



Situation in Mali

Article 53(1) Report

16 January 2013

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List of Abbreviations

AFISMA	African-led International Support Mission in Mali
AI	Amnesty International
AIG	Armed Islamic Group (also : <i>Groupe Islamique Armé, GIA</i>)
AQIM	Al-Qaeda in the Islamic Maghreb
AU	African Union
ECOWAS	Economic Community Of West African States
FIDH	<i>Fédération Internationale des Ligues des Droits de l'Homme</i> (International Federation for Human Rights)
FPR	<i>Forces Patriotiques de Résistance</i> (Patriotic Resistance Forces)
GIA	<i>Groupe Islamique Armé</i> (also: Armed Islamic Group, AIG)
GSPC	<i>Groupe Salafiste pour la Prédication et le Combat</i> (Salafist Group for Preaching and Combat)
HRW	Human Rights Watch
ICC	International Criminal Court
ICG	International Crisis Group
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
MNLA	<i>Mouvement national de libération de l'Azawad</i> (National Movement for the Liberation of Azawad)
MUJAO	<i>Mouvement pour l'unicité et le jihad en Afrique de l'Ouest</i> (Movement for Oneness and Jihad in West Africa)
NGO	Non-governmental organization
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights
OTP	Office of the Prosecutor
RCP	Regiment of Paratrooper-Commandos
UN	United Nations
UNDP	United Nations Development Program
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNSC	United Nations Security Council

I. EXECUTIVE SUMMARY

Article 53 criteria

1. In determining whether there is a reasonable basis to proceed with an investigation, the Statute provides that the Prosecutor shall consider the factors set out in article 53(1)(a)-(c), namely in relation to: jurisdiction, admissibility and the interests of justice. Although the Office is not required to publicise its report when acting pursuant to a referral under article 53(1), it has decided to do so in the interests of promoting clarity with respect to its statutory activities and decisions. This report is based on information gathered by the Office from January until December 2012.

Procedural History

2. On 18 July 2012, the Malian Government referred “the Situation in Mali since January 2012” to the ICC.

Contextual background

3. As of around 17 January 2012, an ongoing non-international armed conflict continued in the territory of Mali between the government forces and different organized armed groups, particularly the *Mouvement national de libération de l’Azawad* (National Movement for the Liberation of Azawad, MNLA), al-Qaeda in the Islamic Maghreb (AQIM), Ansar Dine and the *Mouvement pour l’unicité et le jihad en Afrique de l’Ouest* (Movement for Oneness and Jihad in West Africa, MUJAO) and ‘Arab militias’, as well as between these armed groups themselves absent the involvement of government forces.
4. The armed conflict in Mali can be separated into two phases. The first phase began on 17 January 2012 with the attack by MNLA on the Malian Forces military base in Menaka (Gao region). This phase ended on 1 April 2012 when the Malian Armed Forces withdrew from the north. The second phase commenced immediately when non-State armed groups seized control of the North. This phase of the conflict is characterized primarily by armed clashes between the different armed groups, trying to gain exclusive control over the territory in the North, as well as by sporadic attempts by governmental forces to combat such armed groups and retake territorial control.

Jurisdiction

5. *Jurisdiction ratione temporis*: Mali signed the Rome Statute on 17 July 1998, and deposited its instrument of ratification on 16 August 2000. As such, the Court has jurisdiction over crimes against humanity, war crimes and genocide committed on the territory of Mali or by its nationals from 1 July 2002 onwards. On 18 July 2012, the Malian authorities referred the situation in Mali to the ICC with respect to alleged crimes committed “since the month of January 2012” with no end-date.¹ The OTP may therefore investigate crimes committed after the date of receipt of the referral if they occur in the context of the Situation in Mali.²
6. *Jurisdiction ratione loci/jurisdiction ratione personae*: The Court has jurisdiction *ratione loci* under Article 12(2)(a). The Malian government referred “the Situation in Mali” to the Court with no limitations on the scope of territorial jurisdiction of the Court.³ The OTP may therefore investigate crimes committed within the entire territory of Mali if warranted.
7. *Jurisdiction ratione materiae*: The information available indicates that there is a reasonable basis to believe that war crimes have been committed in Mali since January 2012, namely: (1) murder constituting war crime under Article 8(2)(c)(i); (2) the passing of sentences and the carrying out of executions without due process constituting war crime under Article 8(2)(c)(iv); (3) mutilation, cruel treatment and torture constituting war crimes under Article 8(2)(c)(i); (4) intentionally directing attacks against protected objects constituting war crimes under Article 8(2)(e)(iv); (5) pillaging constituting war crime under Article 8(2)(e)(v); and (6) rape constituting war crimes under Article 8(2)(e)(vi).
8. At this stage, the information available does not provide a reasonable basis to conclude that crimes against humanity under Article 7 have been committed.

¹ République du Mali, Renvoi de la situation au Mali, 18 Juillet 2012, (<http://www.icc-cpi.int/NR/rdonlyres/A245A47F-BFD1-45B6-891C-3BCB5B173F57/0/ReferralLetterMali130712.pdf>).

² *The Prosecutor v. Callixte Mbarushimana*, “Decision on the Prosecutor’s Application for a Warrant of Arrest against Callixte Mbarushimana”, ICC-01/04-01/10-1, 11 October 2010, para. 6; *Situation in the Republic of Cote d’Ivoire*, “Corrigendum to ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Cote d’Ivoire’”, ICC-02/11-14-Corr, 15 November 2011, paras. 178–179.

³ République du Mali, Renvoi de la situation au Mali, 18 Juillet 2012, (<http://www.icc-cpi.int/NR/rdonlyres/A245A47F-BFD1-45B6-891C-3BCB5B173F57/0/ReferralLetterMali130712.pdf>).

Admissibility

9. The information available provides an indication of those persons and groups who appear to bear responsibility for the alleged crimes.
10. *Complementarity*: At this stage there are no national proceedings in Mali or in any other State against individuals who appear to bear the greatest responsibility for crimes that the OTP would investigate.
11. *Gravity*: On the basis of information available, the allegations identified in this report appear to be of sufficient gravity to justify further action by the Court, based on an assessment of their scale, nature, manner of commission and impact.
12. Accordingly, the potential cases that would likely arise from an investigation of the situation would be admissible pursuant to article 53(1)(b).

Interests of Justice

13. Based on the available information, there are no substantial reasons to believe that the opening of an investigation into the Situation in Mali would not be in the interests of justice.

Conclusion

14. The Prosecutor, having evaluated the available information, has decided to initiate an investigation into the Situation in Mali since January 2012.

II. PROCEDURAL HISTORY

15. The Office has been analysing the situation in Mali since violence erupted in northern Mali on or about 17 January 2012.
16. On 24 April 2012, the Office issued a public statement recalling that Mali is a State Party to the Rome Statute, and that the Court has jurisdiction over possible war crimes, crimes against humanity or genocide that may be committed on the territory of Mali or by Malian nationals as of 1 July 2002.⁴

⁴ OTP Statement regarding the situation in Mali, 24 April 2012, (http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otpstatement240412.aspx).

17. On 30 May 2012, the Malian Cabinet made a public decision to refer crimes committed since January 2012 by MNLA, AQIM, Ansar Dine, and other armed groups in the regions of Kidal, Gao and Timbuktu to the ICC. The Cabinet further stated that this situation has led to the withdrawal of the services of the administration of justice, making it impossible to deal with these cases before the competent national tribunals.⁵
18. On 01 July 2012, the Office issued a public statement indicating that directing attacks against and the deliberate damaging of shrines of Muslim saints in the city of Timbuktu may constitute war crimes under the Rome Statute.⁶
19. On 5 July 2012, the Security Council adopted resolution 2056 based on Chapter 7 of the UN Charter, in which it stressed that attacks against buildings dedicated to religion or historic monuments can constitute violations of international law which may fall under Additional Protocol II to the 1949 Geneva Conventions and the Rome Statute of the International Criminal Court.⁷
20. On 7 July 2012, during a summit held in Ouagadougou, Burkina Faso, the Contact Group on Mali⁸ of the Economic Community of West African States (ECOWAS) called for an ICC investigation into war crimes committed by rebels in the North of Mali, referring specifically to the destruction of historical monuments in Timbuktu and the arbitrary detention of persons. The Contact Group called upon the ICC “to initiate the necessary enquiries in order to identify the perpetrators of these war crimes and to initiate the necessary legal proceedings against them.”⁹

⁵ The decision states in the original: «*Le Conseil des Ministres a entendu une communication relative à la saisine de la Cour Pénale internationale des faits commis par le Mouvement National de Libération de l’Azawad (MNLA), Al-Qaïda au Maghreb Islamique (AQMI), Ançardine et d’autres groupuscules armés dans les régions de Kidal, Gao et Tombouctou depuis le mois de janvier 2012. Depuis le mois de janvier 2012, des groupes armés se sont attaqués à plusieurs localités situées dans les régions de Kidal, Gao et Tombouctou commettant des faits extrêmement graves pouvant être qualifiés de crimes de guerre, de crimes contre l’humanité ou d’autres violations graves du droit international humanitaire. Cette situation a entraîné le retrait des services de l’Administration de la Justice de ces localités, rendant impossible le traitement de ces affaires par les juridictions nationales compétentes. Conformément au Statut de Rome, le Mali en tant qu’Etat partie et Etat sur le territoire duquel les faits incriminés se sont produits, a décidé de déférer au Procureur de la Cour Pénale Internationale les faits survenus dans les trois Régions.*» Communiqué du conseil des ministres du Mercredi 30 Mai 2012, 30 May 2012.

⁶ Prosecutor’s Statement on Mali, 01 July 2012, published in the OTP Briefing, Issue #126, 20 June - 3 July 2012, (<http://www.icc-cpi.int/NR/rdonlyres/B8B506C8-E2DE-4FF5-A843-B0687C28AA6C/284735/OTPBriefing20June3July2012.pdf>).

⁷ UNSC Resolution 2056 (2012) - 5 July 2012, para 18.

⁸ The ECOWAS Contact Group on Mali comprised of Benin, Cote d’Ivoire, Niger, Nigeria, Liberia and Burkina Faso and Togo.

⁹ ECOWAS Press Statement No. 191/2012, ECOWAS Calls for Government of National Unity in Mali, 9 July 2012.

21. On 18 July 2012, the Malian Government referred “the Situation in Mali since January 2012” to the ICC.¹⁰
22. In August and October 2012, the OTP sent two missions to Mali for the purpose of verifying information in its possession.

III. CONTEXTUAL BACKGROUND

Administration and population

23. The Republic of Mali is a landlocked country in Western Africa, bordering Algeria to the North, Niger to the East, Burkina Faso and Côte d'Ivoire to the South, Guinea to the South-West, and Senegal and Mauritania to the West.¹¹ Mali is divided into eight *régions* and one district each administered by a governor. The regions are Gao, Kayes, Kidal, Koulikoro, Mopti, Ségou, Sikasso, Timbuktu and the capital district Bamako.¹² Just as the great majority of the other eight Sahelian countries¹³, Mali is among the poorest and least developed in the world, rated 178th of 187 countries on the UNDP human development index of 2011.¹⁴ 47.4 % of the population is living below the national poverty line according to the World Bank poverty headcount ratio.¹⁵
24. The total population of Mali is estimated at around 15,839,538.¹⁶ The main ethnic groups are the Mande 50% (Bambara, Malinke, Soninke), Peul 17%, Voltaic 12%, Songhai 6%, Tuareg and Moor 10%.¹⁷ The predominant religion

¹⁰ The referral letter to the Prosecutor reads in the original: “*En vertu de l'article 14 du Statut de la Cour pénale internationale (CPI), l'Etat du Mali, en tant qu'Etat partie au Statut de Rome, a l'honneur de déférer devant vous les crimes les plus graves commis depuis le mois de janvier 2012 sur son territoire dans la mesure où les juridictions maliennes sont dans l'impossibilité de poursuivre ou juger les auteurs. (...). En vertu de ce qui précède, l'Etat du Mali vous prie, Madame la Procureure, d'enquêter sur la situation au Mali depuis le mois de janvier 2012 en vue de déterminer si une ou plusieurs personnes identifiées devraient être accusées des crimes ci-dessus spécifiés.*” The full letter is available at <http://www.icc-cpi.int/NR/rdonlyres/A245A47F-BFD1-45B6-891C-3BCB5B173F57/0/ReferralLetterMali130712.pdf>.

¹¹ CIA World Factbook , Mali, February 2012.

¹² CIA World Factbook , Mali, February 2012.

¹³ Burkina Faso, Cape Verde, Chad, Gambia, Guinea-Bissau, Mauritania, Niger and Senegal. With the exception of Cape Verde, ranked at Medium Human Development, all other seven countries including Mali, are ranked at Low Human Development in the UNDP Human Development Index. UNDP, Human Development Report 2011, p. 128-130.

¹⁴ UNDP, Human Development Report 2011, p. 129.

¹⁵ World Bank, Country Data, Mali, 2011.

¹⁶ World Bank, Country Data, Mali, 2011.

¹⁷ According to Al Jazeera out of this 10%, 7% is Tuareg. See: AJ, “Is Mali heading for a split?”, 2 April 2012.

is Muslim (90%) followed by indigenous beliefs (9%) and Christians (1%).¹⁸ The rebel groups of the current rebellion are in great parts composed of ethnic Tuareg who predominantly live in northern Mali.

25. In 2012, the Situation in Mali was marked by two main events: first, the emergence of a rebellion in the North on or around 17 January, which resulted in Northern Mali being seized by armed groups; and second a coup d'état by a military junta on 22 March, which led to the ousting of President TOURE shortly before Presidential elections could take place, originally scheduled for 29 April 2012.

The current rebellion

26. The rebellion started with an attack by the Tuareg rebel movement, the Mouvement national de libération de l'Azawad (National Movement for the Liberation of Azawad, MNLA) on a military base in the town of Menaka in the Gao region on 17 January 2012.¹⁹
27. The Ansar Dine group as well as other armed groups joined, without necessarily coordinating operations between each other.²⁰
28. Between 30 March and 2 April 2012 the rebels advanced and took the main cities and military bases of Gao, Kidal and Timbuktu, forcing the Malian military to withdraw to the southern regions of Mali.
29. Armed confrontations between Ansar Dine and the MNLA have been reported since June 2012.²¹ The MNLA was eventually driven out of all urban centres and took up position outside the main cities.²² By the end of June 2012, Timbuktu and Kidal were under the firm control of Ansar Dine and Gao under the control of MUJAO.²³ The presence of members from the Nigerian group "Boko Haram" has also been reported from Timbuktu.²⁴

The armed groups operating in the North

30. The **MNLA** is reported to be a secular nationalist Tuareg movement with political and military branches that operate in the Azawad desert in northern

¹⁸ CIA World Factbook , Mali, February 2012.

¹⁹ According to Government sources the attack started on 17 January 2012. According to media reports quoting witnesses the attack started already on 16 January 2012. See Reuters, "Tuareg fighters attack town in northern Mali", 17 January 2012; and Le Journal du Mali, "Nord-Mali : Menaka aux prises avec la Rebellion", 17 January 2012.

²⁰ ICG, "Avoiding Escalation", 18 July 2011, p. 16.

²¹ JA, "Mali : affrontements entre des islamistes et des touaregs dans le Nord", 8 June 2012.

²² ICG, "Avoiding Escalation", 18 July 2011, p. 16.

²³ ICG, "Avoiding Escalation", 18 July 2011, p. 16-17.

²⁴ Information received from the Government of Mali.

Mali. It was created in October/November 2011 in Timbuktu out of an already existing Tuareg opposition movement.²⁵ The movement is primarily made up of former Tuareg fighters who have reportedly fought with the pro-Gaddafi forces and returned to their native lands at the end of the Libyan revolution in 2011.

31. **Ansar Dine** is regarded as a Tuareg jihadist salafist movement²⁶, aiming to impose Sharia law in all of Mali.²⁷ This movement thus presents a radically different Tuareg nationalism from the one represented by the MNLA.²⁸ While Ansar Dine was unable to reach an agreement on joining forces with the MNLA, it has links with different armed radical groups in northern Mali, including **Al Qaeda in the Islamic Maghreb (AQIM)** and , the *Mouvement pour l'unicité et le jihad en Afrique de l'Ouest* (Movement for Oneness and Jihad in West Africa, MUJAO).²⁹
32. **AQIM** is a militant jihadi salafist organization that is considered to be the successor of the Algerian *Groupe Salafiste pour la Prédication et le Combat* (Salafist Group for Preaching and Combat, GSPC) which emerged from the *Groupe Islamique Armé (GIA or Armed Islamic Group, AIG)*.³⁰
33. **The MUJAO** is reportedly a breakaway branch of AQIM. It published its first military statement in October 2011, declaring jihad in the largest sector of West Africa.³¹
34. Other armed actors include the Malian Armed Forces as well as different local defence groups loyal to the Government that have recently regrouped under the *Forces Patriotiques de Résistance* (Patriotic Resistance Forces – FPR).³² The Armed Forces as well as the FPR are based in the southern regions of Mali.

²⁵ Think Africa Press, “The Causes of the Uprising in Northern Mali”, 6 February 2012.

²⁶ Nick Couldry, *Media, Society, World: Social Theory and Digital Media Practice*, (Cambridge: Polity Press, 2012), p. 152.

²⁷ AllAfrica, “Mali: The Tuareg - Between Armed Uprising and Drought”, 28 February 2012.

²⁸ AllAfrica, “Mali: The Tuareg - Between Armed Uprising and Drought”, 28 February 2012.

²⁹ ICG, “Avoiding Escalation”, 18 July 2011, p. *i*.

³⁰ Stephen Harmon, “From GSPC to AQIM: The evolution of an Algerian islamist terrorist group into an Al-Qa’ida Affiliate and its implications for the Sahara-Sahel region” in *Association Concerned Africa Scholars Bulletin*, no. 85, Spring 2010, p. 1.

³¹ Magharebia, “Al-Qaeda splinter group reveals internal erosion”, 30 December 2011.

³² JA, “Mali : formation de groupes d'autodéfense pour "libérer" le Nord”, 22 July 2012; RFI, “Les «Forces patriotiques de résistance» annoncent la reconquête du nord du Mali”, 21 July 2012.

The Coup d'Etat

35. On 22 March 2012, a week before presidential elections were scheduled to take place, a group of Malian soldiers, led by Captain Amadou Haya SANOGO, overthrew outgoing President TOURE.
36. Following widespread condemnation of the coup and international pressure, in particular, from the African Union (AU) and the Economic Community of West African States (ECOWAS), the military junta declared the prompt return to civil rule and a transition towards elections.³³ President COMPAORÉ's from Burkina Faso acts as ECOWAS Mediator for the Mali situation.
37. At the beginning of April 2012, President TOURÉ officially resigned as part of an agreement between ECOWAS and the military junta. Parliamentary speaker Dioncounda TRAORÉ was elected interim President³⁴ and Cheick Modibo DIARRA nominated as the new Prime Minister of the transitional government.³⁵ On 11 December 2012, President Dioncounda TRAORÉ appointed Diango CISSOKO as Prime Minister.³⁶
38. The establishment of the transition reflected the efforts by the ECOWAS, AU and UN to consolidate and secure the transitional government in Bamako before addressing the crisis in the North.³⁷
39. While the Burkinabe mediation is making contacts with armed groups in the North, preparations by AU and ECOWAS are underway to send an intervention force to Mali.³⁸
40. On 5 July and on 2 October 2012, the United Nations Security Council (UNSC) adopted Resolution 2056 and 2071 respectively, stressing that the perpetrators of human rights violations and international humanitarian law shall be held accountable.³⁹
41. On 20 December 2012, the UNSC adopted Resolution 2085 under Chapter VII of the UN Charter authorizing the deployment of the African-led International Support Mission in Mali (AFISMA) to support national

³³ OCHA, "Situation au Mali", Bulletin spécial n° 8, 5 April 2012; AFP, "Putsch au Mali: les principaux événements", 2 April 2012.

³⁴ JA, "Mali: Amadou Toumani Touré a officiellement démissionné", 8 April 2012; JA, "Mali: Amadou Sanogo a rencontré Dioncounda Traoré, futur président par intérim", 9 April 2012.

³⁵ JA, "Mali: Cheick Modibo Diarra nommé Premier ministre du gouvernement de transition", 17 April 2012.

³⁶ RFI, "Diango Cissoko est le nouveau Premier ministre malien", 12 December 2012.

³⁷ RFI, "Mali : ONU, UA et Cédéao exigent la dissolution de l'ex-junte", 08 June 2012.

³⁸ JA, "Ansar Eddine soutient la médiation burkinabè", 08 August 2012.

³⁹ UNSC Resolution 2056 (2012) - 5 July 2012, para. 13 and UNSC Resolution 2071 - Mali - 12 October 2012, preamble.

authorities to recover the North.⁴⁰ The Resolution “calls upon AFISMA, consistent with its mandate, to support national and international efforts, including those of the International Criminal Court, to bring to justice perpetrators of serious human rights abuses and violations of international humanitarian law in Mali”.⁴¹

IV. PRECONDITIONS TO JURISDICTION

42. Article 53(1) requires that the Prosecutor “shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute”.
43. For a crime to fall within the Court’s jurisdiction: (i) the crime must have been committed within the timeframe specified in Article 11 of the Statute (jurisdiction *ratione temporis*); and (ii) there must be personal and/or territorial jurisdiction.⁴²
44. *Jurisdiction ratione temporis*: Mali signed the Rome Statute on 17 July 1998 and deposited its instrument of ratification on 16 August 2000. The Court therefore has jurisdiction over ICC crimes committed on the territory of Mali or by its nationals as of 1 July 2002. On 18 July 2012, the Malian authorities referred the Situation in Mali to the ICC with respect to alleged crimes committed “since the month of January 2012”.⁴³ The OTP may therefore investigate alleged crimes committed prior to the receipt of the referral on 19 July and thereafter.
45. *Jurisdiction ratione loci/jurisdiction ratione personae*:⁴⁴ Pursuant to Article 12, the crimes must occur in the territory of either a State Party to the Statute or a State that accepted the jurisdiction of the Court under Article 12(3); or the crime must have been committed by a national of a State in question. The alleged crimes under analysis were committed in the territory of Mali. Thus the Court has jurisdiction *ratione loci* under Article 12(2)(a). The OTP may investigate crimes committed within the entire territory of Mali if warranted.

⁴⁰ UNSC Resolution 2085 (2012) – 20 December 2012.

⁴¹ UNSC Resolution 2085 (2012) – 20 December 2012, para.19.

⁴² Article 12, Rome Statute of the International Criminal Court.

⁴³ République du Mali, Renvoi de la situation au Mali, 18 Juillet 2012, (<http://www.icc-cpi.int/NR/rdonlyres/A245A47F-BFD1-45B6-891C-3BCB5B173F57/0/ReferralLetterMali130712.pdf>)

⁴⁴ It is sufficient to establish one of two jurisdictions set out in alternative in Article 12 (Article 12(2)(a) - jurisdiction *ratione loci* or Article 12(2)(b) - jurisdiction *ratione personae*), *Situation in the Republic of Côte D’Ivoire*, Pre-Trial Chamber III, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte D’Ivoire, ICC-02/11-12, 3 October 2011, para. 188 (The Pre-Trial Chamber III concluded that “since the requirement of jurisdiction *ratione loci* is fulfilled, the Chamber does not need to examine jurisdiction *ratione personae* under Article 12(2)(b) of the Statute).

V. SUBJECT-MATTER JURISDICTION

46. For a crime to fall within the Court's jurisdiction the crime must be one of the crimes set out in Article 5 of the Statute.

A. Alleged crimes

47. The section below provides an overview of alleged crimes committed in Mali since January 2012. Although the provisions of Regulation 49 of the Regulations of the Court do not apply in this instance, the Office has nevertheless used them as a guide in this analysis.

(a) Places of the alleged commission of the crimes

48. The majority of the alleged crimes have been committed in the regions of Gao and Timbuktu, and to a lesser extent Kidal (northern Mali). In addition, incidents of alleged crimes occurred in Bamako and Sévaré (southern Mali) in relation to infighting within the Malian army.

(b) Time period of the alleged commission of the crimes

49. Armed groups allegedly perpetrated crimes in the context of an ongoing non-international armed conflict which started on or around 17 January 2012.
50. The alleged execution of between 70 and 153 detainees at Aguelhok in January 2012 marked the peak of the killings in the first phase of the armed conflict from 17 January to 1 April 2012.
51. Incidents of looting and rape (up to 90 cases of rape or attempted rape) were mostly reported at the end of March / beginning of April when armed groups took control of the northern regions. The imposition of severe punishments and the destruction of religious buildings in Timbuktu and other areas in the North followed.
52. Separately incidents of torture and enforced disappearances were reported in the context of the military coup around 21-22 March 2012 and a counter-coup attempt on 30 April/1 May 2012.

(c) Persons or groups involved

53. The alleged crimes committed in the context of the armed conflict are mostly attributed to armed groups such as MNLA, Ansar Dine, AQIM, MUJAO and various militias.

54. Alleged crimes committed in the Southern part of Mali in the context of infighting within the Malian army are attributed to members or supporters of the (ex-) junta.

B. Legal Analysis

1. War crimes

(a) Contextual elements of war crimes

55. Article 8 of the Rome Statute requires the existence of an armed conflict.⁴⁵ As stated by the Pre-Trial Chamber II, “[a]n armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.”⁴⁶
56. A non-international armed conflict is characterised “by the outbreak of armed hostilities to a certain level of intensity, exceeding that of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature, and which takes place within the confines of a State territory. The hostilities may break out (i) between government authorities and organized dissident armed groups or (ii) between such groups.”⁴⁷
57. Thus, in order to distinguish an armed conflict from less serious forms of violence, such as internal disturbances and tensions, riots or acts of banditry,

⁴⁵ Elements of Crimes, second last element of each crime under Article 8.

⁴⁶ Situation in the Central African Republic, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo,” ICC-01/05-01/08-424, 15 June 2009, para. 229 (referring to ICTY, *Prosecutor v. Tadic*, Case No. IT-94-1, “Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction”, 2 October 1995, para. 70) Situation in the Democratic Republic of Congo, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/06 (14 March 2012), para. 535 quoting the PTC II.

⁴⁷ Situation in the Democratic Republic of Congo, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/06 (14 March 2012), para.533. See also: Situation in the Central African Republic, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo” ICC-01/05-01/08-424 (15 June 2009), para 231; The Situation in the Republic of Côte d’Ivoire, “Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire,” ICC-02-11-Corr (15 November 2011), para 119 agreeing with this definition.

the armed confrontation must reach (1) a minimum level of intensity⁴⁸ and (2) the parties involved in the conflict must show a minimum of organization.

58. As of around 17 January 2012, there has been an ongoing non-international armed conflict in the territory of Mali between the government forces and different organized armed groups, particularly MNLA, AQIM, Ansar Dine and MUJAO and 'Arab militias', as well as between these armed groups without the involvement of government forces. As discussed below, the required threshold of the level of intensity and the level of organization of parties to the conflict necessary for the violence to be qualified as an armed conflict of non-international character both appear to be met.

Level of intensity

17 January 2012 – 1 April 2012

59. The rebel offensive started in the north of Mali on or around 17 January 2012, when MNLA members reportedly attacked a military base in the town of Menaka in the Gao region but were pushed back by army reinforcements.
60. Hostilities spread to the towns of Aguelhok and Tessalit in the Kidal region when the rebels attacked army positions.⁴⁹ By the end of that week, the army claimed that 35 attackers and a member of the Malian Armed Forces had died in fighting around the town of Aguelhok, while 10 attackers and a member of the Malian Armed Forces died in the town of Tessalit. A MNLA spokesman claimed that the Touaregs had killed 30 to 40 soldiers.⁵⁰
61. On 31 January 2012, MNLA rebels attacked Menaka again and took control of the town, after Malian Forces had withdrawn from their positions.⁵¹

⁴⁸ The Pre-Trial Chamber in the *Bemba* case raised an issue of difference in wording of article 8(2)(f) of the Statute, "which requires the existence of a 'protracted armed conflict' and thus may be seen to require a higher or additional threshold to be met - a necessity which is not set out in article (8)(2)(d) of the Statute." The duration of any relevant confrontation is to be considered when assessing whether there was a protracted armed conflict, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor against Jean-Pierre Bemba Gombo, ICC-01/05-01/08-424, 15 June 2009, para. 235. See also: The Situation in the Republic of Côte d'Ivoire, "Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire," ICC-02-11-Corr (15 November 2011), para 121 indicating that the "duration of any relevant confrontation is to be considered when assessing whether there is a protracted armed conflict".

⁴⁹ Al Jazeera, "Mali army repels Tuareg rebel attacks", 19 January 2012.

⁵⁰ JA, "Les rebelles touaregs entrent dans Ménaka suite au départ de l'armée", 02 February 2012; Al Jazeera, "Mali military battles Tuareg rebels in north", 20 January 2012.

⁵¹ JA, "Les rebelles touaregs entrent dans Ménaka suite au départ de l'armée", 02 February 2012.

62. Fighting has been particularly heavy around the garrison town of Tessalit, close to the Algerian border. A major counter offensive was launched by the Malian Armed Forces on 14 February 2012. “Hundreds” are reported to have died, 50 rebels allegedly arrested and 70 vehicles destroyed.⁵² However, by 11 March, the MNLA eventually took control of the town.⁵³ According to *Jeune Afrique*, Ansar Dine forces were also involved in the battle for Tessalit.⁵⁴
63. During a three-day offensive between 30 March and 1 April 2012, the MNLA further seized the three cities of Kidal, Gao and Timbuktu, after the army withdrew from their positions in these areas. The Malian army regrouped in the southern city of Mopti.⁵⁵
64. Since the beginning of the rebellion in January 2012, clashes have also taken place between the Ganda Izo militia⁵⁶ and the MNLA.⁵⁷ Among those reportedly killed was Ganda Izo’s leader Amadou Diallo, with five of his men.⁵⁸
65. On 11 March Mauritanian Forces launched an air strike on an alleged AQIM convoy in Toulal, outside Timbuktu.⁵⁹ In early June 2012, Mali and Mauritania agreed to lead a joint military operation to fight AQIM.⁶⁰ Therefore, the involvement of Mauritania does not change the non-international character of the armed conflict.
66. According to UN OCHA, by 22 February, more than 120,000 persons had been displaced by the conflict, including 60,000 internally and an equal number to neighboring countries.⁶¹

⁵² JA, “Nord-Mali-a Tessalit l’armée frappe un grand coup contre les rebelles du MNLA”, 15 February 2012.

⁵³ The Economist, “A perfect desert storm”, 17 March 2012.

⁵⁴ JA, “Le groupe salafiste Ansar dine affirme contrôler le nord-est du Mali”, 20 March 2012.

⁵⁵ Euronews, “Mali’s army regroups in Mopti”, 9 April 2012.

⁵⁶ Ganda Izo, ‘Sons of the Land’, is said to be the successor of Ganda Koy, a militia which aim was to resist attacks on the sedentary and semi-nomadic population, largely black African Songhai and Peul/Fulani, from bandits and lighter-skinned nomads, primarily the Tuareg, Arabs and Mauritians, who are commonly referred to in Mali as “the whites”, Jamestown, “The Sons of the Land”: Tribal Challenges to the Tuareg Conquest of Northern Mali, 20 April 2012, Terrorism Monitor Volume: 10 Issue: 8.

⁵⁷ AI, “Mali: Five months of crisis”, p. 10.

⁵⁸ Reuters, “Mali militia chief, fighters die in clash with rebels”, 25 March 2012; AI, “Mali: Five months of crisis”, p. 10.

⁵⁹ RFI, “Raid de l’aviation mauritanienne au Mali contre des membres d’Aqmi”, 13 March 2012.

⁶⁰ AJ, “Mauritania ‘destroys al-Qaeda camp’ in Mali”, 25 June 2012; France 24, “Mauritanian army destroys al Qaeda camp in Mali”, 25 June 2012.

⁶¹ Reuters, “Some 120,000 forced from homes by Mali clashes – UN”, 22 February 2012.

1 April 2012 – present

67. Immediately after the Malian government forces withdrew, in-fighting between the MNLA and Ansar Dine started. On 2 April 2012 Ansar Dine took control of Timbuktu from the MNLA.⁶²
68. The MNLA clashed with Ansar Dine again on 7 June 2012 in Kidal and on 13 June 2012 in Timbuktu.⁶³
69. On 27 June 2012, the MNLA also clashed with MUJAO in Gao when 20 fighters were killed, including MNLA fighters.⁶⁴
70. Finally, on 11 July 2012 the MNLA was reportedly driven out from their last stronghold in Ansongo by MUJAO and Ansar Dine forces.⁶⁵
71. In accordance with a bilateral agreement between two states, Malian Forces carried out joint operations with the Mauritanian Army during the month of July in order to fight AQIM. Reportedly, after three weeks of heavy fighting in a joint “Operation Benkan”, Mauritanian and Malian Forces regained control of the city of Wagadou on 17 July 2012.⁶⁶
72. The military operations in the North continued when on 1 September 2012, MUJAO seized the central Malian town of Douentza.⁶⁷
73. On 16-17 November 2012, fighting broke out again between the MNLA and MUJAO in Ansongo, south of Gao⁶⁸ and in Menaka, east of Gao⁶⁹ in an unsuccessful attempt by the MNLA to retake Gao.⁷⁰ MUJAO received reinforcements from AQIM.⁷¹
74. According to the Office of the United Nations High Commissioner for Refugees, as at 1 November 2012, a total of 412,000 persons had been forced to flee their homes. This figure includes some 208,000 refugees who are

⁶² AFP, “Putsch au Mali: les principaux événements”, 2 April 2012.

⁶³ The Jamestown Foundation, “Intervening in Mali: West African Nations Plan Offensive against Islamists and Tuareg Rebels”, 5 July 2012.

⁶⁴ JA, “Nord-Mali: combats à l’arme lourde entre le MNLA et le Mujao à Gao”, 27 June 2012.

⁶⁵ RFI, “Mali: le MNLA évincé de son dernier bastion d’Ansongo”, 12 July 2012.

⁶⁶ JA, “Le Mali et la Mauritanie délogent Aqmi de la forêt du Wagadou”, 19 July 2012.

⁶⁷ JA, “Jihad: les nouveaux maîtres du Nord-Mali”, 3 October 2012.

⁶⁸ JA, “Le MNLA lance une offensive contre le Mujao à Gao”, 16 November 2012.

⁶⁹ North Africa United, “Northern Mali: MNLA clash with Mujao”, 17 November 2012; BBC News, “Mali Islamists claim Menaka victory against rebels”, 20 November 2012.

⁷⁰ JA, “Nord du Mali: fin des combats entre MNLA et Mujao, “lourde défaite” du MNLA”, 16 November 2012.

⁷¹ ReliefWeb, “Nord du Mali: les islamistes du Mujao chassent des rebelles du MNLA de Ménaka”, 19 November 2012.

currently hosted in Algeria, Burkina Faso, Guinea, Mauritania, the Niger and Togo.⁷²

75. On 5 July 2012, the UN Security Council adopted Resolution 2056 (2012) on Mali under Chapter VII, “reiterating its strong condemnation of the attacks initiated and carried out by rebel groups against Malian Armed Forces and civilians”. The UN Security Council also addressed the issue of the worsening of the humanitarian situation in Mali as well as the increasing number of displaced persons and refugees.⁷³

Level of organization of parties

76. Malian Armed Forces: The Malian Armed Forces constitute a conventional army with clear lines of command and control. The strength of the active Malian armed forces is assessed in 2011 to be at 12,150⁷⁴ – 15,150⁷⁵.
77. MNLA: The MNLA is an armed group composed of around 10,000 fighters, which operates under the responsible command of Bilal Aq Cherif.⁷⁶
78. The MNLA showed the ability to plan and carry out military operations for a prolonged period of time when engaged in recurrent armed clashes against the Malian Armed Forces in the period from January through end of March 2012.
79. AQIM: AQIM is an armed group based in Southern Algeria with reportedly 4 military zones⁷⁷ and a comprehensive organizational structure. Northern Mali is included in the ‘Sahara military zone’. The organization’s leadership is composed of the Emir, the council of notables, and heads of committees and organs. These organs constitute what is known as the Shura Council responsible for coordination between different levels of leadership. The strength of the active forces of AQIM was estimated at between 400- 800 fighters in 2010.⁷⁸

⁷² UN Report of the Secretary-General on the situation in Mali, S/2012/894, 29 November 2012, p. 4.

⁷³ UNSC Resolution 2056 (2012), SC/10698, 5 July 2012.

⁷⁴ JA, “Force d'intervention au Mali - la CEDEAO patiente pour combien de temps”, 11 May 2012.

⁷⁵ IISS, “The Military Balance 2012, Chapter 9: Sub-Saharan Africa”, 7 March 2012, p. 443 – 444.

⁷⁶ Jamestown Foundation, “Intervening in Mali: West African Nations Plan Offensive against Islamists and Touareg Rebels”, 29 June 2012, Terrorism Monitor Volume: 10 Issue: 13; JA, “Mali - Bilal Aq Chérif (MNLA): ‘Ansar Eddine peut obtenir qu'Aqmi quitte l'Azawad’”, 13 June 2012.

⁷⁷ 1. Central, covering the east of the capital Algiers; 2. Eastern, covering the greater Kabyle area; 3. Western, covering the areas near the borders with Morocco; 4. Southern, also referred to as the Sahara military zone, covering south of Morocco, the western desert, part of Mauritania, the north of Mali, Niger and the western sections of Chad.

⁷⁸ IRIN, “Analysis: Fresh approach needed to quell terrorism threat in the Sahel”, 7 October 2010.

80. AQIM is divided into regional and central military units, or “brigades” called *Katiba*, each headed by a commander. The 5 central brigades report directly to the Emir of AQIM.⁷⁹
81. Ansar Dine: Ansar Dine is an armed group under the responsible command of Iyad Aq Ghali mainly present in Kidal. The group reportedly includes up to 300 fighters trained in camps in Kidal, Gao and Mopti.⁸⁰ Ansar Dine has also moved to Timbuktu, as shown by its alleged involvement in the destruction of shrines and clashes with the MNLA in this city.⁸¹ According to open sources, Ansar Dine is able to procure, transport and distribute arms since these weapons have reportedly come from Libya and transited via Algeria.⁸²
82. The Ansar Dine leadership is able to control and govern parts of the territory through local councils established in towns that fell under its control. Additionally, the group reportedly set up a specialized police force in Timbuktu in order to enforce the Sharia law.⁸³
83. MUJAO: MUJAO has been reportedly founded and is led by Sultan Ould Badi together with AQIM’s former members Hammad Ould Mohamed Khair and Abou QoumQoum.⁸⁴ There is little information about the actual strength of MUJAO, but it was assessed to be around 300 fighters.⁸⁵ The movement announced its participation in the rebellion in the North.⁸⁶ MUJAO controls a military camp in Gao⁸⁷ and the towns of Douentza, Gao, Menaka, Ansongo and Gourma.⁸⁸ This group has engaged in joint military operations elsewhere in the North with Ansar Dine.

Geographical and temporal scope of the armed conflict

84. As the International Criminal Tribunal of the former Yugoslavia (ICTY) has held, “the temporal and geographical scope of both internal and

⁷⁹ Council of Foreign Relations, “Al-Qaeda in the Islamic Maghreb (AQIM) – Backgrounder”, 15 October 2012.

⁸⁰ JA, “Nord-Mali: les enfants, recrues très prisées des djihadistes”, 12 July 2012.

⁸¹ Jamestown, “Intervening in Mali: West African Nations Plan Offensive against Islamists and Tuareg Rebels”, 5 July 2012, Terrorism Monitor Volume: 10 Issue: 13.

⁸² SIWEL, “Azawad: «Ansar Dine reçoit des renforts considérables en argent, en armes et en hommes» (MNLA)” 3 June 2012 .

⁸³ Al Arabiya, “New Mali militia leaves Timbuktu to ‘avoid bloodbath’”, 28 April 2012.

⁸⁴ JA, “Nord-Mali : le chef du Mujao prend ses aises à Gao”, 3 July 2012.

⁸⁵ Jamestown, “Intervening in Mali: West African Nations Plan Offensive against Islamists and Tuareg Rebels”, 5 July 2012, Terrorism Monitor Volume: 10 Issue: 13.

⁸⁶ Magharebia, “Al-Qaeda splinter group reveals internal erosion”, 30 December 2011.

⁸⁷ JA, “Mali : les rebelles touaregs contrôlent le Nord, la junte rétablit la Constitution”, 2 April 2012; AJ, “Timeline: Mali since the independence”, 2 April 2012.

⁸⁸ UN Report of the Secretary-General on the situation in Mali, S/2012/894, 29 November 2012, p. 3.

international armed conflicts extended beyond the exact time and place of hostilities.”⁸⁹

85. Geographical scope: Even though the armed hostilities between parties to the conflict took place mainly in the north of the country, the geographical scope of the armed conflict extends to the entire territory of Mali.
86. Temporal scope: The armed conflict started on or around 17 January 2012 and is ongoing, since no peace settlement has been reached at the time of writing.

Dispute between Red Berets and Green Berets

87. Simultaneously with armed hostilities, which took place in the north of the country, an internal dispute erupted in the south of the country between the presidential guards, the Regiment of Paratrooper-Commandos (RCP) or Red Berets, and members of the former junta or Green Berets.
88. Although a state of armed conflict exists in the whole territory of Mali, the alleged crimes committed in the context of the dispute between the Red and Green Berets appear to lack the required nexus with the armed conflict.

(b) Underlying acts constituting war crimes

(i) Murder pursuant to Article 8(2)(c)(i)

89. The *actus reus* of the crime of murder pursuant to Article (8)(2)(c)(i) requires the perpetrator killing one or more persons, and that such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities.⁹⁰

Alleged conduct by armed groups

The 24 January 2012 Aguelhok incident

90. The Malian government and the *Fédération Internationale des Ligues des Droits de l'Homme* (FIDH) allege that on 24 January 2012 the MNLA and/or other

⁸⁹ *Prosecutor v. Dusko Tadić a/k/a "Dule"* [herein after the *Tadić* case], Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 (Case No. IT-94-1), para. 67.

⁹⁰ Elements of Crimes, Article 8(2)(c)(i).

unspecified “armed groups” attacked the military camp in Aguelhok, detained and executed up to 153 Malian soldiers.⁹¹

91. The information available indicates that thereafter, during an organized search for the survivors of the attack, between 70 and 153 members of the Malian Armed Forces were *hors de combat* by detention, having been captured by members of the MNLA and possibly other groups.⁹²
92. They were allegedly tortured and/or murdered⁹³, some by the slitting of their throats, mutilation and disemboweling, while others were allegedly shot.
93. Notwithstanding conflicting versions of the Aguelhok incident, it appears reasonable to believe that war crimes of murder pursuant to Article 8(2)(c)(i) were committed.

Other incidents of killings

94. Other information available on the alleged crime of killings relate to the stoning to death of an unmarried couple⁹⁴ and the public execution of a member of MNLA.⁹⁵
95. Information with respect to other reported incidents of killings by armed groups is scant and additional information is required.

Alleged conduct by government forces

96. Human Rights Watch (HRW) reported that on 2 April 2012, Malian government soldiers in Sévaré (570 km from Gao) detained and executed at least 4 Tuareg members of the Malian security services.⁹⁶ According to FIDH and Amnesty International, on 18 April 2012, Malian soldiers allegedly killed 3 unarmed persons accused of spying for the MNLA in Sévaré.⁹⁷ At this stage, the information is insufficient to establish whether these incidents amount to the war crime of murder.

⁹¹ FIDH/AMDH, “Crimes de guerre au Nord-Mali”, 11 July 2012, p.5; Information received from the Government of Mali.

⁹² Information received from the Government of Mali.

⁹³ FIDH/AMDH, “Crimes de guerre au Nord-Mali”, 11 July 2012, p.13.

⁹⁴ AI, “Mali: Civilians Bear the Burden of the Conflict”, September 2012, p. 9; AJ, “Mali unwed couple ‘stoned to death’”, 30 July 2012.

⁹⁵ BBC News, “Mali Islamists kill man by firing squad in Timbuktu”, 3 October 2012.

⁹⁶ HRW, “Mali: War Crimes by Northern Rebels”, 30 April 2012.

⁹⁷ FIDH/AMDH, “Crimes de guerre au Nord-Mali”, 11 July 2012, p.21.

97. During the night of 8-9 September 2012, 16 unarmed Muslim preachers were reportedly shot dead by the Malian army at an army checkpoint while they were on their way to Bamako.⁹⁸ There is reasonable basis to believe that the war crime of murder under Article 8(2)(c)(i) was committed by these forces.

(ii) Mutilation, cruel treatment and torture pursuant to Article (8)(2)(c)(i)

98. The *actus reus* of the war crime of mutilation pursuant to Article 8(2)(c)(i) requires that the perpetrator subjected one or more persons to mutilation, in particular by permanently disabling or removing an organ or appendage.⁹⁹

99. The *actus reus* of the war crime of cruel treatment pursuant to Article 8(2)(c)(i) requires that the perpetrator inflicted severe physical or mental pain or suffering upon one or more persons. The *actus reus* of the war crimes of torture requires an additional element, that is, that the perpetrator inflicted the pain or suffering for such purposes as obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind.¹⁰⁰

100. The persons subjected to the conduct must be either combatants *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in hostilities.¹⁰¹

101. HRW reported at least eight amputations imposed by armed groups in the North as punishments against persons accused of theft.¹⁰² Further, on 20 June 2012, an unmarried couple was punished with 100 lashes each in Timbuktu by armed groups.¹⁰³

102. There is a reasonable basis to believe that war crimes of mutilation, cruel treatment and torture pursuant to Article 8(2)(c)(i) were committed by armed groups in the North.

⁹⁸ AI, "Mali: Civilians Bear the Burden of the Conflict", September 2012, p. 13-14; AFP, "Mali investigators at scene of mass shooting", 11 September 2012.

⁹⁹ Elements of Crimes, Article 8(2)(c)(i)-2.

¹⁰⁰ Elements of Crimes, Article 8(2)(c)(i)-3 and 4.

¹⁰¹ Elements of Crimes, Article 8(2)(c)(i)-2-4.

¹⁰² HRW, "Mali: Islamist Armed Groups Spread Fear in North", 25 September 2012.

¹⁰³ FIDH, "War crimes in North Mali", p.17.

(iii) *The passing of sentences and the carrying out of executions pursuant to Article 8(2)(c)(iv)*

103. The *actus reus* of the war crime of sentencing or execution without due process pursuant to Article 8(2)(c)(iv) requires that the perpetrator pass a sentence or carry out an execution of one or more persons who were either combatants *hors de combat*, civilians, medical personnel or religious personnel taking no active part in hostilities; and that the passing of the sentence or execution is carried out without previous judgement pronounced by a “regularly constituted” court, that is, a court which affords the essential guarantees of independence and impartiality, and the other judicial guarantees generally recognized as indispensable under international law.¹⁰⁴
104. Based on the information available, there seem to exist two categories of cases of imposing sentences on the civilian population and *hors de combat* in detention by the armed groups in Mali in the North, particularly in the regions of Kidal, Timbuktu and Gao.¹⁰⁵ The first includes cases where the accused are brought before a panel of judges for a trial. Following the conclusion of the trial, sentences are imposed by judges and subsequently enforced by members of armed groups. The second includes cases where persons are punished by members of armed groups for an alleged conduct without previous trial.
105. With respect to the first category of cases, no lawyers are involved in the process. Most of the sentences, including floggings and amputations, are allegedly carried out by the police created by armed groups.¹⁰⁶
106. Reportedly, many of the punishments were carried out in public.¹⁰⁷
107. A number of incidents falling under the second category of cases have been reported by open sources. There are indications that the sentences are imposed arbitrarily by armed groups or by a panel of judges which did not afford the essential guarantees of independence and impartiality, or other judicial guarantees generally recognized as indispensable under international law.
108. The information currently available provides a reasonable basis to believe that war crimes of sentencing or execution without due process pursuant to Article 8(2)(c)(iv) were committed by armed groups in northern Mali.

¹⁰⁴ Elements of Crimes, Article 8(2)(c)(iv).

¹⁰⁵ HRW, “Mali: Islamist Armed Groups Spread Fear in North”, 25 September 2012; AI, “Mali: Civilians bear the brunt of the conflict”, 20 September 2012.

¹⁰⁶ HRW, “Mali: Islamist Armed Groups Spread Fear in North”, 25 September 2012.

¹⁰⁷ Information received from a local NGO; HRW, “Mali: Islamist Armed Groups Spread Fear in North”, 25 September 2012.

(iv) Intentionally directing attacks against protected objects pursuant to Article 8(2)(e)(iv)

109. The *actus reus* of the war crime of attacking protected objects pursuant to Article 8(2)(e)(iv) includes, an attack on buildings dedicated to religion, education, art, science or charitable purposes or historic monuments.¹⁰⁸
110. The city of Timbuktu, including its three large mosques and sixteen cemeteries and mausoleums, was listed as a World Heritage by the UNESCO Heritage Committee on 23 December 1988.¹⁰⁹ As of 28 June 2012, the World Heritage Committee placed Timbuktu and the Tomb of Askia on UNESCO's List of World Heritage in Danger "to raise cooperation and support for the sites threatened by the armed conflict in the region."¹¹⁰
111. From 4 May 2012 to 10 July 2012, a series of attacks against at least 9 mausoleums, 2 mosques and 2 historical monuments in the city of Timbuktu were intentionally perpetrated by members of Ansar Dine and AQIM¹¹¹ and possibly also MUJAO.¹¹² Information confirms that the attacks were intentional.
112. The destruction of religious and historic monuments (not UNESCO World Heritage sites) outside Timbuktu has also been reported.
113. There is a reasonable basis to believe that war crimes of attacking protected objects pursuant to Article 8(2)(c)(iv) were committed at least in Timbuktu since 4 May 2012.

(v) Pillage pursuant to Article 8(2)(e)(v)

114. The war crime of pillage under Article 8(2)(e)(v) of the Statute requires that the perpetrator appropriated certain property without the consent of the owner, with the intent to deprive him or her of the property and to appropriate it for private or personal use.¹¹³
115. According to the Malian government, AI, HRW and FIDH, the takeover of the large cities in the north of Mali, including Gao and Timbuktu, by armed groups at the end of March/beginning of April 2012 was accompanied by systematic looting and destruction of banks, shops, food reserves, as well as

¹⁰⁸ Elements of Crimes, Article 8(2)(e)(iv).

¹⁰⁹ UNESCO, "Report of the World Heritage Committee" (Twelfth Session, 8-9 December 1988, Brasilia, Brazil), 23 December 1988, C(ii)(iv)(v).

¹¹⁰ UNESCO, "Heritage sites in northern Mali placed on List of World Heritage in Danger", 28 June 2012.

¹¹¹ UN Report of the Secretary-General on the situation in Mali, S/2012/894, 29 November 2012, p. 3.

¹¹² REWMI, "Oumar Ould Hamaha, chef d'Etat Major du Mujao au Mali: 'On est prêt à affronter tous les obstacles, pour que tout le Mali pratique la charia'", 12 September 2012.

¹¹³ Elements of Crimes, Article 8(2)(e)(v).

public buildings, hospitals, schools and places of worship, offices of international organizations, and residences of high-level civil servants, members of the Malian security services, and certain economic personalities.¹¹⁴

116. There is a reasonable basis to believe that the war crimes of pillage pursuant to Article 8(2)(e)(v) was committed in the context of the Situation in Mali.

(vi) Rape pursuant to Article 8(2)(e)(vi)

117. The *actus reus* of the crime of rape pursuant to Article 8(2)(e)(vi) requires the perpetrator to invade 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 part of the body. Moreover, the *actus reus* requires that 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 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.

118. FIDH claims that following the takeover of the North, including Gao and Timbuktu, more than 50 cases of rape or attempted rape were recorded, mostly in the period from March to May 2012.¹¹⁵ Cases of rape were reported in Gao, Timbuktu, Niafounke, villages around Dire,¹¹⁶ and in the Menaka region.¹¹⁷

119. The information available provides a reasonable basis to believe that war crimes of rape pursuant to Article 8(2)(e)(vi) were committed.

(vii) Using, conscripting and enlisting children pursuant to Article 8(2)(e)(vii)

120. The *actus reus* of the crime of using, conscripting and enlisting children consists in the fact that the perpetrator conscripted or enlisted one or more persons into an armed force or groups or used one or more persons to participate actively in hostilities; and that such person or persons were under the age of 15 years old.

¹¹⁴ AI, "Mali: Five Months of Crisis, Armed Rebellion and Military Coup", May 2012, p.8; FIDH/AMDH, "Crimes de guerre au Nord-Mali", 11 July 2012, pp.16-17; HRW, "Mali: War Crimes by Northern Rebels", 30 April 2012.

¹¹⁵ FIDH, "War crimes in North Mali", p.14.

¹¹⁶ HRW, "Mali: War Crimes by Northern Rebels", 30 April 2012.

¹¹⁷ AI, "Mali: Five Months of Crisis, Armed Rebellion and Military Coup", May 2012, p.15.

121. AI claims to have collected statements indicating the presence of child soldiers within the ranks of armed groups operating in Mali.¹¹⁸
122. HRW reports to have identified 18 places¹¹⁹ where witnesses reported that new recruits including children were being trained, including military bases and schools.
123. According to UNICEF, as of 6 July 2012, at least 175 boys aged 12-18 were recruited into “armed groups” in Mali.¹²⁰ The Malian Coalition of Child Rights, an umbrella organization of 78 Malian and international associations, spoke in early August 2012 of “several hundred children aged between nine and 17 within the ranks of the armed groups.”
124. The Office will continue to seek further information on these allegations.

(c) Nexus between the individual acts and the armed conflict

125. The crimes must be closely related to the hostilities, meaning that the armed conflict must play a substantial role in the perpetrator’s decision and his ability to commit the crime, and the manner in which the crime was committed.¹²¹
126. The information available indicates that the crimes mentioned above occurred in the course of hostilities which started when armed groups launched military operations to gain control over the north of Mali. Accordingly, a link can be established between the alleged crimes and the armed conflict.

2. Crimes against humanity

(a) Contextual elements of crimes against humanity

127. The contextual elements of crimes against humanity include the following:
(i) an attack against any civilian population; (ii) a State or organizational policy; (iii) an attack of a widespread or systematic nature; (iv) a nexus

¹¹⁸ AI, “Mali: Five Months of Crisis, Armed Rebellion and Military Coup”, May 2012, p.17.

¹¹⁹ HRW, “Mali: Islamist Armed Groups Spread Fear in North”, 25 September 2012.

¹²⁰ UNICEF, “Violence against children mounting in Mali”, 6 July 2012.

¹²¹ *Situation in the Republic of Côte D’Ivoire*, Pre-Trial Chamber III, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte D’Ivoire, ICC-02/11-12, 3 October 2011, para. 150.

between the individual act and the attack; and (v) the accused's knowledge of the attack.¹²²

(b) Preliminary conclusions on crimes against humanity

128. At this stage, the information available does not provide a reasonable basis to believe that crimes against humanity under Article 7 have been committed in the Situation in Mali. This assessment may be revisited in the future.
129. In particular, further analysis is required as to the question of whether acts proscribed under the Statute when carried out against the civilian population by armed groups in imposition of sentences without a just and fair legal process could constitute the crime of persecution.
130. Several reports by international and local NGOs allege that military coup leaders carried out a wave of arrests of political leaders and persons deemed to be involved in the failed counter-coup of 30 April 2012.¹²³ HRW and AI also reported that at least 20 soldiers allegedly linked to the counter-coup may have disappeared. According to unconfirmed reports, these soldiers were executed and buried in Diago about 12 km from Kati military camp.¹²⁴
131. HRW further reported that forces loyal to SANOGO carried out the "most severe and systematic mistreatment" against rank-and-file soldiers, targeted for their involvement in the 30 April 2012 counter-coup attempt.¹²⁵
132. At this stage the information is insufficient to conclude that these alleged acts were committed in the context of a widespread or systematic attack against the civilian population and in furtherance of a State or organizational policy. This assessment may be revisited in the future.

CONCLUSION ON SUBJECT-MATTER JURISDICTION

133. The information available indicates that there is a reasonable basis to believe that war crimes have been committed in the context of a non-international armed conflict in Mali since around 17 January 2012, namely: (1) murder constituting war crime under Article 8(2)(c)(i); (2) the passing of sentences and the carrying out of executions under Article 8(2)(c)(iv); (3) mutilation,

¹²² Situation in the Republic of Côte D'Ivoire, "Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire", 3 October 2011 (notified on 15 November 2011), ICC-02/11-14-Corr, p. 14, para. 29.

¹²³ AI, "Mali: Five Months of Crisis, Armed Rebellion and Military Coup", May 2012, p.11; HRW, "Mali: Coup Leaders Must Respect Rights", 22 March 2012.

¹²⁴ HRW, "Mali: Security Forces 'Disappear' 20, Torture Others", 25 July 2012.

¹²⁵ HRW, "Mali: Security Forces 'Disappear' 20, Torture Others", 25 July 2012.

cruel treatment and torture under to Article 8(2)(c)(i); (4) intentionally directing attacks against protected objects under Article 8(2)(e)(iv); (5) pillaging under Article 8(2)(e)(v); and (6) rape under Article 8(2)(e)(vi). This assessment is provisional in nature for purpose of meeting the requirements of article 53(1)(a). It is therefore not binding for the purpose of any future investigations.

VI. ADMISSIBILITY

134. As set out in article 17(1) of the Statute, admissibility requires an assessment of complementarity and gravity. Pursuant to its prosecutorial strategy, the Office assesses complementarity and gravity in relation to the most serious crimes allegedly committed by those who appear to bear the greatest responsibility.¹²⁶
135. At the stage of opening an investigation into a situation, article 53(1)(b) requires the Office to consider whether the case or potential case¹²⁷ is or would be admissible under article 17. The assessment is preliminary in nature and is not binding for the purpose of future admissibility determinations.¹²⁸

A. Complementarity

136. The absence of national proceedings is sufficient to render a case admissible. Where relevant national proceedings exist, the case will continue to be admissible before the Court if the State concerned is unwilling or unable genuinely to carry out the investigation or prosecution.¹²⁹

¹²⁶ *Situation in the Republic of Kenya*, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ICC-01/09-19-Corr, 31 March 2010, para 50.

¹²⁷ PTCI in the *Lubanga* case defined the concept of a case as including “specific incidents during which one or more crimes within the jurisdiction of the Court seem to have been committed by one or more identified suspects”, and that the admissibility assessment consists of an examination of “both the person and the conduct which is the subject of the case before the Court”; *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the Prosecutor’s Application for Warrant of Arrest, Article 58, ICC-01/04-01/06 (10 February 2006), paras 21, 31, 38, incorporated into the record by Decision ICC-01/04-01/06-8-Corr.

¹²⁸ *Situation in the Republic of Kenya*, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ICC-01/09-19-Corr, 31 March 2010, para 50.

¹²⁹ *Situation in the Republic of Côte D’Ivoire*, Pre-Trial Chamber III, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte D’Ivoire, ICC-02/11-12, 3 October 2011, para. 193.

137. The Malian authorities in referring the Situation in Mali to the Court on 18 July 2012 also informed the Office that Malian courts were, following the withdrawal of the judicial services from the northern cities, unable to prosecute crimes allegedly committed by armed groups in Mali.¹³⁰
138. Apart from a special administrative commission of inquiry was set up in relation to the Aguelhok events the Malian authorities have confirmed to the Office that no judicial proceedings have been instituted.
139. The Malian authorities have indicated that the alleged acts of torture and enforced disappearances of Red Berets are the subject of a national investigation.¹³¹ An investigation into the killing of 16 Muslim preachers in Diabali on 9 September 2012 also appears to have been initiated.¹³²
140. The information currently available indicates that no other State with jurisdiction is conducting or has conducted national proceedings in relation to crimes allegedly committed in the Situation in Mali.
141. Accordingly the Office has determined that the potential cases that would likely arise from an investigation into the situation would be admissible. The Office may revisit this assessment following any information received by States pursuant to the article 18 notification procedure.

B. Gravity

142. Although any crime falling within the jurisdiction of the Court is serious,¹³³ article 17(1)(d) requires the Court to assess as an admissibility threshold whether a case is of sufficient gravity to justify further action by the Court.
143. The assessment of gravity of crimes includes both quantitative and qualitative considerations based on the prevailing facts and circumstances. As stipulated in Regulation 29(2) of the Regulations of the Office, the non-exhaustive factors that guide the Office's assessment include the scale, nature, manner of commission of the crimes, and their impact.¹³⁴

¹³⁰ Information received from the Government of Mali.

¹³¹ Information received from the Government of Mali.

¹³² AFP, "Mali investigators at scene of mass shooting", 11 September 2012.

¹³³ See Preamble para. 4, articles 1 and 5, ICC Statute.

¹³⁴ See, in concurrence with the Prosecution's submissions, *Prosecutor v. Abu Garda*, Decision on the Confirmation of Charges, ICC-02/05-02/09-243-Red, 8 February 2010, paras. 31; *Situation in the Republic of Kenya*, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ICC-01/09-19-Corr, 31 March 2010, para 188.

1. The Aguelhok incident

144. Scale: Depending on the sources reviewed, the number of members of the Malian Armed Forces who have reportedly been summarily executed following the attack on the military basis in Aguelhok on 24 January 2012 range between 70 and 153.
145. Nature: the alleged crime constitutes the war crimes of murder of combatants *hors de combat* under Article 8(2)(c)(i). The killing of combatants *hors de combat* is no less grave than the killing of civilians.
146. Manner: The information available suggests that the crime was committed with particular cruelty: Some of the detainees were allegedly mutilated, disemboweled, tortured and/or had their throats slit, while others were allegedly executed by being shot in the head.
147. Impact: A number of high ranking Malian officials as well as civil society representatives referred to the alleged summary executions of *hors to combat* in Aguelhok as one of the worst single crime committed due to the manner in which the soldiers were reportedly killed.
148. Based on the information available, the Aguelhok incident appears grave enough to justify further action by the Court.

2. Punishments imposed by armed groups in the North

149. Scale: Since April 2012, Ansar Dine, AQIM and MUJAO have imposed sentences on civilians and *hors de combat* by detention, including executions, amputations, stoning and flogging without previous judgement pronounced by a regularly constituted court. This alleged conduct appears not to have been committed on a large scale but as part of a policy. However, at this stage, there is a lack of information on the scale of the alleged crimes.
150. Nature: Alleged crimes constitute war crimes under Article 8(2)(c)(i) and Article 8(2)(c)(iv), i.e. a violation of Common Article 3 of the Geneva Conventions.
151. Manner: Reportedly, punishments including execution, amputation, flogging, stoning and beatings, are imposed against alleged wrongdoers either in the public or after a suspect is taken to a police station, military camp, or informal place of detention.¹³⁵

¹³⁵ HRW, "Mali: Islamist Armed Groups Spread Fear in North", 25 September 2012; AI, "Mali: Civilians bear the brunt of the conflict", 20 September 2012.

152. Impact: Punishments such as executions, stoning, amputations, flogging and beatings as well as the passing of sentences without due process by armed groups had a severe impact on victims and their families, who are left traumatized and stigmatized in their communities. These alleged crimes have also had an impact on local population, creating an atmosphere of fear in local communities, particularly for the reason that the population had been summoned to watch the imposition of punishments in public.¹³⁶
153. Based on the information available, the punishments imposed by armed groups in the North appear grave enough to justify further action by the Court.

3. The destruction of religious and historical sites in Timbuktu

154. Scale: The information available indicates that at least in the period from 4 May 2012 through 10 July 2012, a series of attacks against at least nine mausoleums out of 16 mausoleums listed in the UNESCO's World Heritage List¹³⁷, two great mosques out of three great mosques listed in the UNESCO's World Heritage List¹³⁸, and two historical monuments, in the city of Timbuktu have been intentionally perpetrated by members of Ansar Dine and possibly by members of AQIM.
155. Nature: The war crime of intentionally directing attacks against 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 under Article 8(2)(e)(iv) violates the special protection of these objects reflected in the Additional Protocol I to the 1949 Geneva Conventions.¹³⁹ According to the ICRC Commentary, "the cultural or spiritual heritage covers objects whose value transcends geographical boundaries, and which are unique in character and are intimately associated with the history and culture of the people".¹⁴⁰ This is undoubtedly the case of the religious and historical buildings in Timbuktu which belong to the World's Heritage since 23 December 1988.

¹³⁶ HRW, "Mali: Islamist Armed Groups Spread Fear in North", 25 September 2012.

¹³⁷ UNESCO, World Heritage Committee, 36th session, 24 June - 6 July 2012, p. 214-215.

¹³⁸ UNESCO, "Timbuktu".

¹³⁹ Article 53 of AP I reads: "Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, it is prohibited: (a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; (b) to use such objects in support of the military effort; (c) to make such objects the object of reprisals".

¹⁴⁰ Y. Sandoz and others, "Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949", nos. 2064 ff.

156. Manner: The protected objects were intentionally damaged or destroyed, in some cases repeatedly and pursuant to the ideology of alleged perpetrators that these objects have had to be destroyed.¹⁴¹ The religious and historical sites were demolished with axes, hatches and picks, while the wooden parts of the objects were burned.
157. Impact: The destruction of religious and historical World Heritage sites in Timbuktu appears to have shocked the conscience of humanity.
158. On 19 July 2012, the AU released a solemn declaration on the Situation in Mali, after the closure of the AU Summit stating that the AU “strongly condemns [...] the senseless and unacceptable destruction of the cultural, spiritual and historical heritage of this region, notably in Timbuktu, which is a serious violation of international law, and urges that the perpetrators be brought to justice before the relevant international jurisdictions.”¹⁴²
159. In his statement to the UNSC on 8 August 2012, the UN Secretary General also recognized the attacked sites as “part of the indivisible heritage of humanity”.¹⁴³
160. Based on the information available, the destruction of religious and historical sites in Timbuktu appears grave enough to justify further action by the Court.

4. Pillaging

161. Scale: The information available indicates that the alleged crime of pillaging took place in cities of Gao and Timbuktu by armed groups.
162. Nature: Alleged crimes constitute war crime under Article 8(2)(e)(v).
163. Manner: Systematic looting and destruction of private and public places took place, including banks, shops, food reserves, as well as public buildings, hospitals, schools and places of worship, offices of international organizations, including humanitarian organizations such as the ICRC¹⁴⁴,

¹⁴¹ The Guardian, “Timbuktu world heritage site attacked by Islamists”, 1 July 2012.

¹⁴² AU, “Solemn declaration on the situation in Mali”, 19 July 2012, para 5.

¹⁴³ UN Secretary General, 8 August 2012.

¹⁴⁴ AI, “Mali: Five Months of Crisis, Armed Rebellion and Military Coup”, May 2012, p.15.

residences of high-level civil servants, members of the Malian security services, and certain economic personalities.¹⁴⁵

164. Impact: Systematic and widespread acts of pillaging had a severe impact on local communities of looted cities and villages.
165. Further information on whether acts of pillaging have been committed on a large scale or as part of a plan or a policy is required.

5. Rape

166. Scale: The number of cases of rape range from 50 to 100. At this stage, the scale of acts of rape committed in the Situation in Mali is unclear.
167. Nature: Alleged crimes constitute war crimes of rape under Article 8(2)(e)(vi) of the Statute. In the *Akayesu* judgement, the Trial Chamber described rape and sexual violence as some of the “worst ways of inflicting harm on the victim as he or she suffers both bodily and mental harm.”¹⁴⁶
168. Manner: The common *modus operandi* in cases of rape allegedly involved rebels jumping down from their vehicles, grabbing the girl as she was walking, lifting her into the car, covering her mouth to prevent her from screaming and abducting her.¹⁴⁷ Often women and girls were taken to abandoned homes, hotels, and other buildings and sexually assaulted before being returned within 24 hours.¹⁴⁸ In some cases, women and female minors were victims of gang-rape.¹⁴⁹ It also appears from “numerous witness accounts” that sexual violence was accompanied systematically by insults, particularly racial insults.¹⁵⁰
169. Impact: The alleged acts of rape had a grave impact on victims, their family members and the local population.
170. Further information on whether acts of rape have been committed on a large scale or as part of a plan or a policy is required.

¹⁴⁵ Information received by the Government of Mali; FIDH/AMDH, “Crimes de guerre au Nord-Mali”, 11 July 2012, pp.16-17; HRW, “Mali: War Crimes by Northern Rebels”, 30 April 2012; AI, “Mali: Five Months of Crisis, Armed Rebellion and Military Coup”, May 2012, p.8.

¹⁴⁶ Summary of the Trial Judgment in the Jean-Paul Akayesu Case (Sept 2, 1998), ICTR 96-4-T, para. 13.

¹⁴⁷ HRW, “Mali: War Crimes by Northern Rebels”, 30 April 2012.

¹⁴⁸ HRW, “Mali: War Crimes by Northern Rebels”, 30 April 2012.

¹⁴⁹ AI, “Mali: Five Months of Crisis, Armed Rebellion and Military Coup”, May 2012, pp.14-15.

¹⁵⁰ FIDH/AMDH, “Crimes de guerre au Nord-Mali,” 11 July 2012, pp.14-15.

VII. INTERESTS OF JUSTICE

171. Under Article 53(1), while jurisdiction and admissibility are positive requirements that must be satisfied, the interests of justice is a potential countervailing consideration that may produce a reason not to proceed with an investigation. As such, the Prosecutor is not required to establish that an investigation is in the interests of justice, but rather, whether there are specific circumstances which provide substantial reasons to believe it is not in the interests of justice to do so at that time.
172. Based on its assessment of the situation, including through its missions to Mali of August and October 2012, there are no substantial reasons to believe that the opening of an investigation would not serve the interests of justice.

VIII. CONCLUSION

173. The information available provides a reasonable basis to believe that war crimes have been committed in the context of the Situation in Mali since January 2012, namely: (1) murder constituting war crime under Article 8(2)(c)(i); (2) mutilation, cruel treatment and torture constituting war crimes under Article 8(2)(c)(i) (3); the passing of sentences and the carrying out of executions without due process constituting war crime under Article 8(2)(c)(iv); (4) intentionally directing attacks against protected objects constituting war crimes under Article 8(2)(e)(iv); (5) pillaging constituting war crime under Article 8(2)(e)(v); and (6) rape constituting war crimes under Article 8(2)(e)(vi). This assessment is not binding for the purpose of any future investigation or selection of charges.
174. Since no national proceedings are pending in Mali or any other State against individuals who appear to bear the greatest responsibility for the most serious crimes committed in Mali, the Office has determined that the potential cases that would likely arise from an investigation into the situation would be admissible. Such cases, moreover, appear to be grave enough to warrant further action by the Court.
175. Since there are no substantial reasons to believe that such would not be in the interests of justice, the Prosecutor has decided to open an investigation into the Situation in Mali since January 2012.