



## ***THE CURRENT INVESTIGATION BY THE ICC OF THE SITUATION IN THE CENTRAL AFRICAN REPUBLIC***

### Summary

On December 22, 2004, the Prosecutor of the International Criminal Court (ICC), Luis Moreno Ocampo, received a letter sent on behalf of the Government of the Central African Republic (CAR) referring to the Court crimes within the ICC's jurisdiction. These crimes were allegedly committed on the country's territory since July 1, 2002, the date of entry into force of the Rome Statute. In accordance with Article 53 of the Rome Statute, the Prosecutor was required to assess the gravity of the alleged crimes and the capacity of relevant domestic courts so as to determine whether he should undertake a formal investigation. On January 19, 2005, the ICC assigned the situation in the CAR to Pre-Trial Chamber III. The Prosecutor announced his decision to accept CAR's request for investigation into the alleged atrocities on May 22, 2007. Under Article 54, the Prosecutor is bound to investigate crimes committed by all parties to the conflict, including the current government. On May 24, 2008, Belgian authorities arrested ICC suspect Jean-Pierre Bemba on charges of war crimes and crimes against humanity, including torture and rape.

### Background

The Central African Republic gained independence from France in 1960 and has been politically and economically unstable ever since. Despite ecological tourist potential and extensive agricultural, water and mineral resources, the CAR is one of the least-developed countries on the African continent.<sup>1</sup>

In 1993, Angé-Felix Patassé of the *Mouvement de Libération du Peuple Centrafricain* was elected president of the CAR and re-elected in 1999. During his term, Patassé faced three coup attempts. The first attempt by former President General André Kolingba in May 2001 and the second by former Army Chief of Staff General Francois Bozizé in October 2002 failed. In March 2003, however, General Francois Bozizé successfully seized power while Patassé was out of the country. After the first coup attempt, Patassé turned to outside military forces for support and protection. He recruited Jean-Pierre Bemba, leader of the *Mouvement du Libération du Congo* (MLC) from the Democratic Republic of Congo (DRC), and Chadian Colonel Abdoulaye Miskine, leader of the *Unité de la Sécurité Présidentielle* (USP). During the coup of 2002, Patassé also enlisted Libyan troops.

Following a series of mutinies by soldiers of the CAR, in 1998 the United Nations deployed a peacekeeping mission (MINURCA) mandated to help improve security in the capital, Bangui. In February 2000, after their withdrawal, the United Nations Peace-Building Office, *Bureau des Nations Unies en Centrafrique* (BONUCA), was created. BONUCA's mandate is to "support the government's efforts to consolidate peace and national reconciliation, strengthen democratic institutions and facilitate the mobilization at the international level of

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<sup>1</sup> BBC News, *Country Profile: Central African Republic*, available at [http://news.bbc.co.uk/1/hi/world/africa/country\\_profiles/1067518.stm](http://news.bbc.co.uk/1/hi/world/africa/country_profiles/1067518.stm).





political support and resources for national reconstruction and economic recovery in the country.”<sup>2</sup> The present mandate of BONUCA expires on December 31, 2007 but will likely be extended.<sup>3</sup>

BONUCA has been aided by a small regional peacekeeping force of the Central African Economic and Monetary Community (*Communauté Économique et Monétaire de l’Afrique Centrale*, or CEMAC) known as FOMUC. FOMUC is currently constituted of 380 troops, contributed by Gabon, Republic of Congo, and Chad.<sup>4</sup> The force’s mandate expires on June 30, 2007. Other UN bodies working in the CAR include the United Nations Children’s Fund, the Food and Agriculture Organization of the United Nations and the World Health Organization.

## CAR and the ICC

The Central African Republic ratified the Rome Statute on October 3, 2001, becoming the 41st State Party of the ICC. The CAR ratified the Agreement on Privileges and Immunities on October 10, 2006. The privileges and immunities of the court, outlined in Article 48 of the Rome Statute and described in detail in the Agreement, are an essential tool in facilitating independent and unconditional investigations.

Former Secretary-General Kofi Annan pointed out that while the CAR is now in a position to move forward and advance in the areas of peace, reconstruction and sustainable development, “[i]t is important for the restoration of trust and reconciliation among the Central Africans that the violators should be brought to justice.”<sup>5</sup> The ICC can play such a vital role in the way forward for this long-suffering country.

## CAR’s Self-Referral to the Court

On December 21, 2004, the ICC Prosecutor, Luis Moreno Ocampo, received a letter from the Government of the CAR, referring to the Court crimes within its jurisdiction committed on the country’s territory since July 1, 2002. The referral identified Patassé and Bemba as individuals responsible for the violence. On May 22, 2007, the Prosecutor accepted CAR’s request to investigate the situation. The allegations refer to large scale acts of sexual violence such as massive rapes of hundreds of victims. In accordance with the ICC’s Rome Statute, the Prosecutor investigations focus on those individuals he believes bear the greatest responsibility for the gravest crimes. Prior to his decision to investigate, the Prosecutor conducted a thorough analysis of information provided by the Central African authorities and non-governmental and international organizations with regard to the alleged crimes. In November 2005, the Prosecutor sent a team to Bangui to collect additional information and speak with the victims. In accordance with the requirements of the Rome Statute, the Prosecutor determined that the situation meets the jurisdiction, admissibility, and interests of justice criteria.

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<sup>2</sup> Department of Public Information, United Nations, *United Nations and the Central African Republic*, October 2000.

<sup>3</sup> Security Council Report, *May 2007, Chad/Central African Republic*, May 2007.

<sup>4</sup> *Id.*

<sup>5</sup> Report of the Secretary-General on the Situation in the Central African Republic and the Activities of the United Nations Peacebuilding Support Office in the Central African Republic, S/2005/414, June 27, 2005 [hereinafter Report of the Secretary-General].





## The Prosecutor's Investigations

### *Delay in the opening of the investigation*

The decision to open investigations in the CAR came almost two and a half years after the country's self-referral to the ICC.<sup>6</sup> In April 2006, the Prosecutor announced that he would wait for the CAR's highest criminal court, the *Cour de Cassation*, to finish consideration of whether domestic courts could try the alleged crimes. Later that month, the *Cour de Cassation* announced that the CAR's judicial system was unable to carry out the necessary criminal proceedings and stated that the ICC was better suited to find and punish the perpetrators of the gravest crimes,<sup>7</sup> thus satisfying the Rome Statute's requirements for complementarity.

Recognizing the Prosecutor's delay in deciding whether to initiate formal investigations, in November 2006 Pre-Trial Chamber III requested that the Prosecutor report on the state of his analysis and provide an estimate of when the preliminary examination will be concluded. In response, the Prosecutor stressed that he needed to properly assess the national proceedings initiated in the CAR before opening investigations.<sup>8</sup> Under Article 17 the Court may only consider a case when the state with jurisdiction is unwilling or unable to genuinely carry out the investigation or the prosecution. The Prosecutor also pointed out that access and verification of information, important to assess the gravity of the situation, has been difficult due to limited resources of some of the parties involved and because of the deteriorating security situation in the northern areas of the CAR.<sup>9</sup> Further, by opening a fourth simultaneous investigation, the Prosecutor will likely require more staff and resources to work effectively on all cases.<sup>10</sup>

### *Scope of the investigation*

The Prosecutor is investigating the most serious crimes committed after July 1, 2002, focusing on the peak of violence between the government and the rebel forces during the period of 2002-2003. The investigation is not limited to past crimes and the Court will continue to monitor ongoing violence in the north of the country. Although the CAR identified Patassé and Bemba in their referral to the ICC, in accordance with Article 54 of the Rome Statute, the Prosecutor cannot limit an investigation to specific parties that may have been referred by the government. The Prosecutor must "extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under the Statute." The nature of crimes committed by forces under the direct control of General Bozizé may mean that the current government of the CAR could also be implicated in the investigation.

Once the Prosecutor collects sufficient information showing that there are reasonable grounds to believe a crime under the Court's jurisdiction has been committed, he may submit an application for arrest warrants to

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<sup>6</sup> In comparison, the preliminary situations in the Democratic Republic of Congo and Uganda were completed within two to six months.

<sup>7</sup> Fédération Internationale des Ligues des Droits de l'Homme, *The Cour de Cassation Confirms the Incapacity of the National Justice System to Investigate and Prosecute Serious Crimes*, April 13, 2006.

<sup>8</sup> *Prosecution's Report Pursuant to Pre-Trial Chamber III's 30 November 2006 Decision Requesting Information on the Status of the Preliminary Examination of the Situation in the Central African Republic*, ICC-01/05-7, December 15, 2006, para. 9.

<sup>9</sup> *Id.*

<sup>10</sup> Human Rights Watch, *Central African Republic: ICC Opens Investigation*, May 22, 2007.





Pre-Trial Chamber III as he did on May 23, 2008, with respect to Jean-Pierre Bemba. Under Article 68 the Chamber may authorize victims to present their views during the consideration of warrants when appropriate and compatible with the rights of the accused and the requirements of a fair and impartial trial. The Prosecutor expected the investigations to last approximately 18 months.<sup>11</sup>

### *Arrest of Jean-Pierre Bemba*

On May 23, 2008 Belgian authorities arrested former MLC leader and Congolese Vice President Jean-Pierre Bemba on six counts of crimes against humanity and war crimes allegedly committed in the CAR. Pre-Trial Chamber III issued a sealed arrest warrant on May 23, 2008 on the basis that there were reasonable grounds to believe that in 2002 and 2003 MLC forces led by Bemba carried out civilian attacks including acts of rape, torture, outrages upon personal dignity and pillaging committed in the localities of PK 12, Bossongoa and Mongoumba.<sup>12</sup>

### *Oversight of the Prosecutor's investigation*

The Office of the Prosecutor is an independent organ within the ICC and the Prosecutor is expected to make independent and impartial decisions. However, his powers are limited by the Rome Statute. With regard to the CAR, the actions of the Prosecutor will be overseen by Pre-Trial Chamber III which will review periodically the status of his investigations. During the investigations, the Prosecutor will need to obtain authorization from the Chamber before initiating certain steps, such as collecting evidence or taking testimony from witnesses who may become subsequently unavailable for the purposes of trial. In addition, his actions are subject to review by the Assembly of States Parties, which has the power to dismiss him for misconduct or inability to exercise his functions.

### Crimes of Sexual Violence

A distinctive feature of the conflict in the CAR is the high reported number of victims of rape – at least 600 in a period of five months. According to the ICC's Office of the Prosecutor, sexual violence is the principal focus of the investigation because the alleged sexual crimes far outnumber the killings. The crimes involve aggravating circumstances such as rapes by multiple perpetrators, in front of third parties, or with the forced participation of relatives. According to Prosecutor, the scale and gravity of the conduct are sufficient to warrant investigation under international criminal law.<sup>13</sup> Other individuals in addition to Bemba who ordered and authorized these acts could face charges of war crimes and crimes against humanity.

### *Documentation of the crimes*

Reports by the United Nations, Amnesty International and the *Fédération Internationale des Ligues des Droits de l'Homme* (FIDH) outline crimes perpetrated by both the current government under General Bozizé and by

<sup>11</sup> Katy Glassborow, *CAR Case to Focus on Sexual Violence*, Institute for War and Peace Reporting, May 24, 2007, available at [http://www.iwpr.net/?p=acr&s=f&o=335830&apc\\_state=henh](http://www.iwpr.net/?p=acr&s=f&o=335830&apc_state=henh).

<sup>12</sup> International Criminal Court, press release, *Jean-Pierre Bemba Gombo arrested for crimes allegedly committed in the Central African Republic*, May 24, 2008, available at <http://www.icc-cpi.int/press/pressreleases/370.html>.

<sup>13</sup> Office of the Prosecutor, International Criminal Court, *Background note on the opening by the Prosecutor of an investigation in CAR*, May 22, 2007, available at <http://www.icc-cpi.int/press/pressreleases/249.html>.





opposing political factions, including that of former President Patassé. BONUCA has registered cases of human rights violations including the denial of the right to life and summary executions.

In a 2003 report Amnesty International cited violations perpetrated by the MLC, Chadian troops supporting Patassé, and forces of Bozizé, in the categories of violence against women, extrajudicial executions, torture and other ill-treatment. In particular, the report states that in late 2002 and early 2003, forces of Bozizé and opposition forces perpetrated the systematic rape of hundreds of women. Some were killed or died because of injuries and others contracted HIV or other diseases. The FIDH also documented violations perpetrated during General Bozizé's coup d'état attempt in October 2002. Its February 2003 report documents war crimes committed by Bemba and Miskine under the authority of former President Patassé.

Amnesty International reported that in 2005 women continued to be raped and subjected to other forms of sexual violence despite the ending of armed conflict.<sup>14</sup> Under the Rome Statute, sexual violence can constitute war crimes and crimes against humanity and is within the jurisdiction of the Court in accordance with Article 5 should the Prosecutor decide to proceed to trial.

## Security Situation

The precarious security situation in some of the country's regions will likely pose special difficulties to the Prosecutor's investigation. In 2006 violence was particularly common in the border regions and prefectures in the western, northern and eastern regions of the country where rebel organizations, seeking to overthrow President Bozizé, fought against the government. The conflict has led to more civilian deaths.<sup>15</sup> Among the groups allegedly responsible for the attacks in the northwest were the Union of Democratic Forces for the Rally (UFDR) and the People's Army for the Restoration of the Republic and Democracy (APRD), both rebel coalitions.<sup>16</sup> During the first months of 2007, CAR's Government, with the support of French troops and a multinational force from CEMAC, recaptured towns taken by rebel groups.

The Prosecutor stated that he would monitor the current outbreaks of violence, but expressed concerns that it has been difficult to confirm allegations of new crimes being committed due to the limited access to the area.<sup>17</sup> In addition, in the period between September 2006 and March 2007, 284,000 people fled their homes in search of refuge: about 210,000 relocated within the country, while another 74,000 sought refuge in neighboring Chad, Cameroon, and Sudan's South Darfur state.<sup>18</sup> The large scale displacement of people is likely to impede the Prosecutor's ability to gather comprehensive information with regard to past crimes.

<sup>14</sup> Amnesty International Report 2005, *Regional Overview, Africa, 2005*, available at <http://www.amnestyusa.org/document.php?lang=e&id=43C02049FA2549F480256F73005534D5>. This has also been confirmed by the UN Office for the Coordination of Humanitarian Affairs (OCHA). OCHA, *Central African Republic: The Plight of Rape Victims Endures*, August 19, 2005, available at <http://www.irinnews.org>.

<sup>15</sup> Fédération Internationale des Ligues des Droits de l'Homme, *The Civilian Population in Northern Central African Republic is in Great Danger*, March 1, 2006.

<sup>16</sup> Sudan: The Passion of the Present, *CAR Rebel Leader Welcomes "Step Towards Reconciliation"*, January 29, 2007, available at [http://platform.blogs.com/passionofthepresent/2007/01/car\\_rebel\\_leade.html](http://platform.blogs.com/passionofthepresent/2007/01/car_rebel_leade.html).

<sup>17</sup> *Prosecution's Report*, supra note 8 at para. 18.

<sup>18</sup> Relief Web, *UN Aid Chief Ends Mission to Chad, heads to Central African Republic*, March 29, 2007, available at <http://www.reliefweb.int/rw/RWB.NSF/db900SID/YSAR-6ZRLPW?OpenDocument>.





The Prosecutor's investigations may be facilitated by the recent peace accord between President Bozizé and two of the rebel leaders: Abdoulaye Miskine from the Democratic Front and Andre Ringui Le Gaillard from the APRD.<sup>19</sup> The peace agreement, signed by the parties in February 2007 in Libya, urges fighters to lay down their arms. However, the leaders of the large rebel coalition, the UFDR, dismissed the deal and refused to relinquish arms until they met directly with the government.<sup>20</sup> The security situation in the country may improve if the United Nations successfully deploys a multinational peacekeeping force to the CAR. The proposed UN presence, which will include protection of civilians and internally displaced persons, maintenance of law and order, and facilitation of the free movement of humanitarian assistance,<sup>21</sup> would likely provide the Prosecutor with a better opportunity to conduct a comprehensive investigation. CAR's Government has expressed its support for the arrival of the international force to try to stabilize the northeastern region.<sup>22</sup>

### Political Situation

The current government of the CAR is headed by General Francois Bozizé whose forces seized power in March 2003. Bozizé suspended the constitution and dissolved the government of former President Angé-Felix Patassé. Bozizé established the National Transitional Council to be an interim law-making body, an aid to the President in legislative functions, and a monitor for the preparation of general elections. General Bozizé appointed an electoral commission composed of representatives of political parties, civil society organizations and government officials to organize and supervise the elections. In October 2004, a national census was carried out. In December 2004, a new constitution which limits the presidential term of office to two five-year terms was adopted by referendum.<sup>23</sup> Bozizé was democratically elected in 2005.

### Economic, Social and Humanitarian Situation

In 2006 the United Nations listed CAR among the world's least developed countries. The nation ranked 172nd according to its Human Development Index, a comparative measure of life expectancy, literacy, and standard of living.<sup>24</sup> A substantial part of the 4.4 million population does not have access to health care or education.<sup>25</sup> The major internal displacement of people, which resulted from the coups of 2002 and 2003, has caused disruptions in farming and the country's food security. A total of 13.5% of the population has HIV/AIDS, while other preventable diseases, such as polio and malaria, continue to claim more and more lives.<sup>26</sup> Only 51% of the population is literate.<sup>27</sup>

<sup>19</sup> Coalition for Darfur, *CAR: Rebel Faction Signs Peace Deal/Rebel Leader Calls on Men to Disarm*, February 5, 2007, available at <http://coalitionfordarfur.blogspot.com/2007/02/car-rebel-faction-signs-peace.html>.

<sup>20</sup> *Id.*

<sup>21</sup> Ted Dagne, *Sudan: The Crisis in Darfur and Status of the North-South Peace Agreement*, CRS Report to Congress, March 27, 2007, available at <http://www.fas.org/sgp/crs/row/RL33574.pdf>.

<sup>22</sup> UN News Centre, *International Force in Central African Republic Possible – UN Humanitarian Chief*, April 4, 2007, available at <http://www.un.org/apps/news/story.asp?NewsID=22132&Cr=CAR&Cr1=>.

<sup>23</sup> Amnesty International Report 2005 *supra* note 13.

<sup>24</sup> United Nations, *Human Development Report 2006*, 2006, available at <http://hdr.undp.org/hdr2006/>.

<sup>25</sup> Central Intelligence Agency, *The World Factbook, Central African Republic*, last updated May 17, 2007.

<sup>26</sup> United Nations Report, *supra* note 23.

<sup>27</sup> *Id.*





The humanitarian situation continues to deteriorate, reaching a state of emergency. Insecurity in the northern areas of the country not only prevents people from carrying out their daily activities but also makes it difficult for humanitarian workers to reach those who are most vulnerable. International aid groups and UN humanitarian agencies have been forced to cease operation in the north as a result of the precarious security situation. According to aid workers the instability deprives many residents of access to proper healthcare and basic services.<sup>28</sup> Due to a food deficit caused by the armed conflicts and insufficient rainfall, approximately 60% of the population, and 70% of all children, are suffering from hunger.<sup>29</sup>

The country's economic development is hindered by CAR's landlocked geographic location, poor transportation system, largely unskilled work force, and a legacy of misdirected macroeconomic policies. Factional fighting remains a drag on economic revitalization. Distribution of income is extraordinarily unequal and GDP per capita as of 2006 was only \$1,100.<sup>30</sup> National public finances are in a deep crisis and the government borrows from the banking sector to meet unavoidable expenses, thus making the commercial banks' situation unstable. Furthermore, the country depends increasingly on budget support from its bilateral and multilateral partners to meet its basic needs.<sup>31</sup>

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<sup>28</sup> UN OCHA, *Central African Republic-Chad: Another 4,000 Central Africans flee to Chad, Recount Village Raids*, August 17, 2005, available at <http://www.irinnews.org>.

<sup>29</sup> Report of the Secretary-General, *supra* note 5.

<sup>30</sup> Central Intelligence Agency, *supra* note 24.

<sup>31</sup> Report of the Secretary-General, *supra* note 5.

