

Central African Republic: Sexual Violence by Peacekeeping Forces

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. Taking Action on Sexual Exploitation and Abuse by Peacekeepers

[Source: Deschamps, Marie (chair), Jallow, Hassan B., Sooka, Yasmin, "Taking Action on Sexual Exploitation and Abuse by Peacekeepers: Report of an Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic", 17 December 2015. Available at <http://www.un.org/News/dh/infocus/centafricrepub/Independent-Review-Rep...>]

[...]

PART II – The Allegations in Context

[...]

1. Overview of the Conflict in CAR

[1] In early 2013, after decades of under-development and political instability, CAR experienced a major political crisis and breakdown of law and order when rebels known as the Séléka overthrew the government. The subsequent formation of a self-defence militia, the anti-Balaka, intensified the hostilities. The conflict became increasingly sectarian and dramatically deteriorated at the beginning of December 2013, leading to widespread violence and human rights violations, and sending hundreds of thousands of people fleeing.

[2] The resulting conflict affected nearly the entire population and threatened to spill over into the region. Thousands of people are believed to have been killed. Some 2.7 million people—more than half the population—are in dire need of protection, including, in many cases, basic humanitarian assistance. Although the numbers fluctuate, UN agencies calculate that over 1.2 million people face serious food insecurity, 400,000 persons are internally displaced, and more than 460,000 are refugees in neighbouring countries. Hundreds of thousands of people fled to makeshift displaced persons camps, including the M'Poko Camp, protected by international troops. At the height of the conflict, approximately 120,000 people were living in the M'Poko Camp and by May 2014, more than 57,000 people remained.

[3] Children, who make up half of the population of CAR, are bearing the brunt of the crisis. They have been subjected to killings, mutilations, and sexual violence, and have been recruited by armed groups. Many have been separated from their families, exacerbating their vulnerability.

[4] Concerned with the growing security, humanitarian, human rights, and political crisis in CAR, on 10 April 2014 the UN Security Council established the Multidimensional Integrated Stabilization Mission in the Central African Republic ("MINUSCA"), initially with 10,000 peacekeeping troops. As set out in UN Security Council Resolution 2149 (2014), MINUSCA's foremost priority is the protection of civilians, including "specific protection for women and children affected by armed conflict".

[5] [...] In parallel, the UN Security Council has also authorized, on several occasions, the deployment of various foreign military forces in CAR. In particular, on 5 December 2013, the Security Council authorized the deployment of the African Union-led International Support Mission in the Central African Republic ("MISCA") and the French Sangaris Forces to quell the spiralling violence. The Sangaris Forces were authorized to "take all necessary measures to support MISCA in the discharge of its mandate", which included the protection of civilians. Similarly, UN Security Council Resolution 2149 (2014) granted Sangaris Forces the authorization to "use all necessary means to provide operational support to elements of MINUSCA". MINUSCA formally subsumed MISCA on 15 September 2014 and continues its operations today. By March 2014, 2,000 Sangaris Forces personnel were deployed in CAR, including in Bangui.

[...]

2. The Problem of Sexual Abuse in Peacekeeping Missions

[6] The UN defines sexual exploitation as "any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another." It defines sexual abuse as "the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions".

[...]

[7] In 2003, after two decades of repeated incidents of sexual violence by peacekeepers, the UN Secretary-General issued a Bulletin on Protection from Sexual Exploitation and Abuse, setting out extensive prohibitions regarding sexual conduct by UN staff and peacekeepers, including a prohibition on sexual

relations with members of the local community, given the "inherently unequal power dynamics". The Bulletin also specifically prohibits sexual activity with children, "regardless of the age of majority or age of consent locally", as well as prohibiting prostitution in general. This Bulletin is generally referred to as the UN's zero tolerance policy.

[...]

3. The Allegations

[8] The Allegations first came to light when the head of a local NGO working in the M'Poko Camp (the "M'Poko NGO"), discovered in the course of a mapping exercise of internally displaced children that some foreign military troops had subjected children to sexual acts in exchange for food or money. In May 2014, the allegations were reported to the Human Rights and Justice Section ("HRJS") of MINUSCA and to the UNICEF office in Bangui, which quickly initiated an investigation. Between 19 May and 24 June 2014, a HRO [Human Rights Officer] temporarily deployed to HRJS interviewed, together with UNICEF Protection Officers, six children who reported sexual abuse by Sangaris Forces and other TCC troops. The HRO compiled a summary of those interviews in a confidential document (the "Sangaris Notes").

[...]

3.2. Additional victims and allegations

[...]

[9] The abuses reported by the children interviewed by the HRO and the local NGO are of a very serious nature and fall within the definition of conflict related sexual violence developed in the UN. Rape and other forms of sexual violence against children in armed conflicts also constitute one of the six grave violations described under the Monitoring and Reporting Mechanisms on Grave Violations against Children in Situations of Armed Conflict, June 2014 (MRM Guidelines). In addition, the procurement of sex from children in exchange for food or money may constitute grave violations of international human rights, international humanitarian law, and international criminal law.

PART III – Initial Response of the UN to the Allegations on the Ground

[...]

1. Policies Applicable to Sexual Exploitation and Abuse [SEA]

[...]

[10] There are two distinct policy frameworks through which the UN can address allegations of sexual abuse and exploitation by peacekeepers. [...]

[...]

1.1. The SEA policy framework

[...]

[11] Under the SEA policies, acts of sexual violence are considered to be instances of serious misconduct. While there is some recognition in the SEA policies that sexual exploitation and abuse can constitute criminal offenses under applicable domestic law, the overarching focus of the SEA policies is on misconduct as a disciplinary matter.

[12] The UN SEA policy regime sets out procedures and undertakings applicable to both the UN and TCCs where allegations of sexual exploitation and abuse by troops under UN command arise. These include:

- The Head of Mission (through the Conduct and Discipline Unit) shall promptly inform the Under-Secretary-General ("USG") for the Department of Field Support, the USG for the Department of Peacekeeping Operations ("DPKO"), and the USG for OIOS, when applicable, of all allegations of sexual abuses by members of TCCs;
- The UN shall notify the government of the TCC about the allegations without delay, where there is *prima facie* evidence that the incident occurred;
- The UN, including the Head of Mission, must cooperate fully with appropriate authorities of the TCC, to assist the TCC in the investigation as necessary (including by sharing documentation and information related to the allegations under investigation), and to facilitate the conduct of the investigation by the TCC, including with respect to identifying and interviewing witnesses; and
- TCCs undertake and agree to inform the UN of any actions taken by the TCC to substantiate and address allegations, and the UN shall follow up with the TCC on all actions taken by the TCC.

[13] Two concerns arise out of the UN's SEA policy framework. First, the SEA policies only apply to allegations against troops under UN command; the policies do not recognize any role for the UN where sexual violence by troops not under UN command are reported. Second, the SEA policies do not confer on the UN any authority to pursue the accountability of the perpetrator; once the matter is handed over to the TCC, the UN has a limited role to play. Because there is too often a lack of transparency in the processes used by the TCC to address allegations (if they follow up on the allegations at all), victims and the local population may infer that nothing is done and that perpetrators are neither investigated nor prosecuted. As a result, there is a strong perception that perpetrators can act with impunity.

1.2. The human rights policy framework

[14] The promotion and preservation of human rights is one of the foremost purposes of the UN, as established in Article 1 of the UN Charter and reaffirmed in the Human Rights Up Front initiative. In the context of UN peacekeeping missions, the obligation to promote human rights, as well as to prevent violations of international human rights law, international humanitarian law, and international criminal law, are articulated through a number of legal instruments. The September 2011 Policy on Human Rights in United Nations Peace Operations and Political Missions (the "Joint Policy"), for example, specifically imposes on all UN Missions the obligation to uphold international human rights law in the implementation of peace operations and political mission mandates, even if this was not part of the original operational plan and design of the mission. Further, the Special Committee on Peacekeeping Operations and its working group

have also held that UN peacekeeping missions have an obligation under international human rights law and international humanitarian law to prevent acts of sexual exploitation and abuse by peacekeepers.

[15] Additional policy frameworks have also been developed (...). [...]

[16] [...] In the case of the MINUSCA mission, the mission's mandate includes the obligation to protect civilians, including to "provide specific protection for women and children affected by armed conflict", to "monitor, help investigate and report publicly and to the Security Council on violations of international humanitarian law and on abuses and violations of human rights committed throughout the CAR", and to "contribute to efforts to identify and prosecute perpetrators, and to prevent such violations and abuses." [...]

[17] Further, UN Security Council Resolution 2217 (2015) [...] emphasizes "the imperative to hold accountable all perpetrators of violations of international humanitarian law and human rights violations and abuses, irrespective of their status or political affiliation, and reiterates that some of those acts may amount to crimes under the Rome Statute of the International Criminal Court (ICC)".

[...]

[18] When looking at the UN's human rights policy framework, it is clear that the UN has the responsibility to address sexual violence as human rights violations and potential violations of international humanitarian law and international criminal law. This includes the obligation to investigate the incidents, report both internally and publicly on the violations, protect the victims, and work to hold the perpetrators accountable.

1.3. Harmonizing SEA and human rights policy frameworks

[19] While UN staff have generally perceived the SEA and human rights policy frameworks as parallel approaches, running on two separate tracks, the reality is that in many instances both policy frameworks can and do apply. In order to address any ambiguity or confusion, therefore, the two frameworks should be harmonized and articulated in a unified policy. Even where the UN's SEA policies are operative, the human rights framework continues to apply, imposing a number of obligations on the UN to respond to the allegation in a robust and meaningful way. [...]

[...]

4. Accountability

[20] The UN's obligation to promote accountability for conflict related sexual violence is rooted in its duty to promote and protect human rights and to uphold the rule of law. Implementing measures that ensure that perpetrators are prosecuted remains the best way to deter these crimes. It is therefore not enough for the UN only to report on acts of sexual exploitation and abuse perpetrated by peacekeepers; it must actively seek to ensure that the perpetrators of such crimes are identified and prosecuted by the relevant TCCs.

[...]

[...]

5. Prevention Through Individual Accountability

[...]

[21] Several accountability provisions are already integrated in Memoranda of Understanding ("MOUs") governing relationships between UN and troops under UN command. For example, TCCs are required to undertake to inform the UN of any actions taken to substantiate and address allegations. However, the Panel is not aware of any such accountability provisions in agreements between the UN and troops not under its command. From a human rights perspective this gap is hardly justifiable.

[22] [...] [A]greements between the UN and TCCs should include robust measures facilitating investigation and prosecution of crimes of sexual violence by the relevant TCC, the UN or the host state, and enabling victims, the local population, and the UN, to know whether and how the alleged perpetrators are held accountable. [...]

5.1. Revisiting the prosecution process

[...]

[23] A significant impediment to successful prosecution has been the agreement of the UN to date that TCCs retain exclusive jurisdiction to prosecute crimes perpetrated by their troops under the TCC's domestic law. These agreements are generally built into MOUs signed by the UN and the TCCs. This means that where the TCCs choose not to exercise their jurisdiction, or engage in flawed processes which may put victims and witnesses at risk, or intentionally interfere with the process so as to exonerate the accused, the hands of the UN and the host country are tied. [...]

[24] In September of this year, the Secretary-General endorsed the Zeid Report's recommendation for the use of on-site court martial proceedings in host countries. This would enable more victims and members of the affected community to participate and see justice being done. Concerns remain, however, that a judicial process conducted by the TCC's own military may not be sufficiently independent, or that it might lack the expertise required to respond to the unique needs of victims of sexual abuse, children in particular. TCCs may also oppose such proceedings taking place in the host country rather than in their own domestic courts. [...]

[25] Given these challenges, alternative mechanisms must be considered in order to ensure respect for human rights and due process [...].

[26] In order to reduce the instances where the TCC does not follow up on allegations (or is perceived not to have followed up), the UN should consider building on the model status of forces agreement ("SOFA") adopted by the North Atlantic Treaty Organization ("NATO"). Where the NATO SOFA applies, primary or subsidiary jurisdiction is established over selected crimes committed in the host state, depending on the

specific nature of the offense. If the country that has primary jurisdiction chooses not to exercise it, then the other country may choose to exercise its subsidiary jurisdiction. NATO SOFA also provides for mutual assistance between the TCC and the host state in carrying out the investigation and sharing information.

[27] This approach is particularly apposite given the gap in impunity that arises as a result of the unwillingness or inability of some TCCs to exercise their jurisdiction in a timely manner. Following on the NATO SOFA model, TCCs could be given primary, but not exclusive, jurisdiction where one of the TCC's troops is alleged to have committed sexual violence in the host state in contravention of the host state's domestic laws. However, agreements with TCCs should provide that, if the TCC fails to take prompt action to investigate the reported violations and prosecute suspects within a specified period, the TCC would be deemed to have waived its primary jurisdiction. Host countries—with, if necessary, the support of the UN—would then be free to exercise subordinate jurisdiction over the crimes committed within their territory under the host state's domestic law. Consistent with its human rights mandate, the UN should monitor proceedings in either the TCC or host state to ensure compliance with prevailing international standards, particularly with respect to the protection of victims of sexual violence.

[...]

Recommendation #8:

[28] Negotiate with TCCs provisions ensuring prosecution, including by granting host countries subsidiary jurisdiction to prosecute crimes of sexual violence by peacekeepers.

[...]

B. Special measures for protection from sexual exploitation and sexual abuse

[Source: "Special measures for protection from sexual exploitation and sexual abuse", Report of the Secretary-General, 16 February 2016, UN Doc. A/70/729. Available at https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_70_729.pdf]

[...]

II. Reports of sexual exploitation and abuse in 2015

[...]

Allegations reported against personnel deployed in peacekeeping operations and special political missions supported by the Department of Field Support

6. In 2015, 69 allegations of sexual exploitation and abuse were reported in nine current and one closed peacekeeping missions. Of those allegations, 15 involved staff members or United Nations Volunteers; 38 involved members of military contingents or United Nations military observers; and 16 involved United

Nations police officers [...].

[...]

IV. Strengthening measures for protection from sexual exploitation and abuse

[...]

37. Transparency and accountability are the critical means through which the United Nations and its Member States can demonstrate their collective commitment to the Secretary-General's zero-tolerance policy, retain the trust of the international community and provide justice for victims. The United Nations and its Member States are committed to taking decisive action to uphold universal values and ensuring protection for civilians, respect for the dignity of victims and accountability when these values are violated. There can be no impunity for personnel who commit sexual exploitation and abuse, nor does immunity serve as a shield for those who serve with the United Nations.

[...]

Promoting transparency

[...]

40. The Secretariat will be making the above-mentioned information available on the website of the Conduct and Discipline Unit of the Department of Field Support. The information will be updated as new allegations against personnel deployed in missions are received and confirmed, in consultation with OIOS. The Secretary-General will, in future reports, also include country-specific information on all outstanding allegations of sexual exploitation and abuse, including referrals for criminal accountability, as well as those reported prior to 2015.

Measures to prevent sexual exploitation and abuse

[...]

42. The Departments of Peacekeeping Operations and Field Support are finalizing an e-learning programme on sexual exploitation and abuse that will target all categories of personnel.

[...]

43. Predeployment training is the mechanism for ensuring that troops that deploy to peace operations are prepared to respect the Organization's standards of conduct. [...] The Secretariat will increase its mobile training teams and roll out updated core predeployment training materials, including enhanced lessons focused on sexual exploitation and abuse.

44. The United Nations continues to expand the means to vet personnel for prior misconduct in order to avoid reengaging the services of any individual who has a history of misconduct while in prior service with the

United Nations. [...]

[...]

Measures to enforce accountability

Enhancing complaint reception mechanisms

47. In 2015, the Secretary-General stated his intention to develop a community-based complaint reception mechanism to encourage complainants to come forward. It is critical to ensuring that complainants report through confidential pathways in local communities. [...]

Strengthening investigations

[...]

50. In 2015, the Secretary-General adopted a six-month timeline, subject to extenuating circumstances, for United Nations investigative entities to conclude investigations into sexual exploitation and abuse. The Secretary-General is requesting that Member States adopt the same timeline as their standard for completing investigations into alleged sexual exploitation and abuse.

51. The six-month time frame is a minimum target, but the time frame will be shortened to three months where circumstances suggest the need for greater urgency.

[...]

53. In cases involving military personnel, Member States may appoint a National Investigation Officer within a 10-day time limit. The Secretary-General expects that Member States will strictly adhere to that limit. In situations deemed to be of heightened risk, there will be greater urgency for a troop-contributing country to appoint a National Investigation Officer. In such circumstances, the Secretariat has requested that the troop-contributing country appoint a National Investigation Officer within five working days. The Secretariat is also requesting that investigations into these situations be concluded within three months. Troop-contributing countries are urged to commit to these expedited timelines.

54. The Secretary-General indicated in his previous report that he would request that troop-contributing countries include National Investigation Officers within deployments as a means of expediting investigations.
[...]

[...]

56. It is proposed that troop-contributing countries enter into bilateral agreements with OIOS authorizing the Office to investigate alleged sexual exploitation and abuse by military contingent members, either alone or in cooperation with National Investigation Officers.

[...]

Promoting managerial, command and individual accountability

60. The Secretary-General has followed through on his commitment to monitor accountability through command and control and to take action, including repatriation of contingent commanders, contingents or termination of the deployment of the uniformed personnel where there is *prima facie* evidence of widespread or systemic violations of the prohibition against sexual exploitation and abuse. [...]

[...]

63. Member States are requested to agree that, where an investigation is not completed within one year of the date of notification, payment in relation to the unit with which the implicated individual was deployed, or a corresponding replacement unit, will be suspended. [...]

Promoting criminal accountability

64. Failure to pursue criminal accountability for sex crimes is tantamount to impunity. The Secretary-General is referring appropriate cases implicating United Nations officials and experts on mission for criminal accountability, either to the host State or the Member State of nationality. [...]

65. There will be instances where criminal accountability through a host State judicial process will not be possible, including owing to the absence of a functioning judicial system or the exclusive jurisdiction by troop-contributing countries. Accordingly, the General Assembly has requested the Secretary-General to bring credible allegations of criminal conduct by United Nations officials and experts on mission to the attention of their States of nationality. There is therefore a need for Member States to explore alternative means to achieve accountability, including extraterritorial jurisdiction for United Nations personnel who commit sex crimes.

66. One long-standing option is an international convention in connection with crimes committed in peacekeeping operations. Member States are urged to catalyse progress on the questions raised more than 10 years ago in the report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations (A/60/980) and finalize their deliberations. Building on these recent deliberations, Member States are requested to assess existing national legislation to determine its applicability to sex crimes committed by nationals while in the service of United Nations peace operations and, if necessary, assess whether new legislative action is required, including allowing nationality-based extraterritorial jurisdiction. This approach should ensure that national courts can take action to respond to conduct that cannot be tolerated.

67. The Secretary-General, in his previous report, requested that Member States amend their administrative frameworks governing police and military contingents to explicitly include sexual exploitation and abuse as a type of misconduct, where this is not the case, and to ensure that such cases attract the harshest available sanctions. The Secretary-General will seek information from Member States on how their legislation complies with this request and seek agreement to include this information in future reports.

68. In cases involving members of military contingents, on-site court martial proceedings may be effective at

demonstrating accountability, especially given that witnesses and physical evidence would be located in the host State and would respond to the interest in accountability by the international community and, most critically, victims. Member States are requested to agree to establish on-site court martial proceedings, supported by the judicial infrastructure necessary, when allegations amount to sex crimes under national legislation.

69. DNA samples may be critical to ensuring effective investigations and often constitute compelling evidence for national criminal judicial processes. The Secretary-General urges Member States to agree to obtain DNA samples of members of their uniformed personnel who are alleged to have committed sexual exploitation and abuse. Doing so would strengthen the Organization's existing DNA protocol, which is currently applied on a voluntary basis in connection with paternity claims.

[...]

C. UN Security Council Resolution 2272 (2016)

[Source: UN Doc. S/RES/2272 (2016), 11 March 2016. Available at [https://undocs.org/en/S/RES/2272\(2016\)](https://undocs.org/en/S/RES/2272(2016))]

The Security Council,

[...]

Recalling the primary responsibility of troop-contributing countries to investigate allegations of sexual exploitation and abuse by their personnel and of troop- and police-contributing countries to hold accountable, including through prosecution, where appropriate, their personnel for acts of sexual exploitation and abuse, taking into account due process,

[...]

Taking note of [...] the report of the External Independent Review of the United Nations Response to Allegations of Sexual Exploitation and Abuse in the Central African Republic submitted on 17 December 2015 to the Secretary-General [...], as well as the report of 4 March 2016 of the Secretary-General on Special measures for protection and prevention of sexual exploitation and abuse (A/70/729, See Document B), and taking note of the recommendations contained therein related to the prevention and combating of sexual exploitation and abuse,

1. Endorses the decision of the Secretary-General to repatriate a particular military unit or formed police unit of a contingent when there is credible evidence of widespread or systemic sexual exploitation and abuse by that unit and requests the Secretary-General to give immediate and ongoing effect to this decision, including by urgently finalising his guidance to United Nations peacekeeping operations to implement this decision;
2. Requests the Secretary-General, when a particular troop-contributing country whose personnel are the

subject of an allegation or allegations of sexual exploitation and abuse has not taken appropriate steps to investigate the allegation and/or when the particular troop- or police-contributing country has not held the perpetrators accountable or informed the Secretary-General of the progress of its investigations and/or actions taken, to replace all military units and/or formed police units of the troop- or police-contributing country in the United Nations peacekeeping operation where the allegation or allegations arose with uniformed personnel from a different troop- or police-contributing country, as applicable and further requests the Secretary-General to ensure that the replacement troop- or police-contributing country has upheld standards of conduct and discipline and appropriately addressed allegations against or confirmed acts, if any, of sexual exploitation and abuse by its personnel;

[...]

7. Urges all non-United Nations forces authorised under a Security Council mandate to take adequate measures to prevent and combat impunity for sexual exploitation and abuse by their personnel;

8. Calls upon Member States deploying non-United Nations forces authorized under a Security Council mandate to take appropriate steps to investigate allegations of sexual exploitation and abuse, hold perpetrators accountable and repatriate units when there is credible evidence of widespread or systemic sexual exploitation or abuse by those units;

Discussion

I. Classification of the situation

1. (Document A, paras 1-5)
 - a. How would you classify the situation in the Central African Republic (CAR)? (GC I-IV, Art. 2 and 3; P I, Art. 1; P II, Art. 1)
 - b. When does a peacekeeping mission become a party to the conflict? From the moment it is mandated? From the moment of its deployment? Does it depend on the forces' actual behavior? What information do we need to assess whether MINUSCA or Sangaris became parties to the conflict? (GC I-IV, Art. 2 and 3; P I, Art. 1; P II, Art. 1)
 - c. Do MINUSCA or Sangaris have to actually enter into armed clashes with the Séléka or the anti-Balaka to become parties to the conflict? Do the clashes have to separately fulfil the intensity requirement? If not, what kind of support provided to the government side would suffice to render them parties to the conflict? (GC I-IV, Art. 2 and 3; P I, Art. 1; P II, Art. 1)
 - d. Does an international organization become a party to the conflict in its own capacity or through the troop-contributing countries (TCCs)? Assuming that the conflict in the CAR was initially a NIAC, did the deployment of MINUSCA or Sangaris internationalize it? Does the nature of the mandate of a peacekeeping mission have an impact on the qualification of the conflict? Does the agreement of the host state to a peacekeeping mission have an impact on the classification of the conflict? (GC I-IV, Art. 2 and 3; P I, Art. 1; P II, Art. 1)
2. What is the law applicable to the conflict? Are MINUSCA and Sangaris bound by it? Are the TCC bound by it? (GC I-IV, Art. 2 and 3; P I, Art. 1; P II, Art. 1)

II. Classification of persons

3.

- a. (Document A, paras 1 and 3) How would you qualify the Séléka fighters? The anti-Balaka fighters? MINUSCA military personnel? MINUSCA police staff? Other UN staff? Who among these categories is a lawful target under IHL?
- b. (Document A, paras 4-5) What is the difference between the Sangaris and the MINUSCA forces?

III. Conflict-related sexual violence

4. (Document A, paras 6-7) What is the definition of sexual exploitation developed by the UN? Is it broader than the one foreseen in IHL? Would sex in exchange for money or food qualify as prohibited sexual violence under IHL? Taking into account the coercive environment? Would any other prohibitions in IHL encompass such conduct? (Document A, paras 8-9) Would you consider that the alleged acts qualified as sexual violence prohibited by IHL in the present case? (GC I-IV, Art. 3; GC IV, Art. 27; P I, Art. 75(2)(b) and 76(1); P II, Art. 4(2)(e); CIHL, Rule 93).

5. (Document A, paras 6-9)

- a. Did IHL apply to the alleged acts of sexual violence and sexual exploitation? Even if the forces to which the accused belonged were not parties to the conflict? Can a soldier commit rape as a war crime even though his forces are not party to the conflict?
- b. Did the acts allegedly committed by the Sangaris Forces have a nexus to the conflict in the CAR? Does geographical and temporal proximity with an armed conflict suffice to establish such a link? The fact that the peacekeeping forces were deployed in relation to the armed conflict? A causal link between the armed conflict and the coercive environment that facilitated sexual violence? Would you consider that the alleged acts had a nexus with the armed conflict in the present case? (ICTY, Appeals Chamber, Prosecutor v. Dragoljub Kunarac and Others, Case No. IT-96-23&23/1, 12 June 2002, paras 58-59)

IV. Responsibility

6.

- a. Does IHL impose an obligation on States to investigate allegations of rape and other forms of sexual violence committed in international armed conflicts? In non-international armed conflicts? Even when the forces are under the effective control of an international organization? (CIHL, Rules 93 and 158; GC I, Art. 49; GC II, Art 50; GC III, Art. 129; GC IV, Art. 146; P I, Art 85)
- b. Under IHL, what are the requirements for an inquiry into an alleged rape? Must the victim be involved? Must the result be made public? If the inquiry concludes that rape was committed by a member of peace forces, who has to try the suspect? What would be the answers to these questions under IHRL? (CIHL, Rules 93 and 158; GC I-IV, Art. 1; P II, Art. 6; GC I, Art. 49; GC II, Art 50; GC III, Art. 129; GC IV, Art. 146; P I, Art. 85)

7. (Document A, paras 10-19)

- a. Does the UN have any obligations in respect to crimes committed by peacekeeping forces? Does it depend on whether it exercises effective control over the said forces? Does it depend on the extent of their mandate?
- b. What are the two frameworks that apply to UN investigations? Do both of them cover forces not under UN control? Which one seems to you more efficient?
- c. Does the UN have obligations under IHRL? Does the human rights framework create similar obligations to those of States? Is this indicative of a trend towards international organizations progressively becoming

bound by IHRL?

8. (Document A, paras 23-28)

a. In the absence of Memoranda of Understanding (MOUs), who would be responsible for prosecuting the perpetrators of sexual violence? Are MOUs establishing exclusive jurisdiction of the TCC in compliance with international law where the acts committed amount to war crimes? (CIHL, Rules 93 and 158; GC I-IV, Art. 1; P II, Art. 6; GC I, Art. 49; GC II, Art 50; GC III, Art. 129;GC IV, Art. 146; P I, Art. 85)

b. Would such acts be covered by the international immunity enjoyed by certain UN employees? In the host State? In the TCC? In third States? Before the ICC or other international courts? Are acts ultra vires covered by immunity?

9. (Documents B and C)

a. Do the measures proposed by the Secretary-General and endorsed by the Security Council make a distinction between forces under the UN effective control and the others? Should there be such a distinction? Do you find these measures useful? Should criminal accountability be the primary focus regarding the issue of sexual violence in peacekeeping operations?

b. Is the UN interested in putting a pressure on the TCCs, given that they largely depend on the latters' free-will contributions?

10. Is UN Security Council Resolution 2272 (2016) binding upon the UN Secretary-General? Upon troop-contributing countries? Upon countries deploying non-United Nations forces authorized under a Security Council mandate?

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