.

386. During its field missions outside of Bangui, the Commission was also able to observe the destruction of mosques. Many witnesses indicated to the Commission that they had witnessed such attacks. For instance, in Bossembélé the population knew that the anti-balaka attack was coming and so many Muslims fled the town in convoys. But when the attack started, those who were not able to run away took refuge inside the mosque. The anti-balaka fired at the mosque, even throwing grenades. Many Muslims were killed or wounded as a result.

387. In December 2013, when the anti-balaka attacked Boyali and reportedly killed around 40 people, many of the victims were inside the mosque, including the Imam and his wife.

388. At least one of the mosques in Bossemptélé was burned to the ground in January 2014.<sup>166</sup> The anti-balaka were looking for the Imam, they found him inside the mosque and killed him.

389. In Guen, the anti-balaka allegedly destroyed the mosque after tearing up the Koran in January 2014.

390. In Bohong, at least one mosque was targeted during an attack and people were killed in and around the mosque.

391. In the town of Gontikiri (Mambere Kadeï Province) the anti-balaka attacked in February 2014, destroying the mosque, and killing an assistant of the Imam.

392. The mosques in Berbérati were allegedly looted and destroyed by the anti-balaka in March 2014.

393. In the same month, during an attack on the town of Bouguéré it was reported that two mosques were looted and destroyed.

### iii. Applicable Law and Legal Findings

394. For the applicable law on directing attacks against buildings dedicated to religion during an armed conflict, see paragraphs 230 to 235.

395. In light of the above factual findings, the Commission has reasonable grounds to believe that the anti-balaka deliberately targeted mosques in Bangui and in numerous towns of the CAR.

### iv. Pillaging and Destruction of Property

#### 1. Introduction

396. A total of 99 witnesses were interviewed by the Commission in relation to cases of pillaging and destruction of property by the anti-balaka. During the Commission's field visit to the refugee camps in Cameroon, investigators met numerous alleged victims of pillaging, but it was not possible to interview them because of lack of time. The Commission notes that the refugee camps had thousands of potential victims and

<sup>166</sup> It is not possible to know if the witnesses interviewed by the Commission are referring to the same Mosque, but three witnessed claimed they saw the anti-balaka burn a Mosque while another said the Mosque was destroyed.

witnesses of different kinds of violations, but it had to focus its limited resources on investigating certain patterns of the alleged violations.

397. It is clear to the Commission that there was widespread pillaging during the period of the Commission's mandate. Houses, shops and mosques were targeted by the anti-balaka during attacks on the towns, as well as in other circumstances. Looting frequently included taking parts of houses such as doors and metallic roofs. Cattle were also frequently taken from the peuhls. It is important to mention that civilians were also often involved in looting, in the context of opportunistic crimes. Since the majority of the anti-balaka did not wear military uniforms, it is very difficult to differentiate between them and the civilians who looted properties after the Muslims had to take refuge in IDP or refugee camps.

398. Destruction of property belonging to the Muslim population was also widespread, particularly between September 2013 and March 2014. Property was destroyed in Bangui but also in the vast majority of the towns that were attacked by the anti-balaka. The looting was mainly committed during the attacks on the villages, but it was not uncommon for Muslims to be targeted in other circumstances.

#### ii. Factual Findings

399. During the attack on Bangui, it was reported that a lot of properties were looted and sometimes destroyed by the anti-balaka. On occasions the victims were present at the time of the destruction but often they fled during the attack and heard through others that their houses had been destroyed. This was the case in the Boy-Rabé neighborhood on 5 December 2013, when the anti-balaka started destroying shops belonging to the Muslim community. Following an attack on the PK12 district in January 2014, a witness took refuge in a mosque. But when he came back to his neighborhood, he saw that everything had been destroyed.

400. Cases of looting and destruction of property were also reported in the subsequent months in Bangui, after the Séléka was no longer in control of the capital. According to a damage assessment by UNOSAT published on 7 March 2014, a total of 1,872 destroyed structures were located in the area of Bangui, with 1,341 structures detected in the 8 districts and an additional 531 located in the surrounding area.<sup>167</sup> A second assessment was prepared on 2 July 2014 which established that between the 22 February and 6 June 2014, 871 houses were destroyed.<sup>168</sup> Although it is not possible to conclude whether the houses destroyed belonged to Christians or Muslims, it is symptomatic of the fact that thousands of houses were destroyed in the period from 16 November 2013 to 6 June 2014.

401. The Commission is not aware of the existence of a comprehensive assessment concerning housing damage affecting members of the Muslim community. However, according to UNHCR, the Shelter/NFI Cluster has conducted an assessment of the

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<sup>167</sup> Damage Assessment in Bangui, Central African Republic by UNOSAT. Available at <http://www.unitar.org/unosat/node/44/1952>. Pre-crisis imagery used for this analysis was collected on 16 November 2013 and thus destruction documented occurred between that date and 22 February 2014

<sup>168</sup> Damage Assessment in Bangui, Central African Republic by UNOSAT. Available at <http://www.unitar.org/unosat/node/44/2024>.

damages affecting housing units belonging to the Muslims in Bangui and Begua, and their preliminary results indicated that 2,000 households had their houses partially destroyed.<sup>169</sup>

402. In Berbérati, during February and March 2014, the anti-balaka looted and destroyed properties belonging to Muslims. It was alleged that all houses in Djamala and Potopoto districts were destroyed. They had not been burned, but even the windows and the doors had been taken. It was also reported that anti-balaka burned the house of the mayor.

403. On 11 January 2014, in the town of Bimon (35 kilometers from Bangui), the day following the resignation of Djotodia, the local population started looting the houses and the shops belonging to Muslims. The anti-balaka, led by a well-known commander, arrived later and participated in the looting.

404. Following an attack on Yaloké on 16 January 2014, the anti-balaka looted around 50 shops belonging to Muslims, including the shops of four brothers. In January 2014, once the Muslims had left Yaloké it was reported that the population looted Muslim properties over a period of two days, even taking the doors and windows from the houses.

405. In January or February 2014, the two mosques in the town of Gamboula, as well as all the shops belonging to Muslims, were looted by the anti-balaka and the local population.

406. In Zawa, Muslims had to give their cattle to the anti-balaka in order not to be killed. It was reported that when the anti-balaka attacked the town, many houses were burned.

407. It was also reported that in the town of Bocaranga, many houses belonging to members of the Muslim community were burned. This was allegedly in retaliation for actions on the previous day when 45 houses belonging to members of the non-Muslim community in the Irimandji, Commercial, Camp mission and Dumba districts were also burned.

408. The Commission received several testimonies describing the destruction of Muslim properties in Bossempé. It is alleged that several houses were looted and destroyed by the anti-balaka. Some of the houses were burned. In the neighbourhood of Bala, which was predominantly Muslim, all the houses with thatched roofs were burned. A humanitarian source mentioned that 642 houses were burned in Bossempé but indicated that the total number covered houses belonging to members of both the Muslim and non-Muslim communities.

409. During the first and second attacks on the town of Baoro, the anti-balaka reportedly burned the houses in which the Muslims were living. As many as 1,000 houses were destroyed. The anti-balaka burned houses with thatched roofs and took the tin from the houses that had tin roofs.

410. During the attack on the village of Boy Balé (sous-Province de Gazdi), anti-balaka burned houses of the Muslim community. It was also further alleged that four Muslims were burned alive in their houses.

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<sup>169</sup> UNHCR, UNHCR operation in the Central African Republic, Fact sheet, 31 March 2014,.

411. In Ndinguiri (sous-Province de Carnot), anti-balaka looted and burned more than 100 houses belonging to the Muslim community.

412. During the attack on Ngout é é, one witness reported that anti-balaka had burned houses.

413. It was reported that anti-balaka started to burn houses belonging to Muslims when they attacked Boyali.

414. Between February and March 2014, Bougu é é was reportedly attacked on three occasions by the anti-balaka. Many houses belonging to the Muslim community were looted and destroyed.

ii. Applicable Law and Legal Findings

415. For the applicable law on pillage and destruction of property, see paragraphs 140 to 144

416. From the information gathered by the Commission, there are reasonable grounds to believe that a great many houses and other property belonging to members of the Muslim population was destroyed in Bangui and in different parts of the country by the anti-balaka. The Commission was able to see first-hand the destruction of mosques in Bangui as well in other towns. The destruction was usually done in the context of an attack against a town, but in some cases it occurred after the population had left. There are also strong indications that the anti-balaka systematically looted houses and shops belonging to members of the Muslim community, and many were subsequently burned.

i. Persecution

i. Introduction

417. The Commission described above the numerous attacks committed by the anti-balaka against the Muslim population in a series of contexts including villages, forests and convoys. Thousands of Muslims were killed over a short period of time.

418. But the Commission also gathered testimonial evidence suggesting that in Bangui and in the provinces controlled by the anti-balaka, Muslims were subjected to treatment that could constitute the crime of persecution.

ii. Factual Findings

419. The Commission interviewed witnesses who confirmed that following the attack on Bangui on December 5, 2013, Muslims continued to be killed in the weeks thereafter. A total of 17 people were interviewed in relation to incidents that occurred in January 2014. These accounts indicate that 13 people were killed, of whom 12 were civilians and one was a S é éka. All the victims were men, but of different ages. At the time of the interviews some families stated that the bodies of their relatives had still not been found. Victims included Muslim men, women and children, although the majority were men. They were killed by bullets or machetes. Some were burnt alive. Some women were disembowelled.

420. The number of killings in Bangui in January was reportedly very high. The Commission reviewed the records of the morgue at the Ali Babolo mosque, and in January 2014 they received a total of 221 bodies. The records of a humanitarian group which had the difficult task of collecting the dead bodies, listed 331 for the same period.

421. Between 24 and 28 January 2014 heavy fighting occurred between the anti-balaka and Séléka fighters in the Miskine neighborhood, which was predominantly inhabited by Muslims. The Muslim community had already started to leave the neighborhood before these attacks and many had sought refuge at the central mosque. But following the clashes, all the Muslim population left the neighborhood, many of them seeking refuge in the PK5 district, where to this day Muslims still live in an enclave. Many houses and all the mosques were then looted and destroyed, by both the anti-balaka and civilian groups.

422. In February and March 2014, a series of incidents occurred on the road to the airport. During this period, many Muslims were trying to leave the country because they were being targeted by the anti-balaka. As noted above, Muslims were systematically targeted and killed while trying to escape from the CAR by convoys or by long cross-country treks through the bush. But many Muslims also attempted to leave by flying out from M'Poko airport. Because there were too many people and too few flights, many were forced to stay in Bangui. In addition, there were a great many IDP's living in the camp next to the airport who were desperately trying to cross the border by road. In order to do that, they had to take the airport road and reach the *Bureau d'affrètement routier centrafricain*, the point from which the trucks departed for Cameroon and Chad.

423. On their way from the airport, many Muslims were stopped by the anti-balaka and robbed and killed. On 7 March 2014, three persons were robbed and killed by men who came out of the anti-balaka base. The victims were dismembered. In another incident on the following day, five persons took a taxi from the airport because no flights were available. One of them, a man originally from Mali, was able to pay for his freedom and that of two women. All three were released unharmed. But the two other passengers were killed. The bodies were never found by their families. That these incidents reflected a broader pattern of killings was confirmed by a humanitarian source, which also provided details of similar incidents that occurred on 28 February and 1 March 2014. But this pattern clearly happened on other occasions as well.

424. The Commission also gathered evidence on specific incidents in which Muslims were targeted by the anti-balaka, but not necessarily as part of an attack on a village. For instance, on 7 February 2014, a woman who was walking to the village of Ombela because her car had broken down witnessed a large number of anti-balaka brutally killing four persons, including her husband.

425. In February 2014, in the town of Yermo (close to Yaloké), approximately 30 anti-balaka are alleged to have killed four members of a family and wounded another.

426. In February 2014, in the town of Batouri-Danzé (close to Berbérati), three anti-balaka looted six houses belonging to Muslims and also killed one Muslim man.

427. On 14 April 2014, after the anti-balaka had allegedly destroyed around 20 houses in the town of Ngoukomba (23 km from Damara), they started looking for two Muslim

men. When they found them, they allegedly took them away on a motorcycle and they have not been seen since.

428. In the town market of Carnot, four Muslims were allegedly killed and one was wounded by anti-balaka who were wearing uniforms.

429. In Bozoum, approximately a week after the Séléka had left the town, anti-balaka in military uniforms allegedly shot a man who was looking after his cattle.

430. In Mbaiki, a town which had one of the largest Muslim populations in the CAR, the anti-balaka killed the deputy Mayor, who was the only remaining Muslim in town. On February 18 2014, the anti-balaka decapitated him when he was going to the *gendarmerie*.<sup>170</sup> Some witnesses alleged that the local authorities were complicit in this killing.

## ii. Applicable Law and Legal Findings

431. Under the Rome statute, persecution can be committed against “any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.”<sup>171</sup> A discriminatory act exists where a person is targeted on the basis of religious, political or racial considerations, or in other words for his membership of a certain victim group that is targeted by the perpetrator. But there is no requirement to prove that a discriminatory policy existed.

432. Persecution is therefore not a stand-alone crime. In the context of violations committed in the CAR by the anti-balaka, a nexus has to be established with a crime committed by the armed group listed in the Rome statute.

433. It is clear from the hundreds of interviews conducted by the Commission, some of them with members of the anti-balaka, and from all the documents and other material gathered and analysed, that the anti-balaka persecuted individuals, mainly men, on the basis of their religion. As previously mentioned, there is a reasonable basis to conclude that the anti-balaka committed murders on a massive scale, directed attacks against the civilian population, directed attack against buildings dedicated to religion and looted and destroyed the property of the Muslim population. As explained below, the anti-balaka also forcibly transferred entire populations out of their villages, which should also be viewed as part of the crime of persecution.

## iii. Deportation or Forcible Transfer of the Population

### i. Introduction

<sup>170</sup> He was killed despite the assurances of the international forces that he would be protected. See report from Amnesty International “Time for Accountability”, p. 22, also Le Monde “la mort de Saleh Dido, le dernier musulman de Mbaiki”, available at [http://www.lemonde.fr/afrique/article/2014/03/03/centrafrique-la-mort-de-saleh-dido-le-dernier-musulman-de-mbaiki\\_4376904\\_3212.html](http://www.lemonde.fr/afrique/article/2014/03/03/centrafrique-la-mort-de-saleh-dido-le-dernier-musulman-de-mbaiki_4376904_3212.html).

<sup>171</sup> Article 7(1)(h).

434. The violations committed by the anti-balaka in the many contexts described above forced the Muslim population to make a choice between leaving their towns in order to stay alive or be killed. Although some of the victims tried at first to relocate to neighbouring villages, this strategy failed since the attacks continued whether in the villages or in the bush. They eventually fled the country.

ii. Factual Findings

435. As described above, when the anti-balaka attacked Bangui and other the towns, they only targeted the Muslim population. The Muslims' property was taken from them. Their houses, shops and mosques were burned or destroyed. In many cases, they were explicitly told not to come back. Many of the victims were mutilated or disembowelled in front of their families, and these acts of extreme violence undoubtedly had a terrifying effect on the survivors.

436. Victims met by the Commission at the refugee camps not only lamented the loss of their family members, but also the fact that their property was taken away from them. Most of them lost everything, except some clothes that they were able to take with them. Without houses, crops or livestock, they were left with nothing, making it even more difficult for them to come back.

437. Even at the time of writing this report, many months after the massive outflow of refugees to neighbouring countries, Muslims continue to be targeted in the CAR. Those who are trapped in enclaves such as the one in the PK5 district in Bangui, or in Boda or Yaloké cannot leave without the risk of being killed. In each case, the enclaves are surrounded by anti-balaka, making the likelihood of being killed very high if any of the Muslims attempt to leave the protected area.

438. The scale of the exodus is illustrated by the number of persons who sought refuge outside the borders of the CAR during this period. In December 2013, there were 235,067 refugees from CAR. By March 2014, that figure had climbed steeply to 312,719,<sup>172</sup> and in November it had reached 423,296. The numbers of internally displaced persons also rose very rapidly during this period, from 602,000 in December 2013, to 825,000 in January 2014. By November 2014 the figure had decreased to 430,000.<sup>173</sup> Most of the refugees were in Cameroon and Chad, with others also in Congo and the Democratic Republic of the Congo. As previously stated, the Commission conducted a field mission to the refugee camps in Cameroon. A total of five refugee camps were visited, four of which were predominantly occupied by Muslims. Those interviewed in the four camps explained that they were forced to leave their homes because of the anti-balaka. They were unable to find safety in nearby towns or even in Bangui, and even after the arrival of the French forces and the reinforcement of MISCA, international forces did not have the capacity to protect the entire civilian population.

iii. Applicable Law and Legal Findings

<sup>172</sup> See Annex III, p. 126 for an illustration of the total number of IDPs, refugees and evacuees since December 2013 (as of March 2014).

<sup>173</sup> Figures taken from the website of the Office for the Coordination of Humanitarian Affairs on 1 December 2014. See <http://www.unocha.org/car>.

439. Section 7(1) (d) of the Rome Statute prohibits the deportation or the forcible transfer of population. In order to conclude there was a deportation or a forcible transfer, the displacement must be committed through coercion. The essential element in establishing coercion is that the displacement must be involuntary in nature, so that the persons concerned had no real choice.<sup>174</sup>

440. Genuine choice cannot be inferred from the fact that consent was expressed or a request to leave was made where the circumstances deprive the consent of any value.<sup>175</sup> An apparent consent induced by force or threat of force should not be considered to be real consent.<sup>176</sup> For instance, fleeing in order to escape persecution or targeted violence is not a genuine choice.<sup>177</sup>

441. A lack of genuine choice may be inferred from threatening and intimidating acts that are calculated to deprive the civilian population of the ability to exercise its free will. These acts can include crimes like looting or burning property belonging to the targeted population. These crimes must be calculated to terrify the population and make them leave the area with no hope of return.

442. Publicly, the anti-balaka stated that their objective was to remove the Séléka from power. But even after the Djotodia government had resigned, the Séléka were confined in military bases in Bangui and had left many of the villages they had dominated in the CAR, the violence did not stop and weapons were not put away. Instead the anti-balaka stepped up their attacks against the Muslim population. It was also emphasized by the Commission's interlocutors that in the vast majority of the attacks, the anti-balaka waited until the Séléka had left the villages before they attacked. Also, from the information obtained at meetings in Yaoundé the Commission believes there was a plan to target the Muslim population as a whole.

#### IV. Genocide and Ethnic Cleansing

##### i. Introduction

443. The terms genocide and ethnic cleansing have often been used to describe certain events that occurred during the reporting period. In establishing the Commission, the Security Council made no reference to genocide or to ethnic cleansing. Nevertheless, in public discourse about the conflict in the CAR the term genocide has been invoked on many occasions. For example, in November 2013, senior officials in two national governments suggested that CAR could be qualified as a "pre-genocide" situation, as one put it, or was "on the verge of genocide", as another suggested. Subsequently, the Special Adviser of the Secretary-General on the Prevention of Genocide, stated on 22 January 2014 that if the widespread attacks against civilians were not halted, "there

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<sup>174</sup> Simic et al Trial Judgment, § 126.

<sup>175</sup> Stakic, Appeal Judgment, § 279.

<sup>176</sup> Slobodan Milosevic, Case No. IT-02-54-T, Trial Chamber Decision on Motion for Judgment of Acquittal, 16 June 2004, § 73.

<sup>177</sup> Krstic, Trial Judgment, § 530.

is a risk of genocide in this country.”<sup>178</sup> On 14 March 2014 he commented that “the risk of genocide remains high.”<sup>179</sup> Similarly, OCHA’s Director of Operations stated on 16 January 2014 that the “seeds are there for a genocide.”<sup>180</sup> And a lengthy report by a major non-governmental human rights group stated that “the extent to which the crime of genocide has been perpetrated with intent, planning and organisation is difficult to ascertain in the present crisis ..., though there remains the possibility that ‘acts of genocide’ have been committed at certain times at the local level.”<sup>181</sup>

444. Ethnic cleansing is another term that has frequently been used to describe the situation in the CAR. Thus Amnesty International alleged that “anti-balaka militias are carrying out violent attacks in an effort to ethnically cleanse Muslims.”<sup>182</sup> The New York Times called for an end to ethnic cleansing in the CAR.<sup>183</sup> Time Magazine published a report by a group of religious leaders who had visited the CAR who noted that “we were asked repeatedly if ethnic cleansing is on the horizon.”<sup>184</sup> And the BBC reported that “massive scale ethnic cleansing” had taken place.<sup>185</sup>

445. The CAR authorities, in creating the *Cellule spéciale d’enquêtes et d’instruction* in April 2014, included the crime of genocide within its jurisdiction. Because of the seriousness of the allegations that have been made, the Commission attaches particular importance to providing a detailed analysis of the issues that arise in analyzing whether these two crimes have been committed.

## ii. Factual findings

<sup>178</sup> <http://www.un.org/en/preventgenocide/adviser/pdf/SAPG%20Statement%20at%20UNSC%20on%20the%20situation%20in%20CAR-%2022%20Jan%202014.pdf>

<sup>179</sup> <http://www.un.org/en/preventgenocide/adviser/pdf/2014-03-12%20Statement%20of%20USG%20Adama%20Dieng%20to%20the%20Security%20Council.%20FINAL.pdf>

<sup>180</sup> <http://www.unmultimedia.org/radio/english/2014/01/un-warns-of-genocide-in-central-african-republic/>

<sup>181</sup> IDH “They Must All Leave or Die”

<sup>182</sup> Amnesty International, Central African Republic: Ethnic cleansing and sectarian killings (12 February 2014), at <http://www.amnesty.org/en/news/central-african-republic-ethnic-cleansing-sectarian-violence-2014-02-12>

<sup>183</sup> Ethnic Cleansing in Africa, New York Times, Editorial, 5 May 2014, at <http://www.nytimes.com/2014/05/06/opinion/ethnic-cleansing-in-africa.html>

<sup>184</sup> Central African Republic: Christians and Muslims Counter Ethnic Cleansing, Time Magazine, 7 April 2014, at <http://time.com/51863/central-african-republic-christians-and-muslims-counter-ethnic-cleansing/>

<sup>185</sup> Central African Republic: ‘Massive scale ethnic cleansing’, BBC News, 19 March 2014, at <http://www.bbc.com/news/world-africa-26641152>

446. For present purposes, the Commission recalls the information that has been provided above in relation to the various categories of crimes alleged to have been committed by the anti-balaka against the Muslim population starting from 5 December 2014. In concluding that widespread attacks were directed against the civilian population, the Commission observed that these attacks were driven, at least in part, by a desire to kill as many Muslims as possible. It also noted that this common purpose was pursued in almost any context in which Muslims could be found, and efforts were made to kill even those who were seeking to flee the country. Muslim holy places were systematically attacked, and the houses of a very large number of Muslim families were either destroyed or confiscated. Muslim-owned shops and other businesses were looted and frequently destroyed thereafter.

447. Hate speech was directed towards the Muslim population in general, and murders that specifically targeted Muslims were committed on a massive scale. The Commission considered that the crime of persecution underpinned most of these actions. It also concluded that the anti-balaka had undertaken a very large scale process of deportation or forcible population transfer against the Muslim population, and that these activities showed every indication of having been orchestrated as part of a plan to target the Muslim population as a whole. Figures show that these crimes succeeded in reducing the number of Muslims living in Bangui by 99 per cent in the space of a couple of months. Thus, by 7 March 2014, the Muslim population of Bangui had been reduced from over 100,000 to less than 1,000. For the country as a whole, it was estimated that more than 80 per cent of the Muslim population had been driven out of the country.<sup>186</sup>

448. As noted above, the allegations of genocide and ethnic cleansing have almost all been directed towards the actions of the anti-balaka. The Commission recalls that much of the information reviewed earlier in this report points clearly to the commission of serious crimes on the part of the Seleka forces and it also notes that in some instances the actions of the anti-balaka were undertaken in retaliation for atrocities committed by the Seleka. Thus the fact that the Commission did not receive information that would enable it to establish that crimes of genocide or ethnic cleansing were carried out by the Seleka should not be permitted to obscure the equally serious allegations against that group, described elsewhere in this report.

### iii. Applicable Law and Legal Findings

449. Genocide was first defined in legal terms in Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Fifty years later the Rome Statute adopted the same definition, in article 6. Genocide is defined as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

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

<sup>186</sup> Reuters, "UN says almost all Muslims have fled Central African capital", 7 March 2014.

e) Forcibly transferring children of the group to another group.

450. The *actus reus* of genocide thus consists of two elements: specific acts, committed against specific groups. The *mens rea* of specific intent must also be met. The Elements of Crimes, attached to the Rome Statute, require that the relevant conduct must have taken place in the context of a manifest pattern of similar conduct directed against the targeted group or was conduct that could itself effect such destruction of the group.

451. The notion of ethnic cleansing is not defined in any international treaty. The term was first used in the United Nations context in the first interim report to the Security Council by the Commission of experts examining the situation in the former Yugoslavia.<sup>187</sup> In its final report, that Commission defined ethnic cleansing as “a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas.”<sup>188</sup> The Commission observed that it could be carried out through the following crimes: mass murder, torture, rape and other forms of sexual assault; severe physical injury to civilians; mistreatment of civilian prisoners and prisoners of war; use of civilians as human shields; destruction of personal, public and cultural property; looting, theft and robbery of personal property; forced expropriation of real property; forceful displacement of civilian population; destruction of villages; and attacks on hospitals, medical personnel and locations marked with the Red Cross/Red Crescent emblem.<sup>189</sup>

452. While various international tribunals have acknowledged the concept of ethnic cleansing, they have also made clear that it is not necessarily synonymous with genocide. Thus, for example, the International Court of Justice held that the intent required for the crime of genocide was distinct from that commonly associated with ethnic cleansing which seeks to render an area “ethnically homogeneous”.<sup>190</sup> The ICTY also observed that situations of ethnic cleansing in which there is no intention to bring about the physical destruction of the targeted group, or parts of it, could not be characterized as genocide. As stated by the Tribunal, “[i]t does not suffice to deport a group or a part of a group. A clear distinction must be drawn between physical destruction and mere dissolution of a group. The expulsion of a group or part of a group does not in itself suffice for genocide.”<sup>191</sup>

453. The Commission considers that the information available to it reveals repeated instances of crimes against humanity amounting to the fact pattern of ethnic cleansing committed by the anti-balaka in the areas in which Muslims had been living. In terms of criminal responsibility, however, the Commission is of the view that these acts of ethnic cleansing would best be prosecuted with under the rubric of crimes against humanity, which is the crime category that is explicitly recognized in the Rome Statute and in the relevant legislation of the CAR. As concluded above, the facts of

<sup>187</sup> S/25274, 10 February 1993, § 55

<sup>188</sup> S/1994/674 (May 1994), § 130.

<sup>189</sup> Ibid., paras. 134 and 136.

<sup>190</sup> ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), para 190, [Bosnia v. Serbia].

<sup>191</sup> Stakic, trial judgment, IT-97-24-T, para 519

the situation indicated that there are strong grounds for concluding that the crimes of persecution and forcible population transfer were committed as part of a widespread or systematic attack against a civilian population, thus constituting crimes against humanity that capture the full essence of the policy of ethnic cleansing that was pursued.

454. It still remains to be considered whether these crimes could also constitute the necessary *actus reus* required for genocide. The question would be whether the ethnic cleansing or crimes against humanity that took place could also be considered as evidence of the intent to destroy the Muslim population of the CAR in whole or in part. As provided for in article 6(c) of the Rome Statute, and acknowledged by the International Court of Justice, when the expulsion of a national, ethnical, racial or religious group from a territory as part of a policy of ethnic cleansing results in the creation of living condition calculated to bring about the group's destruction, the acts committed can correspond to the *actus reus* of genocide.<sup>192</sup> A Chamber of the ICTR held that the deliberate infliction on a group of conditions of life calculated to bring about its physical destruction, in whole or part, could include subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirement.<sup>193</sup>

455. The question for the Commission is whether the anti-balaka, in carrying out acts that can be characterized as ethnic cleansing or crimes against humanity, can be considered to have possessed the specific intent to destroy the Muslim community, in whole or in part. In making this determination, various considerations are relevant. They include: the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of the atrocities, whether there was systematic targeting of victims on account of their membership of a particular group, and whether the destructive and discriminatory acts were repetitive.<sup>194</sup>

456. The Commission recalls that the standard of proof for this report is that there are reasonable grounds to believe that the factual incidents occurred as described. This is a similar standard of proof as utilized under Rome Statute article 58(1)(a) relating to the issuance of an ICC arrest warrant or summons to appear. The application of this standard was addressed by the Appeals Chamber of the ICC in the decision relating to arrest warrant charges for genocide.<sup>195</sup> The ICC Appeals Chamber found that, under the standard of proof of "reasonable grounds to believe", it is not necessary to prove that genocidal intent was the "only reasonable conclusion".<sup>196</sup> This standard of proof is therefore distinct from the "beyond reasonable doubt" standard of proof applied at

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<sup>192</sup> Bosnia v. Serbia, para 190

<sup>193</sup> Kayesu, trial judgement, ICRT-96-4-T, para 506

<sup>194</sup> Kstic, appeal judgment, para 34; Jelusic, appeal judgment, IT-95-10-A, § 47

<sup>195</sup> Prosecutor v. Omar Hassan Ahmad Al Bashir, Decision 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-02/05-01/09OA

<sup>196</sup> Prosecutor v. Omar Hassan Ahmad Al Bashir, Decision 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-02/05-01/09OA, § 37.

trial, wherein the finding of specific intent must be the “only reasonable inference” to be drawn from the facts.<sup>197</sup>

457. However, the ICC Appeals Chamber left open the issue of whether all potential reasonable conclusions ought to be applied under the “reasonable grounds to believe” standard of proof, or whether the finder of fact is open to draw conclusions relating to one particular reasonable conclusion, which may have a greater evidentiary basis. It is the position of this Commission that the latter is the most appropriate approach within the parameters of its mandate under Security Council Resolution 2127 (2013). On the basis of this application of the standard of proof, the Commission has not received sufficient evidence to establish reasonable grounds to believe that the perpetrators acted with specific intent to destroy the targeted group.

458. The facts relating to forced transfer of population ought to be specifically addressed within this context of determining the specific intent relating to genocide. The Commission has found facts establishing the dramatically high proportion of the Muslim population forcibly transferred during attacks against the civilian population. Previous international criminal law jurisprudence has concluded that “forcible transfer could be an additional means by which to ensure the physical destruction of the [targeted group].”<sup>198</sup> Although forcible transfer can be relied upon as evidence of intent,<sup>199</sup> “forcible transfer does not constitute in and of itself a genocidal act.”<sup>200</sup> The question for the Commission is whether there are sufficient indicia of genocidal intent for which forcible transfer would lead to the establishment of a reasonable inference of specific intent to destroy the targeted group.

459. There are several international criminal law cases which have addressed the extent to which attacks against a large proportion of a targeted group, while not a constitutive element for the crime of genocide,<sup>201</sup> can be indicative of specific intent to destroy that group. As stated by the International Criminal Tribunal for Rwanda: “[T]he relative proportionate scale of the actual or attempted destruction of a group, by any act listed in Article 2 of the Statute, is strong evidence of the intent to destroy a group, in whole or in part.”<sup>202</sup> However, the case law has consistently affirmed that there is no numeric threshold in the context of genocide, and while this may be relevant for inferring specific intent, “[i]t is the genocidal *dolus specialis* that

<sup>197</sup> *Krstic*, appeal judgment, para 41.

<sup>198</sup> *Krstic*, (Appeals Chamber), April 19, 2004, § 31.

<sup>199</sup> *Krstic*, (Appeals Chamber), April 19, 2004, § 33.

<sup>200</sup> *Krstic*, (Appeals Chamber), April 19, 2004, § 33. See also *Krstic*, (Appeals Chamber), Partial Dissenting Opinion of Judge Shahabuddeen, April 19, 2004, § 35: “[S]tanding alone, forcible transfer is not genocide.” *Stakic*, (Trial Chamber), July 31, 2003, § 519: “It does not suffice to deport a group or a part of a group. A clear distinction must be drawn between physical destruction and mere dissolution of a group. The expulsion of a group or part of a group does not in itself suffice for genocide.”

<sup>201</sup> *Ndindabahizi*, (Trial Chamber), July 15, 2004, § 454: “The actual destruction of a substantial part of the group is not a required material element of the offence, but may assist in determining whether the accused intended to bring about that result.” See also *Brdjanin*, (Trial Chamber), September 1, 2004, § 697.

<sup>202</sup> *Muhimana*, (Trial Chamber), April 28, 2005, § 498.

predominantly constitutes the crime.”<sup>203</sup> In the absence of evidence demonstrating reasonable grounds to believe that the targeting and transfer of the population took place with specific intent to destroy the group as such, the Commission is not able to conclude that the crime of genocide took place.

460. The Commission also notes that some commentators have advocated that the understanding of genocide should be expanded to include the notion of cultural genocide.<sup>204</sup> But, whatever the merits of such arguments, it has not yet found favour with any international criminal tribunals. The Commission also takes note of a similar outcome reached by another recent commission of inquiry. That commission noted that it was “sympathetic to the possible expansion of the current understanding of genocide. However, in light of finding many instances of crimes against humanity, the Commission does not find it necessary to explore these theoretical possibilities here. The Commission emphasizes that crimes against humanity, in their own right, are crimes of such gravity that they not only trigger the responsibility of the state concerned, but demand a firm response by the international community as a whole to ensure that no further crimes are committed and the perpetrators are held accountable.”<sup>205</sup>

461. In conclusion, the Commission does not possess sufficient evidence to enable it to conclude that the attacks by the anti-balaka forces against the Muslim population were undertaken with the specific intent to achieve the physical destruction of the group, either in part or in whole. But the actions taken were clearly intended to achieve the expulsion and transfer to another territory of the Muslim population. In reaching this conclusion, the Commission notes that the Office of the Prosecutor of the International Criminal Court in its article 53(1) report on the situation in the CAR concluded that the information available to it at that time was “inconclusive on the question of whether the alleged crimes ... were committed with the requisite intent to destroy, in whole or in part, a national, ethnical racial or religious group, as such.”<sup>206</sup> The Office noted, however, that that conclusion was only provisional and was not binding for the purpose of any future investigation.

## V. Cross-Cutting Issues

### 1. Sexual and Gender-Based Violence

462. The Commission gathered evidence relating to sexual and gender-based violence against civilians from a diverse range of sources, including individual victims, witnesses, domestic groups and international non-governmental groups that had

<sup>203</sup> Stakic, (Trial Chamber), July 31, 2003, § 522.

<sup>204</sup> Micol Sirkin, “Expanding the Crime of Genocide to Include Ethnic Cleansing: A Return to Established Principles in Light of Contemporary Interpretations”, 33 *Seattle University Law Review* (2009-2010), p. 518; see also Benjamin Liberman, “‘Ethnic Cleansing’ versus Genocide?”, in *Oxford Handbook of Genocide Studies* (2010).

<sup>205</sup> Report of the detailed findings of the commission of inquiry on human rights in the Democratic People’s Republic of Korea, A/HRC/25/CRP.1 (7 February 2014), § 1158.

<sup>206</sup> Article 53(1) Report, § 220.

undertaken fact-finding missions.<sup>207</sup> In total, the Commission received testimony from one hundred and three victims who were either raped or experienced other forms of sexual and gender-based violence. While most of the victims were women and girls,<sup>208</sup> the Commission received reports of males being raped as well.<sup>209</sup> Most of the acts reported were committed during or in the immediate aftermath of other acts of violence. The widespread nature of these forms of violence is undisputed.

463. The main perpetrators of the gender based crimes were identified as the Séléka and anti-balaka groups. The sexual violence was one dimension of the broader pattern of sectarian violence conducted by anti-balaka elements and Séléka during attacks and house to house searches.<sup>210</sup>

i. Factual Findings

a. Violations by the Séléka

464. The Commission documented multiple<sup>211</sup> instances of rape and other forms of sexual and gender-based violence<sup>212</sup> committed by the Séléka in Bangui between 24 March 2013 and 25 December 2013. The Commission has also received reliable information of gang rapes, and other sexual violence committed in different parts of Bangui and other parts of the country by the Séléka.<sup>213</sup> The allegations related especially to events in the Boy Rabé neighbourhood and at Vangué Information gathered<sup>214</sup> demonstrates that most of the sexual violence was committed in March, April, August and December 2013. The Commission also interviewed victims and witnesses of rapes committed against girls under the age of eighteen. The

<sup>207</sup> Secretary General's Report on Conflict Related Sexual Violence, S/2014/181, January-December 2013, paras.14-17.

AI-Central African Republic, Human Rights Crisis spiralling out of control-291013,p.26. FIDH-République Centrafricaine, Un Pays Aux Mains des Criminels de Guerre de la Séléka -230913,p.30. HRW-I can still smell the dead, p.62. OHCHR-Daily Sitrep and Case Notes: Bossangoa, 21 December 2013. Actions Communautaires pour le Bien-être Familial (A.C.B.F.) Rapport d'activités de violences commises sur les personnes (femmes) dans le 3<sup>e</sup> arrondissement de Bangui-semaine du 20-27 Octobre 2014 en dehors des événements qui ont secoué le PK.5. Reports or information received from local NGO's : LCDH, CJP, ARESDI, MERCY CORPS.

<sup>208</sup> Of the interviewed persons 17 were aged between 9-18 years, 49 between 19-30, 18 between 31-40, and 15 between 41-55 years.

<sup>209</sup> The Commission received reports of sexual violence against at least seven men in Bouar.

<sup>210</sup> S/2014/181, §15.

<sup>211</sup> The Commission interviewed 103 individuals on gender based violence, 5 refer to attempted rapes, 98 to rapes of which 4 can qualify as cases of sexual slavery.

<sup>212</sup> The Commission interviewed 103 sexual violence victims, of which 90 were victims of gender violence committed by the Séléka.

<sup>213</sup> 26.5% of the interviews conducted by the COI were with victims from, Bambari, Bossangoa, Bossembélé Bouar, Bozoum, Gaga, Mbaiki Issongo and Vangué

<sup>214</sup> March 2013 , 14 incidents, April 2013 , 33 incidents, August 2013 ,11 incidents, December 2013, 15 incidents.

Commission delineates below some examples of the interviews that it has collected in this regard.

465. On 14 April 2013, the victim was at home in Boy Rab é with her sister, due to the intense fighting that was on going. Six S ď ě ka men kicked open the door and entered. They asked her where the men of the house were, demanded money, and threatened to hurt the victim's sister if their demands were not met. The victim was then raped in front of her sister and her children. The men who raped her wore military uniform.

466. The victim, of the Mandjia ethnicity, was gang raped on 20 April 2013 at her house by a group of S ď ě ka fighters. When they arrived they fired shots in the air, one of the men struck her, and the other three then raped her in turn. The men then looted her house and left.

467. On 24 April 2013, the victim, a mother of three, was raped by two different men in her sitting room while her children hid under the bed. She identified the men as S ď ě ka because of their uniform and the fact that the pickup truck in which they arrived had the words S ď ě ka written on it.

468. The 33 year old victim was gang raped by four S ď ě ka men on 20 August 2013, she now lives in misery and the rape weighs heavily on her. The S ď ě ka also pillaged her house.

469. The victim and her family were at home on 5 December when they heard shooting. They were subsequently attacked by four masked Arab-speaking S ď ě ka men. They first tied up her husband and, in a different room, raped the victim orally and vaginally. One of the rapists ejaculated in her mouth. A month later she tested positive for HIV.

470. The victim a mother of six, was gang raped on December 5 2013, by S ď ě ka men in the mixed neighbourhood of Mbaiki, she stated that, Christian men in particular were targeted, and people were killed indiscriminately. Following the rape, her husband left her, and she was diagnosed with HIV.

471. The victim was in Boy Rab é on 5 December 2013, when attacks began in the neighbourhood. S ď ě ka fighters invaded her house and two of them raped her in front of her children. She is particularly ashamed that her children saw her being raped and she feels she has lost her dignity.

472. A young man was detained, drugged and taken to a location in PK9 where he was raped by a S ď ě ka fighter. He is severely traumatized as result of the rape. The victim also recalled that, at the time of his abduction, the S ď ě ka were targeting the residences of senior officials in the Boziz é government. He further stated that in addition to his own rape he saw women being selected and taken as wives by the S ď ě ka fighters, including by the bodyguard of the man in charge of the base.

## i i. Conclusion

473. From the material available to the Commission, there seems to be a widespread pattern of sexual and gender-based violence that was committed by S ď ě ka fighters in the course of their attacks on different villages and neighbourhoods in the city. While some of the victims may well have been targeted because they were perceived to be allied to the anti-balaka, this makes no difference in terms of the criminal responsibility of the perpetrators.

b. Violations by the Anti-Balaka

i. Factual Findings

474. The Commission received reports of sexual and gender-based violence committed by anti-balaka forces. However, of the one hundred and three interviews conducted by the Commission related to such violence, twelve concern rapes and other sexual violence, attributed to the anti-balaka. The Commission undertook missions to refugee camps in July 2014, where most of the victims of anti-balaka violence had sought refuge. Although it visited six camps and met with one hundred and ninety eight victims in four days, it was unable to investigate sexual and gender based violence due to time constraints which impeded its ability to establish the necessary rapport with the victims and to create a conducive working environment in which to conduct interviews.<sup>215</sup> Given the taboo, shame, stigmatization, and ostracisation<sup>216</sup> associated with such violations, the Commission felt that this task would be better undertaken at a later stage by investigators who have the necessary time and resources at their disposal.

475. The Commission provides below an indication of some of the cases reported to it of sexual violence committed by the anti-balaka.

476. The victim told the Commission that on 5 December 2013, the anti-balaka entered her house in Bangui, raped her and her fourteen year old daughter. The witness reported that her daughter subsequently died in Chad.

477. The victim was raped twice by an anti-balaka called Eric in a house full of anti-balaka on 20 December 2013. She told the Commission that Eric and his group stopped her at a road block in Gondorou and asked her if she was a Moslem and if she knew any Moslems in the neighbourhood. After giving a negative response and a Christian name she was directed to the house where she was later raped. She does not like to speak about the rape and does not have money to go to the hospital for medical tests.

478. On 23 December 2013, an attack was directed against Muslims at the quartier combatant where the victim, a grandmother was gang raped by anti-balaka. She told the Commission that a machete was held against her neck as she was ordered to lie on the floor and was raped by two men. She is currently in bad health and has lost everything.

479. The victim was gang raped by six anti-balaka men in March 2014 in Galabadja sinistré. She was taken by force together with her younger sister, to a house occupied by the anti-balaka where they were beaten and the victim was raped. Her sister managed to escape. She was only freed after her mother paid a ransom of 30.000 CFA to the anti-balaka.

480. On 7 July 2014 the anti-balaka searched for Moslems in Gbangouma, thus, people fled for security reasons. That evening the victim was found by the anti-balaka.

<sup>215</sup> UNICTR, Office of the Prosecutor, Best Practices Manual on the Investigation and Prosecution of Sexual Violence Crimes in Post Conflict Regions, 30 January 2014, P.42, paragraph. 133. P 45, paragraph. 145.

<sup>216</sup> Id. PP.37-38, paragraph 114-117.

They accused her Moslem relatives of killing their brothers. When they arrived they were armed with guns and traditional weapons, they snatched her baby from her, while others shot. She panicked, and lost consciousness. When she regained consciousness she was naked and realised she had been raped.

481. On 22 August 2014, two anti-balaka factions, the Njilo and FACA fought in a battle in Lakounga Boy Rabé. The victim a virgin at the time was hiding in her house when eight anti-balaka men broke the door and entered. Two of them beat and forcefully undressed her, then raped her. She told the Commission she is now traumatised and has urinary tract infection and gastric problems.

## i i. Conclusion

482. It is clear from the available information that the anti-balaka forces were involved in a number of incidents involving rape and other forms of gender-based violence. However, because of the relatively few interviews that the Commission was able to conduct with alleged victims, it is not able to reach a more broad-ranging conclusion as to whether these crimes were widespread or systematic.

### Applicable Law<sup>217</sup>

483. Gender-based violence is defined as any harmful act directed against individuals or groups of individuals on the basis of their gender.<sup>218</sup> Gender-based violence may include sexual violence, domestic violence, trafficking, forced/early marriage and harmful traditional practices. Sexual violence is a form of gender-based violence and encompasses “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim,

<sup>217</sup> In addition to the Rome Statute, the legal regime that applies depends on the qualification of the conflict at the time of the alleged acts, which the Commission has analysed in paras. 82-114 above. In addition to the relevant provisions of Additional Protocol II and common Article 3 of the Geneva Conventions, it may be noted that the Security Council has attached particular importance to the need to respond effectively to allegations of gender-based violence. Thus, Resolution 1325 (2000) calls upon all Parties to conflicts to protect women and girls from rape and other forms of sexual abuse, and Resolution 1820 (2008) stresses that sexual violence when used as a tactic of war in order to deliberately target civilians or as part of a wide spread or systematic attack against civilian populations can significantly exacerbate situations of armed conflict. The Commission notes that Article 18 (3) of the African Charter on Human and Peoples Rights, (ACHPR), calls upon States to ensure the elimination of every discrimination against Women and also ensure the protection of the rights of the Women and the Child as stipulated in International Declarations and Conventions. The Commission in particular draws attention to Article 11 of the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, which calls upon State Parties to respect and ensure respect for the rules of international humanitarian law applicable in armed conflict situations which affect the population, particularly women.

<sup>218</sup> See the Guidelines for Gender-Based Violence Interventions in Humanitarian Settings, issued by the Inter Agency Standing Committee 2005, p.7-8. See also the Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (1992).

in any setting”.<sup>219</sup> Sexual violence takes multiple forms and includes rape, sexual abuse, forced pregnancy, forced sterilization, forced abortion, forced prostitution, trafficking, sexual enslavement, forced circumcision, castration and forced nudity.<sup>220</sup>

484. The Rome Statute provides for the prosecution of rape and other sexual violence, wherein rape can be pursued as a crime against humanity, and as a war crime. The contextual elements have to be met for crimes of sexual violence to be raised to the level of international crimes, crimes against humanity, war crime or an act of genocide.

485. Rape has two elements that need to be met: (i) the perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other body part. (ii), the invasion was committed by force or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such a person or another person or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

486. The requisite elements for sexual slavery are that (i) the perpetrator exercised any or all powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such person or persons, or by imposing on them similar deprivation of liberty. (ii) The perpetrator caused such person or persons to engage in one or more acts of a sexual nature. Whereas, those for sexual violence are three. (i) The perpetrator committed an act of a sexual nature against one or more persons or caused such a person to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person or persons incapacity to give genuine consent. (ii) Such conduct was of a gravity comparable to the other crimes against humanity. (iii) The perpetrator was aware of the factual circumstances that established the gravity of the conduct.

487. The elements of war crimes are: (i) the crime was committed during an international or non-international armed conflict. (ii) the crime had a nexus to the armed conflict (iii) the victim was a protected person (not an element for crimes of sexual and gender based violence) (iv) the perpetrator knew that the victim was a protected person. (v) the perpetrator was aware of the factual circumstances that established the situation as one of armed conflict.

488. The Commission further notes that Central African legislation,<sup>221</sup> has criminalised serious violations of international humanitarian law and or international criminal law, incorporating it in the Penal Code, as other Crimes Against Humanity inter alia, rape, sexual slavery, forced prostitution, forced pregnancies, sterilization or all forms of sexual violence of comparable gravity, and War Crimes.

<sup>219</sup> United Nations Action against Sexual Violence in Conflict, citing the World Health Organization, in “Analytical and conceptual framing of conflict-related sexual violence” (2011), p. 1.

<sup>220</sup> Rome Statute, articles, 7 and 8(2)(c)-(e). *Akayesu*, trial judgement, paras. 598, 688, 697.

<sup>221</sup> LOI N.10.001, Portant Code Pénal Centrafricain, 2011, Articles 153-157.

iii. Conclusion

489. The Commission concludes, on the basis of the information available to it, that repeated acts of sexual and gender-based violence took place across the geographic and temporal jurisdiction under examination. Acts of rape were sufficiently frequent and sufficiently connected to the broader attack against the civilian population, such that the superiors within the chain of command for the respective forces implicated in perpetrating rape either knew or should have known of the conduct of their subordinates. Representatives of the command and control network of the respective groups were either present at the crime scene, receiving reports, or otherwise should have known of the acts of rape committed by their subordinates. This is particularly the case given the public nature of certain rapes, the frequent use of gang rape by multiple perpetrators, and the blatant impunity with which the acts were committed, demonstrating knowledge, condoning, or acceptance at the highest levels of command and coordination of the respective armed groups.

2. Child Soldiers

i. Introduction

490. The Security Council has consistently condemned the recruitment and use of children in armed conflict and, in relation to the CAR, has called upon all armed groups to prevent such activities, and to take steps to ensure that all victims are released and reintegrated within the community. The Commission thus paid particular attention to this issue.

491. The Commission had access to information from United Nations agencies, as well as national and international NGOs, in relation to this problem. Allegations of rape and sexual abuse of children were also reported, and some children have witnessed acts of extreme violence, including the killing of family members.<sup>222</sup> The Commission also gathered information from 14 victims under the age of 18 on sexual and gender based violence. The Commission also gathered information from 24 witnesses on sexual and gender based violence involving children. The Commission feels such allegations are serious and call for the need for further inquiry on these issues.

ii. Factual Findings

492. The Commission interviewed the representatives of various United Nations agencies, and national and international non-governmental organisations dealing with children and the effects of the conflict. The Commission also had the opportunity to talk with some of the children who were used as child soldiers. The Commission documented testimonies of persons who were detained in military camps, some of

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<sup>222</sup> United Nations, Conclusions on the Children and armed conflict in the Central African Republic by Working Group on Children and Armed Conflict, S/AC.51/2011/5, 6 July 2011 p. 5 § 4 and p. 2 para 10, Situation of Human Rights in the Central African Republic, A/HRC/24/59, 12 September 2013, p. 15, para 72-73, Report of the Secretary General on the Situation in the Central African Republic, S/2013/4705 August 2013, p.10, para 44, Index: AFR 19/003/2013, Human Rights Crisis Spiralling out of Control, Amnesty International, October 2013, p. 31.

whom were able to provide credible information on the existence of child soldiers and the places where they worked.<sup>223</sup>

493. In December 2014, UNICEF estimated that there were between 8,000 and 10,000 child soldiers in the CAR. Children were used by all parties to the conflict, including the Lord's Resistance Army (LRA).<sup>224</sup>

494. The information gathered suggests that some child soldiers joined the different groups 'voluntarily' while others were recruited by force<sup>225</sup>. Most of the children joined in order to gain protection, attain revenge, or for economic reasons. Most of them felt they had no options. Forced recruitment was done either by kidnapping the children from their homes or in the streets. Girls were sometimes raped during this process. Some children were killed when the recruiters discovered that they had previously worked with the enemy. According to testimonies, some children were forced to kill their own parents during the recruitment process in order to show that they were brave.<sup>226</sup>

495. Many children were used to carry out 'household work' in the camps, such as carrying water, searching for wood, cooking, washing and cleaning. They also worked as spies, providing information to the armed groups.<sup>227</sup> Testimonies revealed that children who worked as informants were often not accepted back into their communities. Some were killed upon return. Both girls and boys also worked at roadblocks to secure the camps.<sup>228</sup>

496. On some occasions, boys (though not exclusively) participated in direct combat using firearms and machetes. Testimony revealed that children were generally provided with some form of military training when they joined the groups. Those who showed bravery were given leadership positions.<sup>229</sup>

497. The females often did household work and sometimes worked at roadblocks. It was reported that girls were sometimes used to kill prisoners in the camps. They were also used as sex slaves by the males of the group, and some were sexually abused by their fellow 'soldiers'. This led to the prevalence of teenage pregnancies and forced abortions, and also resulted in infections and sexually transmitted diseases. It is alleged that boys were sometimes sexually abused as a form of punishment.<sup>230</sup>

<sup>223</sup> Bangui (all eight districts, Bimbo 1,2,3 and 4), L'Dimbella-M'Poko, Lobaye, Sangha-Mbaere, Mambere Kadei, Ouham-Pende, Mbomou, Haut-MBomou. Information provided by a victim, 6 September 2014.

<sup>224</sup> Statistics provided by United Nations Children Emergency Fund staff during an interview, December 2014.

<sup>225</sup> Op cit, p. 31-32.

<sup>226</sup> Interview conducted with a local NGO dealing with children and armed conflict in an IDP camp on 19 August 2014. Information provided was limited to anti-balaka. Interviews were also provided by UNICEF on Séléka and anti-balaka child soldiers on 3 December 2014.

<sup>227</sup> Interview conducted with a local NGO on the roles they played on 7 September 2014.

<sup>228</sup> Ibid.

<sup>229</sup> Ibid.

<sup>230</sup> Ibid.

498. There are allegations that the use of drugs and alcohol was prevalent among child soldiers. Newly recruited children were given Tramadol,<sup>231</sup> often in combination with local marijuana and or hashish to make them brave.<sup>232</sup>

499. Those who violated internal rules were made to do extra household work (cleaning, washing for others), deprived of food and water, flogged, cut with a knife, tied up and left in the sun, burnt, or sexually abused. Children who tried to escape were severely punished.<sup>233</sup>

500. The Commission was informed that sensitization campaigns that were undertaken had enabled many children to escape or be released.<sup>234</sup> On 3 July 2014, the chief of staff of the Séléka signed a document on the non-use of child soldiers.<sup>235</sup> As a result, 51 children were released. 800 copies of this document were distributed to commanders in French, Sango and Arabic. Furthermore, on 31 March and 1 April 2014, awareness trainings were conducted with 79 commanders.<sup>236</sup> It proved impossible to sign such an agreement with the anti-balaka, due in part to the unclear command structures<sup>237</sup>.

501. However, these steps forward took place mainly in Bangui. Testimony revealed that it was more difficult to achieve such results in the interior of the country. In 2014, a demobilization process was initiated through awareness campaigns and negotiations between the armed groups and the Government, UNICEF and NGOs. By November 2014 a total of 2,472 child soldiers, a third of whom were girls, were released.<sup>238</sup>

### iii. Applicable Law and Legal Findings

502. During times of armed conflict, international humanitarian and human rights law must be respected, with special regard to children who usually lack the means of self-protection from abuses. These obligations have been spelled out in international treaties to which the CAR is a party. As noted above, non-State actors are also obliged to respect these standards.

503. The Convention on the Rights of the Child, ratified by the CAR in 1992, obligation States Parties to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child, including ensuring that children do not take a direct part in hostilities.<sup>239</sup> The recruitment and use of children under the age of 15 in hostilities is also prohibited by

<sup>231</sup> A pain killer.

<sup>232</sup> Ibid.

<sup>233</sup> Ibid 7 September 2014.

<sup>234</sup> Interview with the Head of Child Protection Section of MINUSCA.

<sup>235</sup> Ibid.

<sup>236</sup> Ibid.

<sup>237</sup> However, the Commission received information that on 4 August 2014, one of the leaders of the anti-balaka signed an agreement during which he stated that he released 153 child soldiers.

<sup>238</sup> UNICEF Humanitarian Situation Report, Central African Republic, 7 November 2014, p. 1.

<sup>239</sup> Article 38

article 4(3)(c) of the Additional Protocol II to the Geneva Conventions. The rules that children must not be recruited into armed forces or armed groups and that children must not be allowed to take a direct part in hostilities are considered customary international law, applying equally to international and non-international conflicts, and to State and non-State armed groups. Article 22 of the African Charter on the Rights and Welfare of the Child also requires specific protection to be given to children during armed conflict.<sup>240</sup>

504. Rape and other forms of sexual violence against children are serious human rights violations, and may amount to violations of international humanitarian law. Acts of sexual violence may constitute a crime against humanity and a war crime. Article 34 of the CRC requires that children be protected from all forms of sexual exploitation and sexual abuse.

505. Rape and other forms of sexual violence during armed conflict are prohibited under common article 3 of the Geneva Conventions and Additional Protocol II.<sup>241</sup> The CRC also requires that children must enjoy protection from torture, cruel, inhuman or degrading treatment.<sup>242</sup> This also includes acts of rape and sexual violence. Article 27 of the African Charter on the Rights and Welfare of the Child (1990) also forbids sexual violence against minors.

506. Based on the information collected from reports and testimony, the Commission has reasonable grounds to believe that all parties to the conflict used child soldiers. However, the Commission could not independently verify the allegations that the LRA used child soldiers.

### 3. Economic, Social and Cultural Rights

#### i. Introduction

507. Armed conflicts always have an impact on the lives of the civilian population. But these situations are generally examined under the frameworks of international criminal law and international humanitarian law. When a human rights lens is applied, it generally focuses only on civil and political rights.

508. But warfare inevitably has very negative consequences for the enjoyment of economic, social and cultural rights. For instance, schools will shut, hospitals will close or their services will severely be reduced, and people will be unable to work thus undermining their source of income. The rights to education, access to healthcare and work will therefore be put in jeopardy.

<sup>240</sup> States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child. Art. 22, African Charter on the Rights and Welfare of the Child

<sup>241</sup> ‘Children shall be the object of special respect and shall be protected against any form of indecent assault.’

<sup>242</sup> Convention on the Rights of the Child of 1989, ratified by CAR in 1992 (the optional protocol on the involvement of children in armed conflict of May 2000 has been signed by CAR in 2000, but not ratified).

509. In addition, there are situations in which economic, social and cultural rights will intentionally be violated as a result of deliberate measures taken by a party to the conflict. In other words, actions will be taken with the clear intent to deprive the population of these rights.

510. Without purporting to offer a comprehensive analysis of the full range of such violations, the Commission has observed that the following economic and social rights were violated during the period of its mandate.

#### A. Right to Adequate Housing (Forced Eviction)

##### i. Introduction

511. After it came to power in March 2013 the Séléka engaged in the widespread destruction of housing, a practice that still continues today. Both the Séléka and the anti-balaka have resorted to burning or in some other way demolishing the houses of civilians perceived to be allied to their opponents. Humanitarian actors and, to a lesser extent, human rights NGOs, have reported on these practices conducted by both of the armed groups in many parts of the country.

##### ii. Factual Findings

512. Thousands of houses have been totally or partially destroyed by members of the Séléka and the anti-balaka. Other actors, including civilians and other unidentified armed men have also engaged in such destruction. According to estimates published by the CAR Shelter Cluster, 36,127 houses were destroyed between December 2013 and September 2014. During the same period, another 15,898 were given assistance for the purpose of reconstructing houses damaged during the conflict.<sup>243</sup>

513. Many areas throughout the country have been affected. Satellite images show the seriousness of the damage done to housing units in different areas (see paragraphs 399 and 400) a humanitarian NGO has conducted a survey that revealed that up to 6,343 houses were burned down on the Bangui-Ouham Bac axis. The survey covered 407 locations and most of the destructions occurred in 2013.<sup>244</sup> According to another humanitarian NGO, 2,157 houses were burned down between October 2013 and February 2014 in Gaga (1,300), Zawa (330), Gomion (307), Bossenforo (210) and Yaloké (10).<sup>245</sup>

##### iii. Applicable Law and Conclusion

514. The right to adequate housing is protected in the International Covenant on Economic, Social and Cultural Rights, to which the CAR became a party in 1981. Article 11 provides that everyone has the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing.

<sup>243</sup> <https://www.sheltercluster.org/Africa/CentralAfricanRepublic/Pages/default.aspx>

<sup>244</sup> Catholic Relief Service Database.

<sup>245</sup> Rapport section locale de la croix rouge de Yaloké

515. The International Court of Justice has stated that even during an armed conflict, the provisions of the ICESCR continue to apply.<sup>246</sup>

516. The Committee on Economic, Social and Cultural Rights has defined forced evictions as “the (...) removal against their will of individuals, families and/or communities from the homes and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”.<sup>247</sup>

517. The facts describing the forcible transfer of population and the destruction of houses as explained above clearly constitute violations of the right to adequate housing.

## B. Limited Access to Food, Water and Health Services for Populations Living in Enclaves

### i. Introduction

518. As a result of the conflict between the anti-balaka and the Séléka, the civilian population has suffered extensively in terms of the impact of this conflict on their daily lives. And those who are forced to live in enclaves suffer even more. In February 2014, the United Nations High Commissioner for Refugees indicated that as many as 15,000 people, living in 18 locations, were at risk because they were surrounded by armed groups. Most of those people were Muslims who were living under the constant fear of attacks by anti-balaka forces. At the time, the communities particularly at risk were those in PK5, PK12 and Boda. The rights to food, water and access to health services of people living under such circumstances are inevitably put in great jeopardy, not just because of the constant fear of being killed, but because the opportunities and services available to them are significantly constrained as a result.

### ii. Factual Findings

#### a. PK5

519. The Commission conducted several interviews with persons living in the PK5 enclave, the majority of whom are Muslims who have fled from other areas of Bangui, such as Kina and Makombo. There are also a few Christians who lived in PK5 before 5 December 2013 and did not flee. They too are threatened by the anti-balaka when they attempt to leave PK5. The anti-balaka considers them to be traitors because they remained in the enclave. They also believe them to be informants working for the Muslims.

520. Living conditions are difficult within PK5; the food is scarce and not easily accessible. Food distribution is undertaken by a humanitarian organization but only for the benefit of the IDPs and not for the longer-term residents. This issue was

<sup>246</sup> Legal Consequences on the Construction of a Wall in the Occupied Territories, ICJ Reports 2004, 178.

<sup>247</sup> CESCR, General Comment 7 on the Right to Adequate Housing: Forced Evictions, 13.12.1997, E/1997/4, §3.

addressed by the Food Security Cluster in September 2014 in a survey that measured the consequences of isolation in terms of food security vulnerability for both IDPs and residents.<sup>248</sup> A report, published in October 2014 by FAO and WFP observed that IDPs and others living in enclaves are in a critical food security situation.<sup>249</sup>

521. There are only three medical facilities in PK5. They can accommodate simple medical cases but are not equipped to deal with serious medical conditions, or to undertake operations or deal with bullet wounds. Additionally when the security situation becomes tense, the personnel working in these medical facilities cannot get in to work in the enclave. One witness stated that in cases of serious medical conditions they had secretly evacuated people to hospitals of Bangui with the assistance of MINUSCA forces. In such cases the patient, upon arrival at the hospital is given a fake name so as not to be identified as a Muslim.

b. PK12

522. Approximately 1,400 Muslims and Peulh were living in the enclave located near the mosque of the PK12 IDP camp, up until April 2014 when humanitarian organizations organized a convoy to transport this population to Kabo and Moyen Sido. Before this transfer, the Muslim population living in PK12 was under constant threat from the anti-balaka. The Commission was informed by a humanitarian organization that 22 Muslims were killed in PK 12 between January and April 2014.<sup>250</sup> The same organization reported that anti-balaka groups said they would not attack provided the Muslims left by the end of April 2014.<sup>251</sup>

523. According to another humanitarian organization, the people living in the enclave had entirely inadequate access to food and water. Access to health services provided by NGOs was infrequent. A survey concluded that sanitary and nutrition conditions were disastrous.<sup>252</sup>

c. Boda

524. When the Commission visited Boda between 10 and 13 September 2014, there were approximately 10,000 Muslims living in the enclave. But they are unable to cross its perimeter without military escorts.

525. WFP, with the assistance of COOPI, has been distributing food in the Muslim enclave since February 2014 but there is a serious lack of water since most water pumps are in areas outside the enclave. Persons interviewed by the Commission

<sup>248</sup> See Central African Republic Food Security Cluster, September 2014.

<sup>249</sup> See FAO et PAM, Rapport spécial mission FAO/PAM d'évaluation de la sécurité alimentaire en République Centrafricaine, 29 octobre 2014, p.33.

<sup>250</sup> Interview with IOM in August 2014. Place of interview

<sup>251</sup> Interview with IOM in August 2014.

<sup>252</sup> See MSF  
[http://reliefweb.int/report/central-african-republic/r-publique-centrafricaine-rca-s-questr-s-dans-le-camp-de-transit-de PK12.](http://reliefweb.int/report/central-african-republic/r-publique-centrafricaine-rca-s-questr-s-dans-le-camp-de-transit-de-PK12)

reported that they had already used all their wooden furniture, doors and windows as firewood in order to prepare food.

526. There is limited access to medical facilities: two medical NGOs have created such facilities in the enclave but they can only be used for first aid and for small operations. People who are sick cannot be moved outside the enclave because of the situation.

iii. Applicable Law and Legal Findings

527. The Committee on Economic, Social and Cultural Rights has declared that “[t]he denial of access to food to particular individuals or groups [...], the prevention of access to humanitarian food aid in internal conflicts or other emergency situations” constitute violations of the right to food.<sup>253</sup>

528. Article 11 of the ICESCR recognises the right of each individual to an adequate standard of living for himself and his family including adequate food, clothing, and housing.

529. Article 12 of the ICESCR, right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

530. Article 7 of the African Union Convention for the Protection and Assistance of Internally Displaced persons in Africa (Kampala Convention) states that armed groups are prohibited from denying IDPs the right to live in satisfactory conditions of dignity, security, sanitation, food water, health.

531. Art 16 of the African Charter on Human and Peoples’ Rights guarantees the right to enjoy the best attainable state of physical and mental health.

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<sup>253</sup> General Comment 12 on the Right to Adequate Food, 12.5.1999, E/C.12/1999/5, § 15.

## C. Illegal Exploitation of Natural Resources

### i. Introduction

532. There is a link between the illegal exploitation of natural resources and the ability of a state to fulfill its obligations under the ICESCR. According to Article 2(1)1 of the ICESCR, States have to take steps to the maximum of their available resources to progressively fulfill the rights recognized in the ICESCR. The illegal exploitation of natural resources by private interests reduces the resources at the disposal of the state to enable it to fulfill its obligations, and thus has a negative impact on rights holders.

533. It has been alleged that in recent times in the CAR, first the Séléka and then the anti-balaka, have been heavily involved in the illegal exploitation of natural resources. The Commission received a statement from a Séléka Commander who acknowledged that he controlled the mines in the vicinity of Bambari.<sup>254</sup>

534. Because these issues are central to the mandate given by the Security Council to the Sanctions Committee and thus to its Panel of Experts on the Central African Republic,<sup>255</sup> the Commission has chosen to rely on the Panel's work on this issue, rather than duplicating effort. It is important, in the present context, however to draw attention to the human rights consequences of many of the practices and abuses documented by the Panel in its two reports to date.

### ii. Factual Finding

#### a. Séléka

535. The involvement of the Séléka in the illegal exploitation of natural resources started between December 2012 and January 2013. In the context of their offensive they took control of most of the mining areas in the east of the country.<sup>256</sup> Since March 2013, their illegal activities are alleged to have included levying parallel taxes, selling parallel mining authorizations, and illegally trading and smuggling diamonds.<sup>257</sup>

536. The report the Panel of Experts indicates that Séléka collected taxes on planes landing in Bria prior to the arrival of international forces- and also in Sam-Ouandja,<sup>258</sup> Both airstrips are used by companies to transport diamonds.<sup>259</sup> According to the panel

<sup>254</sup> Interview with General Darass in Bambari

<sup>255</sup> Security Council resolution 2127 (2013)

<sup>256</sup> Yannick Weyns, Lotte Hoex, Filip Hilgert and Steven Spittaels, Mapping conflict motives: the Central African Republic, IPIS report, November 2014, p. 20.

<sup>257</sup> Yannick Weyns, Lotte Hoex, Filip Hilgert and Steven Spittaels, Mapping conflict motives: the Central African Republic, IPIS report, November 2014, p. 28

<sup>258</sup> Report of the Panel §123

<sup>259</sup> Report of the Panel §123.

of Expert, Séléka allegedly sold “authorizations” to dig to hundreds of local miners in Ndassima.<sup>260</sup> The International Crisis Group reported that in the Sub-Province of Bayanga, Séléka provided security to foreign prospectors for several months to assist them to restart a gold and diamond mine.<sup>261</sup> Séléka also supported entrepreneurs who sought to coerce diamond mine diggers to sell at lower prices. They also opened a purchasing office in the Berbérati area.<sup>262</sup>

537. It is alleged that one group, the Front Populaire Pour la Renaissance de la Centrafrique (FPRC), which is a spinoff from the Séléka, now controls the main diamond producing area<sup>263</sup> - between Sam-Ouandja, Nedjé and Bria - in the East, whereas a splitter group from FPRC, the Front Républicain pour le Changement (FRC/UPC) controls the zone encompassing Mbrès, Zippy and Bambari, which includes the most important gold mining site in the east.<sup>264</sup>

b. Anti-Balaka

538. Although anti-balaka groups are present on mining sites in the western part of the country,<sup>265</sup> their level of involvement in mining activities has not reached that of the Séléka. This lower profile is illustrated by the fact they concentrate their attention on gold rather than diamonds which require more investment in terms of extraction.<sup>266</sup> The Panel of Experts’ report recounts examples of relevant anti-balaka activities. In one case a diamond collector told the Panel that he purchased diamonds from an anti-balaka leader called “Mama Drogba,” in Sassele (Mambéré Kadéi Province).<sup>267</sup> In Berbérati mining areas, anti-balaka worked as diggers and intermediary traders according to statements made to the Panel by two main diamond collectors in the area.<sup>268</sup> Two anti-balaka commanders were also cited as having supervised mines from which a licensed collector had purchased gold in March 2014, in the Yaloké area.<sup>269</sup>

<sup>260</sup> Report of the Panel §141.

<sup>261</sup> International Crisis Group, “The Central African Crisis: From Predation to stabilisation”, Crisis Group Africa Report, N°219, 17 June 2014, p. 10.

<sup>262</sup> International Crisis Group, “The Central African Crisis: From Predation to stabilisation”, Crisis Group Africa Report, N°219, 17 June 2014, p. 11.

<sup>263</sup> Yannick Weyns, Lotte Hoex, Filip Hilgert and Steven Spittaels, Mapping conflict motives: the Central African Republic, IPIS report, November 2014, p. 31.

<sup>264</sup> Yannick Weyns, Lotte Hoex, Filip Hilgert and Steven Spittaels, Mapping conflict motives: the Central African Republic, IPIS report, November 2014, p. 33.

<sup>265</sup> Yannick Weyns, Lotte Hoex, Filip Hilgert and Steven Spittaels, Mapping conflict motives: the Central African Republic, IPIS report, November 2014, p. 56.

<sup>266</sup> Yannick Weyns, Lotte Hoex, Filip Hilgert and Steven Spittaels, Mapping conflict motives: the Central African Republic, IPIS report, November 2014, p. 59.

<sup>267</sup> Panel of experts S/2014/762 §129.

<sup>268</sup> Panel of experts S/2014/762 §130.

<sup>269</sup> Panel of experts S/2014/762 §140.

i. Applicable Law and Conclusion

539. A recent report by the International Crisis Group goes further than the Panel of Experts in arguing that the leaders of the Seleka “looted state resources and controlled the country’s illicit economic networks”. The report calls for an end to what it terms a cycle of predatory rule. The extent to which both the anti-balaka and the Seleka, and the Bozizé Government before them, oversaw a huge black market operation in natural resources is of major significance in terms of the inability of successive CAR governments to satisfy even the most minimum level of economic and social rights of its citizens. When taxes are not collected, and money that should go into the public treasury is diverted to fill the pockets of the ruling elites, there is a clear violation of the obligation under Article 2 of the ICESCR that requires the government to use the maximum of available resources in an effort to progressively realize the rights recognized in the Covenant.<sup>270</sup>

4. Violations by International Forces

i. Introduction

540. During the period of the Commission’s mandate in relation to the CAR, four foreign military forces have operated in the country with mandates given by the Economic Community of Central African States (ECCAS), the African Union (AU), the European Union, or the United Nations.<sup>271</sup>

<sup>270</sup> See Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, A/HRC/26/28 (22 May 2014); and Center for Economic and Social Rights, A Post-2015 Fiscal Revolution Human Rights Policy Brief (2014).

<sup>271</sup> The Mission for the Consolidation of Peace in the Central African Republic (MICOPAX) is a peace keeping operation of the Economic Community of Central African States (ECCAS). On 19 December 2013, MICOPAX’s authority was transferred the African- led international Support Mission in the Central African Republic of the African Union (known under the French acronym of MISCA). On 19 July 2013, the Peace and Security Council of the African Union (PSC-AU) authorized the deployment of the African- led international Support Mission in the Central African Republic (MISCA) for a duration of 12 months. This deployment was subsequently authorized by the UN Security Council through the adoption of UN Security Council Resolution 2127 of 5 December 2013. The Security Council tasked MISCA with, inter alia, protecting civilians, restoring security, public order and the State’s authority in the country. MISCA’s mandate came to an end on 15 September 2014 in conformity with resolution 2149 of the UN Security Council. Following the proposal made by France to increase its military component in the Central African Republic, which was welcomed by (PSC-AU) in a press communiqué date 13 November 2013, the Security Council, in its resolution 2127 adopted on 5 December 2013, decided to authorized French military presence (referred to as SANGARIS) in CAR for a temporary period in order to support MISCA in the implementation of its mandate. In January 2014, the High Representative for Foreign Affairs and Security Policy of the European Union and Vice President of European Commission wrote to the United Nations to announce that the Council of the European Union had agreed to contribute to the action of the international community to stabilize the security situation in CAR. The EU offered to send a military component to help protecting the civilian population. On 28 January 2014, the Security Council adopted resolution 2134 which authorized the deployment of a European Union operation in CAR.

541. On 10 April 2014, the United Nations Security Council adopted resolution 2149 establishing the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA). The Security Council decided that MINUSCA's mandate should focus, among other things, on protecting civilians, supporting the implementation of the transitional process, enabling safe delivery of humanitarian assistance, protecting United Nations personnel, promoting and protecting human rights, and supporting national and international justice and the rule of law. The transfer of authority from MISCA to MINUSCA occurred on 15 September 2014 in accordance with the provisions of resolution 2149.

ii. Factual Findings

542. The Commission has received allegations of violations committed by MISCA, MINUSCA and SANGARIS forces. Because of limited resources, the Commission focused its investigation on the most important allegations made against MISCA forces, involving the alleged death of individuals. These allegations relate to several contingents.

a) Allegations Against the Contingent of Chad Involving the PK12 Incident

543. The Commission investigated allegations made against members of the Chadian contingent involved in an incident in PK12 on 24 March 2014. Seventeen persons were interviewed, including the Commander of the Chadian troops from MISCA who was present during the incident. The Commission also met with medical staff from relevant hospitals.

544. Four witnesses have said that there were two columns of vehicles, one on the Boali axis and one on the Damara axis. Five witnesses have indicated that the incident started between 2pm and 3pm.

545. According to the Chadian Commander, his troops were fired upon with AK-47 machine guns and grenades by anti-balaka at the junction of the Boali-Bangui and Damara-Bangui roads, in the middle of a market. He allegedly ordered his troops not to fire until all the civilians had fled the area. He then gave the order to retaliate, allegedly killing six anti-balaka. The Commander told the investigators that there were no civilian casualties during the incident, and that his troops took *gris-gris* and weapons from the anti-balaka.

546. The Commission interviewed two eyewitnesses who gave a different version of what had transpired. According to them, a Chadian soldier dismounted from a pick-up vehicle carrying MISCA troops and randomly started shooting at civilians. Both witnesses were very clear that there had been no prior attack by the anti-balaka. Witness A saw seventeen bodies in total, including six children. Witness B provided many pictures of the victims following the attack and stated that he saw a total of 18 bodies, including women.

547. Another eyewitness, C, interviewed by the investigators indicated that Chadian MISCA troops fired without being attacked, and that on that day, no anti-balaka were present in the market. He said that the Chadian soldiers who had shot first were the ones coming from Damara. He said that a woman who was trying to run away at the same time as he was hit three times by bullets.

548. Witness D, who was nearby to the scene of the incident but could not see the clash from where he was, said he first heard a detonation followed by shots from weapons with different types of ammunition. His testimony is consistent with the theory that the Chadian troops were first attacked with a grenade. This testimony seems incompatible with the theory of a Chadian soldier firing his AK-47 first, without provocation. This witness, who learned that one of his relatives was among the victims, went to the site where the shooting occurred and saw a total number of 16 bodies. He was able to identify the body of his relative, who was among those brought to the SANGARIS position.

549. Interviews with medical staff from different hospitals confirmed that patients were treated for firearm wounds following the attack in PK12. From our interviews, it appeared that the great majority of persons wounded were taken to the *hôpital communautaire* of Bangui. According to the director of the hospital, 23 cases were admitted on 29 March and seven cases were admitted on 30 March following the incident in PK12. Although it is not yet possible to have an exact figure of persons killed and wounded, the Commission can conclude that it was far from the figure of three hundred wounded, as initially reported by some media. As for the number of people killed, the estimate of thirty persons mentioned in other sections in the media seems more accurate.

550. The Commission acknowledges the complexity of the investigation, due in part to the existence of two very contradictory versions of events, and in part to the level of animosity towards the Chadian troops on the part of the local population and also the possible sympathy that people may have towards the anti-balaka. As a result, it is difficult to assess the veracity of the statements made by the witnesses as to what exactly happened.

551. The Commission requested the cooperation of MISCA and SANGARIS in order to gather additional information regarding this incident. At the time of the completion of this report, the Commission has yet to receive such information.

b) Allegations Against Elements of the Contingent of the Republic of Congo Involving the case of Disappearance of 12 Persons in Boali

552. On 24 March 2014, in Boali, which is about 80 kilometers north of Bangui, members of the Congolese contingent of MISCA went to the residence of an anti-balaka general, and arrested him along with eleven other persons. From the moment they were taken by MISCA, no one has ever seen them again.

553. On 25 March 2014, MISCA issued a press release in which it announced the death of one of its soldiers in Boali during an attack by anti-balaka on the previous day. The same press release stated that MISCA had responded to the attack and that twelve anti-balaka fighters, including a well-known commander, had been killed.

554. On 21 June 2014, the Commission interviewed the officer in charge of the MISCA soldiers at the time of the incident. The officer indicated that, on 24 March 2014, following an exchange of fire between anti-balaka and MISCA elements that occurred near the Boali market in the afternoon, MISCA troops chased anti-balaka elements and entered the property of the “general” and captured a total of 12 anti-balaka (two males and 10 females). The officer added that, at around 7.30pm, as they were returning to their base in a convoy of three vehicles, one of which was transporting the twelve persons, their convoy was ambushed by anti-balaka. According

to him, the 12 persons under his custody fled during the ambush. He added that upon the arrival of the convoy at their base, he realized that one of his troops had been killed and three injured. He reported the incident on the same evening.

555. On 1 October 2014, the Commission sent a letter to MISCA asking it to clarify its position on how the events unfolded, since the press release contained a different version of facts than from the one provided by the officer interviewed by the Commission.

556. On 23 October 2014, MISCA replied to the Commission stating that the information published in the press release did not reflect what had really happened and that it had been released too quickly. The letter also stated that MISCA conducted an investigation, which is preliminary at this stage, and established that 12 persons were arrested by MISCA but managed to escape while they were being transferred. The Commission interviewed two persons in relation to this incident; one of them gave a list with the names of the 12 persons who have allegedly disappeared; they were 6 men, 5 women and a child. MISCA also confirmed that the troops involved in the incident have been relieved of their duties to facilitate the internal investigation. The Commission was informed that the result of this investigation has been communicated to the head of MISCA, and that he will forward it to the Congolese authorities for appropriate action in compliance with the existing procedures. The report has not been made available to the Commission.

557. Based on that fact that the whereabouts of the 12 victims remain unknown, the Commission has reasonable grounds to believe that this case falls within the definition of enforced disappearance.

c) Allegations of Torture in Bossangoa Against Elements of the Congolese Contingent of MISCA

558. On 22 December 2013, following the death of one of their soldiers killed by a mob at the church compound in town, MISCA elements of the Congolese contingent allegedly arrested three persons whom they brought to their base. One of the three was allegedly released while the other two remained at MISCA's base and were allegedly tortured. They were later brought to the hospital where they died as a result of their injuries.

559. The Commission initiated an investigation during which it interviewed four persons. The testimonies confirmed that MISCA arrested at least three persons following the death of the MISCA soldier.

560. According to one testimony, MISCA went to the hospital and wanted to take a man on the basis that he was an anti-balaka. Another man intervened on his behalf and they were both taken away by MISCA elements. Another witness indicated that a man was arrested by MISCA at the hospital at around 5pm. According to a third witness, two of the three persons were taken by MISCA elements at the hospital compound at between 5pm and 6pm.

561. The fourth witness said that MISCA elements went to the hospital compound to take three men because they were anti-balaka. He also said that one of them was released due to the intervention of SANGARIS.

562. The Commission spoke to a MISCA officer who was allegedly involved in the case but he refused to make any comment. According to a statement he made to

Human Rights Watch, the victims were injured during an attack against the hospital that was repelled by MISCA elements.<sup>272</sup>

563. On 14 November 2014, the Commission sent a letter to MISCA to ask for a meeting with the officer in charge and any other MISCA personnel who were present at the time of the incident and, to request a copy of any report or other document regarding the case.

564. During a meeting held with MISCA Human Rights Officers on 25 November 2014, the Commission was informed that following an internal investigation, the Officer in charge was sanctioned and sent back to Congo. MISCA prepared a report that was sent to the African Union Peace and Security department in Addis Ababa.

565. In the course of the meeting, the Commission learned that on the day of the incident, MISCA elements detained four persons who were brought to the MISCA base where they were tortured. It was confirmed that two of them died.

566. The Commission has in its possession the death certificate of one of the two victims which was established on 28 December 2013 by the General Hospital of Bossangoa.<sup>273</sup> The death certificate indicated that death resulted from a cranium trauma which suggests that the victim may have been beaten. The information provided by MISCA Human rights Officers confirmed the suspicion that the Commission had concerning the circumstances surrounding the death of the victim.

#### iv. Applicable Law and Conclusion

567. All international forces in CAR are obliged to respect human rights in their activities and especially in relation to any individuals who are under their power or effective control, even when these forces are operating outside their national borders. The fact that international forces are acting under an international peace keeping or peace enforcement mandate does not nullify this obligation.<sup>274</sup>

568. It is uncontested that the United Nations is bound by at least the customary rules of IHL when engaged in hostilities.<sup>275</sup>

569. Furthermore, following the adoption of United Nations Security Council resolution 2127, MISCA, SANGARIS AND EUFOR-CAR are required to carry out their mandate in full compliance with applicable international humanitarian law, human rights law and refugee law.<sup>276</sup>

570. The Human Rights Committee, in its General Comment No31(80), concerning the Nature of the General Legal Obligation Imposed on States Parties to the

<sup>272</sup> See HRW report "Central African Republic: Peacekeepers Tied to Abuse", at <http://www.hrw.org/news/2014/06/02/central-african-republic-peacekeepers-tied-abuse>

<sup>273</sup> Ref to Annex C (death certificate)

<sup>274</sup> See, Human Rights Committee, General Comment No 31 (80), 2004, § 10.

<sup>275</sup> Dietrich Schindler, "United Nations forces and international humanitarian law " , in Studies and essays on international humanitarian law and Red Cross principles in honour of Jean Pictet, Christophe Swinarski, ed., ICRC, Martinus Nijhoff, Geneva/The Hague, 1984, p. 526.

<sup>276</sup> MISCA and SANGARIS(S/RES/2127 (2014), §33), EUFOR-CAR (S/RES/2134 (2014) §48).

International Covenant on Political and Civil Rights, adopted on 29 March 2004, reiterated that the obligation to ensure the enjoyments of rights set forth in the Covenant is not limited to their citizens but extends to all individuals, regardless of nationality or statelessness, who may find themselves on the territory of a State Party or subject to its jurisdiction. The Committee further stated that this principle applies to persons who are under within the power or effective control of the forces of a State Party acting outside its territory. And it cited by way of the case of a national contingent of a State Party participating in a peace-keeping or peace enforcement operation.

571. According to the International Convention for the Protection of All Persons from Enforced Disappearance, enforced disappearance “is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”

572. The prohibition of torture is part of international customary law and as such is binding on all States irrespective of whether they have ratified the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

573. Contingents assigned to peace-keeping or peace-enforcement operations when using force, are required to act in compliance with principles of international humanitarian law such as the distinction between civilians and persons taking direct part in hostilities. Reference may also be made to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

574. The Commission was able, for the reasons stated above, to reach a conclusion in only one of these three cases. It wishes to emphasize, however, that the existing arrangements for conducting inquiries and reporting on the results do not appear to provide any assurance that justice will be done, or be seen to be done, and fails to satisfy the rights of the family members of the victims to an effective remedy. In addition to calling for each of the relevant forces to take appropriate steps in this regard, it considers that it is imperative for the Security Council to address the issues raised by these allegations by putting in place new arrangements to guide such cases in the future. Specific recommendations to this effect are made below.

## 5. Abuses of Medical and Humanitarian Personnel and Objects

### i. Introduction

575. Medical and humanitarian personnel have been subjected to threats and other acts of violence while trying to alleviate the suffering of the civilian population. Many attacks on both medical and humanitarian facilities by both Séléka and anti-balaka have been documented.

### ii. Factual Finding

#### a. Séléka’s Attack Against the Hôpital de l’Amitié in Bangui

576. During the anti-balaka’s 5 December 2013 attacks in Bangui, several civilians from the surrounding areas had sought refuge at the Hôpital de l’Amitié located at the

4th district of Bangui. At approximately 6:00 a.m. some anti-balaka brought a few injured persons to the Surgical Emergencies section of the hospital, one of whom died upon arrival. The anti-balaka left the hospital at about 7:00 a.m., but in the meantime, according to a witness, the Séléka were notified that injured anti-balaka fighters were in the hospital.

577. At approximately 9:00 a.m. about 30-40 Séléka arrived at the hospital in four wheel drive pick-up trucks. Witnesses gave different accounts as to the number of the Séléka vehicles (varying from one to five). Some of the vehicles had the sign 'Séléka' on them. The occupants wore military attire, were carrying guns, and some were wearing turbans. Some spoke Arabic and others Sango. Upon arrival they positioned themselves at the four corners of the hospital. Some then entered the building and started searching, section by section and room by room.

578. When the Séléka arrived at the hospital, there was panic on the part of the medical personnel, the patients, and those who had sought refuge at the hospital. Many of them ran towards the maternity ward, located at the back of the hospital. The Séléka broke into the pharmacy, which is next to the Surgical Emergencies area, and stole the medical supplies. Then they started searching everywhere while saying that they were looking for anti-balaka.

579. The Séléka picked out a number of men (the witness statements range from 8 -20 men), took them outside the iron gates of the hospital, and shot them dead in the street. The victims were all male and most were aged between 18 and 25 years old. According to various witnesses, the victims were not anti-balaka but persons visiting patients or civilians who had sought refuge at the hospital. The Séléka also killed a young man who was carrying an injured person in a stroller (pousse-pousse) to the hospital. The killing took place outside the hospital after the killing of the other men.

b. Séléka's Attack Against the Hospital in Boguila

580. On 27 April 2014, according to information collected by the Commission, the Séléka killed a total of 16 civilians in a hospital in Boguila (Ouham Pendé Province). The casualties include 3 staff from MSF.

581. The incident happened at around four in the afternoon, when a group of armed Séléka fighters entered Boguila. They fired a warning shot upon their arrival at the hospital and ordered those present to give them money and other valuables.

582. After a few minutes of prolonged gunfire, other Séléka fighters arrived at the hospital in a pick-up mounted with a machine gun. They stated that they were the commanders of the troops inside the hospital, and said that they were looking for anti-balaka. After returning some of the stolen items, they left Boguila.

583. The incident occurred while a meeting was being held with community leaders organized by MSF to discuss medical and humanitarian access. According to survivors, the Séléka fighters said that the people participating in the meeting were anti-balaka.

584. MSF had to stop its medical activities in Boguila as a result of this incident.

c. Attacks Against Medical Personnel

585. Medical personnel and patients have been attacked and threatened by both the Séléka and the anti-balaka. The Commission was able to gather evidence on a number of specific incidents.

i. Séléka

586. When the Séléka arrived at the at the Hôpital de l’Amitié in Bangui on 5 December 2013, all the medical personnel removed their medical clothing so as not to be able to be identified by the Séléka. In the past, the Séléka had on various occasions brought wounded persons to the hospital and ordered anyone wearing medical clothing to perform operations whether they were qualified to do so or not, and they threatened to kill them if the injured persons did not survive.

587. In Bouar, in April 2013, when the Séléka arrived, they took over the hospital and prevented access to medical care by the population. After negotiations between the medical personnel and the Séléka authorities, the hospital resumed its activities. But in November 2013, the Séléka brought an injured person to be operated upon, and threatened to burn down the hospital if the wounded Séléka died. Almost all the medical personnel and the patients fled from the hospital after these threats. The hospital director in Bouar received threats to his life from the Séléka and had to go into hiding.

588. In Bossemptélé, medical personnel were frequently harassed by the Séléka and sometimes were threatened to be shot. In other instances, patients were taken out of the hospital beds and were never seen again. These persons were mostly accused of being anti-balakas or anti-balaka sympathizers.

589. In Boali, medical personnel were threatened by the Séléka not to treat anti-balaka who were brought to the hospital.. Some of the personnel received death threats because they treated persons that the Séléka considered to be anti-balaka.

ii. Anti-Balaka

590. In Boda, on 22 August 2014, the anti-balaka chased away all of the patients who were being treated by the non-governmental groups Agence Humanitaire Africaine (AHA) and the Alliance for International Medical Action (ALIMA). Previously, many of the medical personnel had departed from the town due to heightened security risks.

d. Attacks and Threats Against Humanitarian Personnel

591. Humanitarian personnel and premises have been threatened or attacked on various occasions. The Commission gathered evidence on the following incidents:<sup>277</sup>

- In Boda, around May 2014, unidentified non-Muslims men attacked trucks from a humanitarian organization at the Boda-Mbaiki axis and stole all the food being carried in the trucks. The aid workers reported that they felt threatened because they were bringing food to the Muslim enclave of Boda.

<sup>277</sup> The Panel of Experts has also listed numerous incidents against humanitarian workers. See p. 151, annex 59 of the report.

- On 20 August 2014, staffs from an INGO were allegedly threatened by anti-balakas at Boda because they had distributed food in the Muslim enclave in the town. Due to the rising tensions between the two communities and the direct threats towards the INGO personnel, the staff members were evacuated the following day.
- On 21 August 2014, the anti-balaka attacked the AHA base at Boda under the pretext that there was a Muslim in the base. The anti-balaka requested that the Muslim come out so that they could cut him up into pieces. On that evening, one of the anti-balakas smashed the gate at the NGO premises. After this incident the AHA personnel was evacuated from Boda on 22 August 2014. Subsequently the anti-balaka looted all the food that the World Food Program had stored in the AHA base. During the same period, the anti-balaka threatened to kill an International Organization for Migration (IOM) staff member at an IDP camp in Boda. The IOM staff member had gone to the camp to register the IDPs.
- On 11 September 2014, an IOM convoy travelling from Bangui to Boda was stopped by the anti-balaka at the entrance to the town. They accused IOM of supplying food to the Muslim enclave and threatened to kill the personnel if they continued to do so.

592. The Commission also consulted confidential documents from very credible sources describing incidents that targeted the medical and humanitarian personnel working in the CAR. To preserve confidentiality, the details provided below are minimal:

- In January 2013, Séléka Soldiers threatened humanitarian staff while insisting that they be given better medical care.
- In February 2013, Séléka soldiers threatened a nurse and demanded that she give them 500 000 XAF.
- In September 2013, two workers from a humanitarian NGO were killed by armed men in Bossangoa.
- In October 2013, the Séléka allegedly threatened medical personnel in a treatment facility. They were fully armed and insisted that better care must be provided to Séléka patients. They sometimes fired their weapons.
- In December 2013, following the anti-balaka attacks in Bangui, Séléka came to a hospital looking for wounded Christians, and using similar tactics as had been used in Hôpital de l'Amitié. Medical personnel, however, were able to take the necessary security measures to dispatch the Christian patients to other areas of the hospital.
- In January 2014, a convoy escorting Muslims was blocked by armed Séléka who shot at it during negotiations.
- In January 2014, Séléka threatened medical personnel and insisted that priority be given to Séléka soldiers.
- In February 2014, a humanitarian staff member was killed at a Séléka check point after he claimed he had no money to give them.
- In March 2014, a convoy was stopped by anti-balaka who threatened to throw a grenade the next time.

- In May 2014, unidentified non-Muslims attacked humanitarian trucks at the Boda-Mbaiki axis and stole everything. The aid workers were threatened and accused of bringing food to the Muslims.
- In July 2014, a patient was lynched by a mob inside a medical facility. Threats were also made against humanitarian staff.
- In August 2014, a worker from the National Red Cross was killed in Bangui, when he was helping the wounded.
- In August 2014, the personnel of an NGO were threatened by the anti-balaka because they were accused of bringing food to Muslim enclave and not to the IDP sites.
- In August 2014, the anti-balaka attacked the base of a humanitarian organization. They broke down the door under the pretext that there was a Muslim inside and demanded that he be handed over. The personnel told them that there was no Muslim in the facility, but the staff was subsequently evacuated on 22 August 2014.
- A local UN agency staff member reported that in August 2014 he was threatened with death by an -anti-balaka when he went to a new site to register IDPs.
- In September 2014, a nun was threatened to be killed by an anti-balaka because she opened the back door to the investigators of the Commission during a visit to the IDP site at St Michel.
- In September 2014, personnel from two UN agencies were stopped at an anti-balaka checkpoint and were asked to give money. They were also threatened by the anti-balaka because they were perceived to be helping the Muslim population more than the Christians.

593. According to OCHA, more than 1120 incidents have been recorded since January 2014, of which 109 directly targeted humanitarian workers.<sup>278</sup> Both sides extensively participated in incidents that involved looting, robberies, threats and even sometimes murder of humanitarian and medical personnel.

594. In November 2014, Doctors Without Borders/Médecins Sans Frontières (MSF) two incidents within two days in which MSF trucks carrying medical supplies were stopped by an armed group on the road between Bangui and Paoua. In a public statement, MSF observed that these incidents were “part of a steady increase in the number of attacks and extortion attempts carried out against humanitarian aid workers and vehicles over the past several months, especially since October. Despite repeated contacts with the authorities, international forces, and local armed groups, their guarantees of security are not actually followed up by action.”<sup>279</sup>

### iii. Applicable Law and Conclusion

<sup>278</sup> Ssee OCHA Situation Report No. 41 (6 November 2014), at <http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20CAR%20Situation%20Report%20No%2041.pdf>.

<sup>279</sup> CAR: Attacks Against MSF Threaten Humanitarian Aid, November 11, 2014, at <http://www.doctorswithoutborders.org/article/car-attacks-against-msf-threaten-humanitarian-aid>

595. International human rights law does not contain specific provisions relating to the protection of medical personnel and humanitarian personnel and objects, but States are obligated to respect the rights of individuals who are under their jurisdiction and on a non-discriminatory basis. Medical and humanitarian personnel, as individuals, have a right to life, a right to be free from torture or cruel, inhuman, or degrading treatment or punishment, and a right to freedom from arbitrary arrest, all guaranteed under the ICCPR.

596. Article 12 of the ICESCR protects the right to the highest attainable standard of physical and mental health. According to General Comment 14 (2000), the Committee on Economic, Social and Cultural Rights states that this right should be understood as the “right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.”

597. States are required to respect, protect and fulfill the right to health, which includes an obligation to do everything possible to prevent interference by third parties, including attacks on the right to health committed by armed groups. While the State’s obligations are subject to the maximum of its available resources, there are nonetheless certain minimum core obligations that always apply.

598. The African Union Convention for the Protection and Assistance to the Internally Displaced Persons in Africa (the ‘Kampala Convention’), to which CAR is a party, imposes obligations on states, as well as prohibiting armed groups from perpetrating certain acts against IDPs that are contrary to international and national law and for which they should be held criminally responsible. For example, armed groups shall not interfere with the provision of protection and assistance to IDPs, or deny them “the right to live in satisfactory conditions of dignity, security, sanitation, food, water, health and shelter.”

599. Under international humanitarian law, common Article 3 of the Geneva Conventions requires that the wounded and sick be collected and cared for. While no specific mention is made of the protection of medical and humanitarian personnel, this dimension is an essential corollary of the explicit requirement. Protocol II Additional to the Geneva Conventions grants protection to medical personnel (Article 9) and (medical duties) and medical units (Article 11).

600. According to the Rome Statute, within the context of a non-international conflict, launching an attack against buildings, material, medical units and transport, and personnel, using the distinctive emblems of the Geneva Conventions in conformity with international law, constitute a war crime. In the same vein, attacking personnel, installations, material, units or vehicles involved in humanitarian assistance also constitute a war crime as long as they are afforded the protection of international humanitarian law as civilians or civilian objects.

601. In addition, an authoritative ICRC study has confirmed various rules of customary international humanitarian law that protect medical personnel (Rule 25), medical activities (Rule 26), medical units (Rule 28), and medical transports (Rule 29) and must be respected and protected under all circumstances, as long as the personnel are exclusively assigned to medical duties. Rule 30 protects medical personnel and

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objects displaying the distinctive emblems of the Geneva Conventions, and Rules 31 and 32 protect humanitarian personnel and objects, respectively.<sup>280</sup>

602. The Commission has reasonable grounds to believe, based on the cases that have been documented, that both S ð ka and anti-balaka violated the norms of international humanitarian law protecting medical personnel and objects and, the personnel and objects involved in humanitarian assistance. The Commission also considers that both armed groups violated the provisions of Article 12 of the ICESCR by threatening and killing medical and humanitarian personnel and, attacking medical or humanitarian objects.

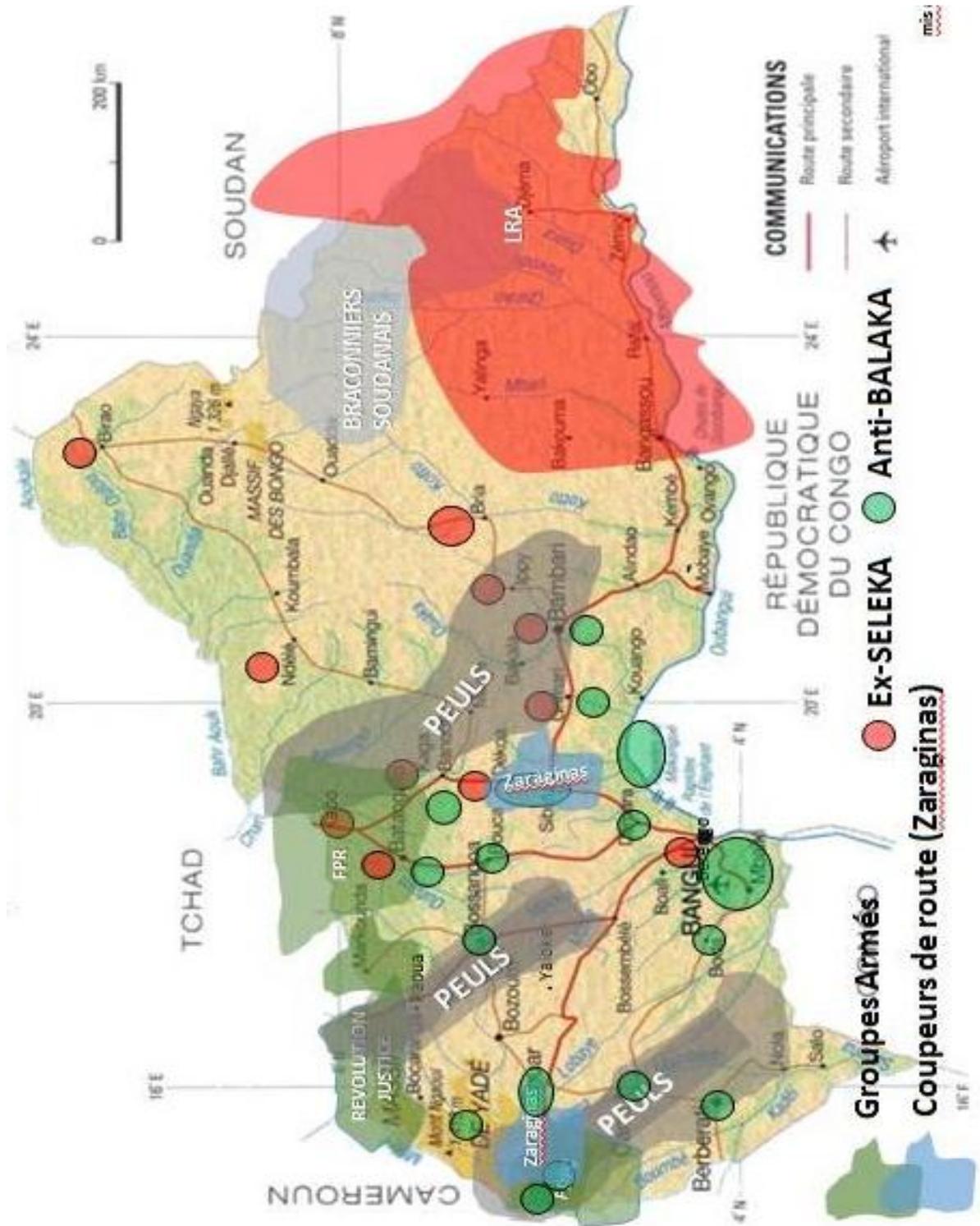
## Enclosures

### C. Other Annexes

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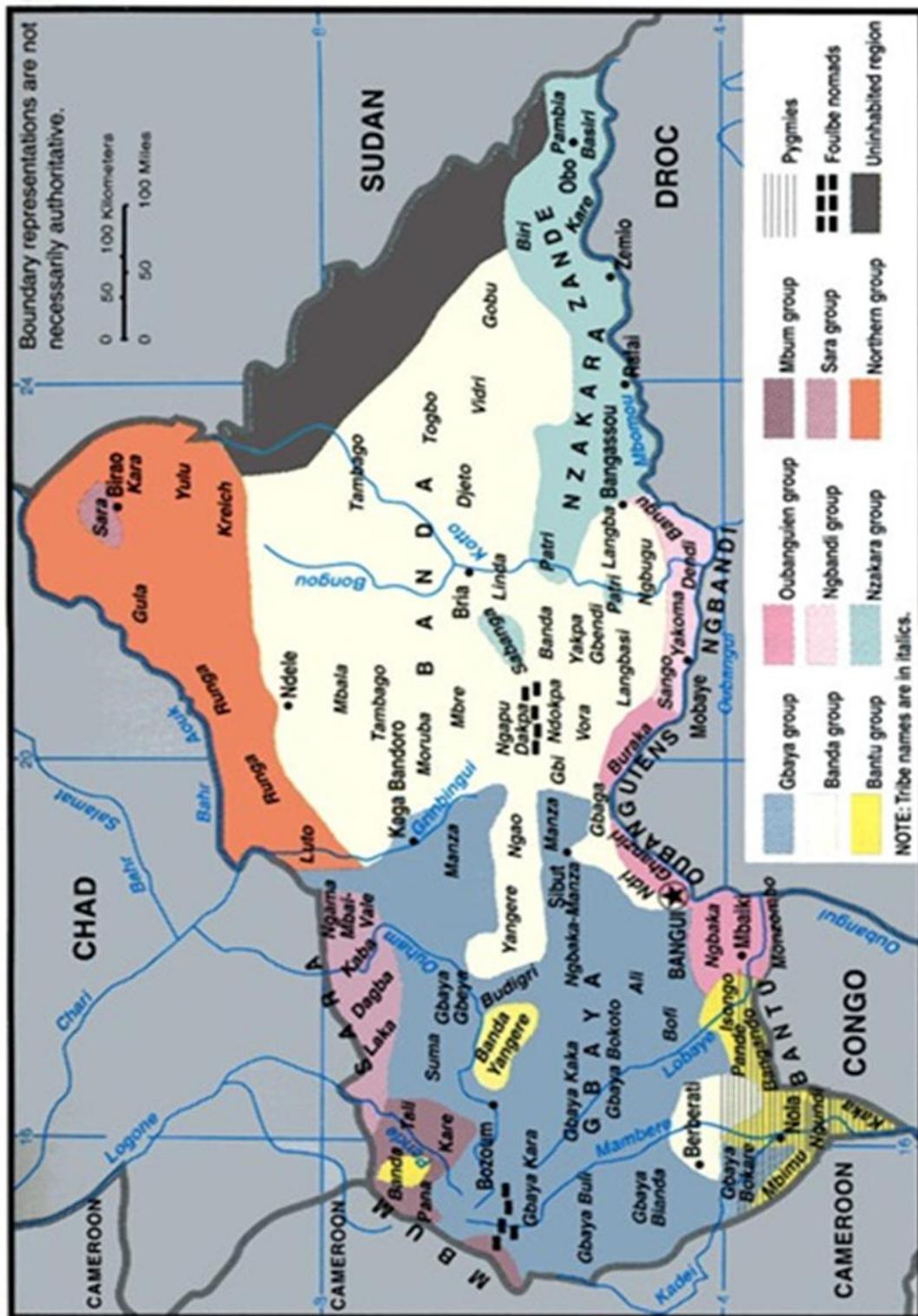
<sup>280</sup> Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), *Customary International Humanitarian Law*, vol. 1 (Cambridge University Press and ICRC, 2005).

Annex I: Zones of Influence of Séléka and anti-balaka<sup>281</sup>

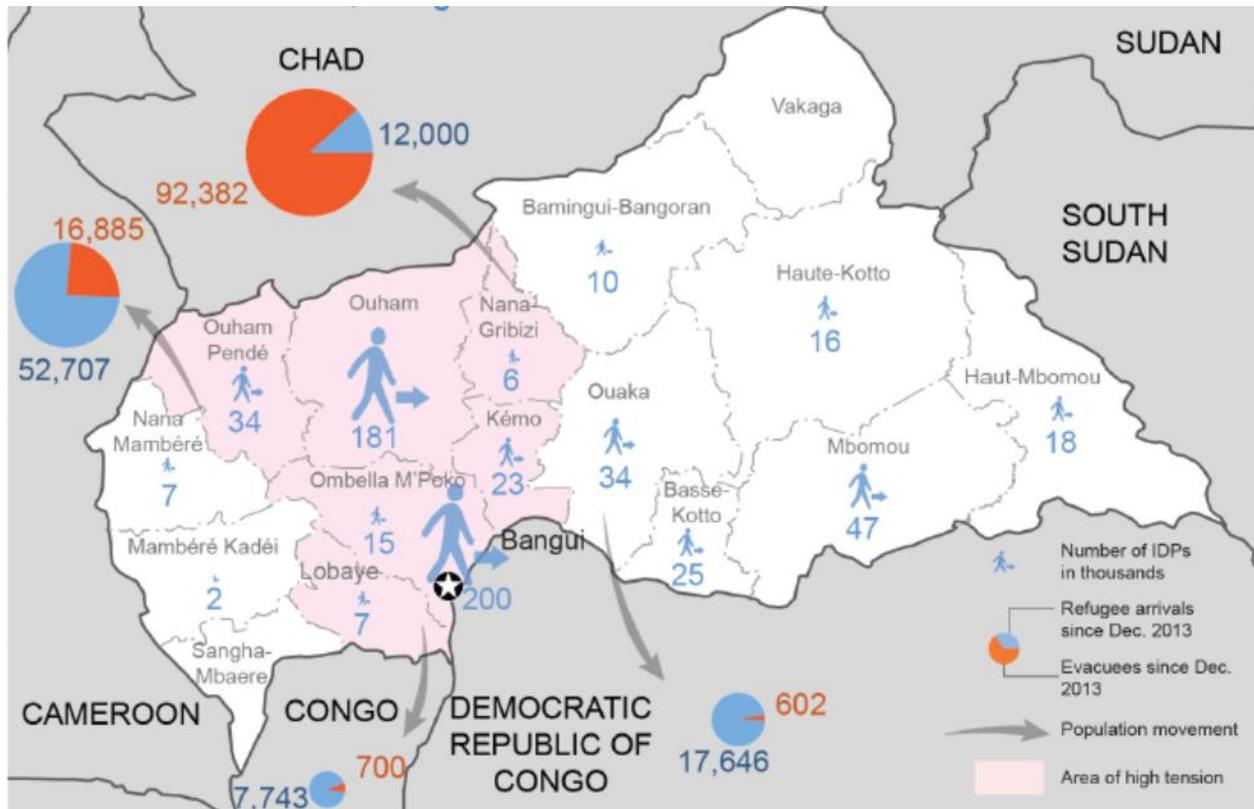


<sup>281</sup> Courtesy of MINUSCA

Annex II: Ethnic groups in the CAR



Annex III: Total IDPs, refugees and evacuees since December 2013, as of 31 March 2014<sup>282</sup>



<sup>282</sup> Source is taken from OCHA Sitrep of March 2014. The data is taken from IOM report of March 2014 and UNHCR CAR External Regional Update #8 March 2014.

Annex IV: Pictures taken at the morgue in Bangui in the days following the 5 December 2013 attack

