

Central African Republic, Report of the UN Independent Expert, July 2016

INTRODUCTORY TEXT: This case study presents a report and press release from the UN Office of the High Commissioner for Human Rights regarding the situation in the Central African Republic. This case study will focus on MINUSCA's involvement in the conflict and select situations of detention.

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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. REPORT OF THE INDEPENDENT EXPERT ON THE SITUATION OF HUMAN RIGHTS IN THE CENTRAL AFRICAN REPUBLIC

[Source: United Nations Office of the High Commissioner for Human Rights, "Report of the Independent Expert on the situation of human rights in the Central African Republic", 22 July 2016, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/63]

[...]

II. General situation

[...]

B. Security context

28. The security situation in the country is still characterized by the strong presence of armed groups throughout the territory, the threat they pose to civilians and displaced persons living in camps or enclaves, intercommunity tensions, transhumance-related issues, power struggles within armed factions, the widespread circulation of weapons, including weapons other than firearms, crime, the absence of State authorities and the marginalization of the eastern part of the country.

[...]

32. The security situation improved from November 2015 to May 2016 with a significant decline in large-scale attacks against civilians and the end of the transition period. On 14 April, the President began a series of discussions with the leaders of the armed factions in order to keep the channels of communication open and to pave the way for a national programme of disarmament, demobilization, reintegration and repatriation, funded by international partners. However, in late June, the Independent Expert noted that the discussions had not led to the conclusion of clear agreements on disarming armed groups and the dismantling of militias.

33. In 2015, 1,151 incidents targeting humanitarian actors were recorded, including attacks on humanitarian convoys, attacks and threats against humanitarian personnel or persons receiving assistance from them and the looting of humanitarian assets. On 18 May 2016, an attack on a convoy belonging to Médecins Sans Frontières (MSF) in Kouï, in the prefecture of Ouham-Pendé, resulted in the death of a driver and forced the organization to suspend its activities in the province. On 17 June, another of the organization's drivers was killed in similar circumstances in the prefecture of Kémo.

34. The security situation deteriorated again in late June during clashes between armed fighters and MINUSCA soldiers in the [...] enclave, which resulted in the death of 6 armed men and 15 civilian casualties. On 24 June, a Senegalese peacekeeper was killed by armed men in Bangui. In early July, clashes between the different ex-Séléka factions in Kaga Bandoro once again forced civilians to seek protection in camps for displaced persons protected by international forces. UNHCR has also registered more than 6,000 new refugees from the Central African Republic in Chad and Cameroon since mid-June.

[...]

III. Human rights situation

36. In 2015, MINUSCA reported 1,278 human rights violations which left 1,786 victims. The violations include killings, acts of torture and inhuman and degrading treatment, arbitrary arrest, gender-based violence and acts of racketeering and extortion.

37. Most of the violations are perpetrated by armed groups, which continue to intimidate, threaten and attack any individual or local community group that they accuse of collaborating or being affiliated with a rival armed

group. The main armed groups are the anti-balaka, the ex-Séléka faction and the various factions of that movement. The Lord's Resistance Army has also increased its activities and acts of abuse against the local communities since the beginning of the year.

[...]

A. Acts of abuse attributed to armed groups

39. Although large-scale attacks against civilians have decreased during this period, the situation remains on a knife-edge and unpredictable. Civilians are still vulnerable in large swathes of the country, especially in the western region, which is controlled by the anti-balaka faction [...] and in the eastern region, where the main ex-Séléka factions continue to exercise control over the territory and its natural resources. In the east, the Lord's Resistance Army threatens civilians and carries out increasingly frequent kidnappings.

[...]

B. Violations attributed to the national armed forces

48. The Independent Expert was informed of human rights violations committed by certain members of the armed forces of the Central African Republic, acting in support of or in direct affiliation with members of the anti-balaka faction. In its public report on the events of September-October 2015, the Human Rights Division of MINUSCA mentions that it confirmed three extrajudicial executions of civilians, including those of two boys aged 16 and 17, by members of the armed forces of the Central African Republic between 26 September and 20 October in the 3rd and 5th districts of Bangui. The Division also received reports that members of the armed forces of the Central African Republic had extrajudicially executed two civilians presumed to be Muslim in the 5th district of the city.

[...]

52. Arrests and arbitrary detention remain common owing to the absence of a functioning judiciary, the technical and logistical constraints stemming from the dearth of training for the security forces and the unavailability of the resources necessary to ensure compliance with legal procedures.

[...]

G. Situation of children

[...]

74. Many children are kidnapped by the Lord's Resistance Army (LRA) and used to carry off goods stolen in

villages or for other support roles. Abducted girls are often kept as sex slaves. The transitional Government and the new Government reportedly at times refused to cooperate with people providing assistance to children who have escaped from the LRA. The authorities reportedly prefer to keep these children in detention so as to interrogate them to extract information on LRA activities, thereby depriving them of the right to humanitarian assistance, including psychosocial and family reunification assistance.

75. By December 2015, nearly 5,000 children had been demobilized and between January and April 2016 around 1,298 children were released from armed groups. International actors responsible for child protection have drawn attention to the numerous demobilization-related challenges that vary depending on the armed group into which the children were taken. They have also condemned the lack of care and reintegration programmes; the Independent Expert considers it important to strengthen these in the coming months. She also encourages the establishment of rehabilitation centres for children in conflict with the law.

[...]

I. Violations attributed to the international forces

81. Further allegations of sexual exploitation and sexual abuse by international forces have been made in 2016.

82. During the reporting period, MINUSCA documented 21 cases of sexual exploitation and sexual abuse allegedly committed by international forces against children. In 19 of these cases, the violations were attributed to MINUSCA peacekeepers, including 7 alleged rapes of girls between 11 and 17 years of age.

83. The United Nations system, including MINUSCA and the Member States, has recognized the importance of effectively combating sexual exploitation and abuse, and has taken urgent steps to minimize the risk of sexual violence, including by confining contingents. The Independent Expert welcomes the appointment in February 2016 of Ms. Jane Holl Lute as Special Coordinator on Improving the United Nations Response to Sexual Exploitation and Abuse.

84. Since early 2016, MINUSCA has reaffirmed its full commitment to the Secretary General's zero-tolerance policy on sexual exploitation and abuse, and has demonstrated its determination that each allegation be thoroughly investigated, that assistance be provided for the victims, and that the perpetrators be held accountable for their actions.

85. Following the allegations brought to the attention of the Member States of the international contingents and forces concerned, several States dispatched teams of national investigators to inquire into the allegations and to consider measures for the protection of victims.

86. The Independent Expert took note of the decision by the United Nations system to repatriate a national

contingent involved in confirmed allegations of sexual exploitation and abuse of women and girls at Bambari. She recalled that the contingents deployed in the Central African Republic had an important mandate to protect civilians, and supported the measures taken against soldiers who seemingly failed to respect that mandate.

87. Victims are at the centre of the response to these violations. All partners that met with the Independent Expert agreed on the principle of non-discrimination in assisting the victims of sexual exploitation and abuse, regardless of the identity of the perpetrators. The Independent Expert urges that this assistance should seek to improve existing social, medical and legal services for all victims.

88. The Independent Expert continues to encourage all national and international stakeholders to recognize the principle of “do no harm” in relation to the victims’ interests, and to ensure that they are treated sensitively and with respect for the confidentiality of information, thus guarding against stigmatization.

IV. Transitional justice and mechanism to combat impunity

[...]

C. Court and prison administration

107. Criminal justice remains practically non-existent. Despite commitments by the authorities, no session of the criminal court has taken place since the first session in July 2015, which itself followed almost five years without proceedings. The Independent Expert encourages the authorities to hold a second session as quickly as possible, in order to try defendants whose files are complete and to resolve the question of prolonged pretrial detention. A second session would send a strong signal of the renewal of judicial activity and the struggle against impunity. According to the Minister of Justice, the priority is to support ordinary domestic courts to ensure that they are able to function throughout the country. An emergency plan on justice has been drawn up and funds budgeted, but has not yet received support.

108. In response to the incidents of September and October 2015, the Minister of Justice instructed the authorities to investigate crimes committed after 26 September. The public prosecutor at the court of first instance of Bangui created a special investigation unit for that purpose. On 15 March, the leader of the former Séléka Front populaire pour la renaissance de la Centrafrique (FPRC), Abdoulaye Hissène, was detained in Bangui on the grounds of his purported involvement in September’s violence, but was freed by armed elements later that day. To date, no further charges have been brought, or arrests made, under this inquiry.

[...]

112. The prison service was already underdeveloped before the 2013 conflict and it remains barely functional. While administrators have been appointed for the country's 38 prisons, only 7 are taking in detainees and just 11 are staffed [...].

113. There are currently five detention centres outside Bangui [...], holding about 230 of the country's 600-strong prison population. Infrastructure is generally dilapidated and the food budget is clearly insufficient. Camp de Roux, an annex of Ngaragba prison located on a Central African Republic armed forces base in Bangui, holds 12 high-profile inmates accused of serious crimes. The Independent Expert also notes the existence of several illegal detention centres in parts of the country controlled by armed groups, notably at Kaga Bandoro.

B. CENTRAL AFRICAN REPUBLIC: UN EXPERT URGES ALL ACTORS TO SEIZE HISTORIC OPPORTUNITY

[Source: United Nations Office of the High Commissioner for Human Rights, Central African Republic: UN Expert urges all actors to seize history opportunity, 8 February 2017, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21155&LangID=E>]

[1] GENEVA / BANGUI (8 February 2017) – The United Nations Independent Expert on the situation of human rights in the Central African Republic, Marie-Thérèse Keita-Bocoum, urges all actors to seize the historic opportunity for justice, development and reconciliation.

[...]

[2] The Independent Expert noted that the conflict in the Central African Republic had evolved into a proliferation of local conflicts and armed groups with surprising alliances.

[3] "The conflicts that, beforehand, seemed to oppose the Christian and Muslim communities have transformed into armed oppositions between groups calling themselves nationalists and others considered foreigners, sometimes with ethnic connotations which could become dangerous," she said.

[...]

[4] "It must be said that little progress has been made with regard to the effective restoration of State authority outside Bangui, particularly the security forces and the judiciary and administrative staff in general," she noted. "Armed groups reign supreme over more than 60% of the territory, enjoying total impunity. They play the role of judicial authorities, terrify the population and are often accused of committing abuses against people suspected of witchcraft."

Discussion

I. Classification of the Situation and Applicable Law

1. (*Document A, paras 28-39, 48; Document B, para [2]*)

- a. Given the information contained in the report, how would you classify the situation in CAR? What entities are the parties to this conflict? In your opinion, did the conflict cease between November 2015 and May 2016 (para 32)? Why or why not? (GC I-IV, Arts. 2 and 3; P I, Art. 1; P II, Art. 1)
- b. What legal regimes are applicable to this situation? Do these regimes apply to all non-state entities (including MINUSCA)? Why/Why not?
- c. What is MINUSCA? Can it constitute a party to the conflict? 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 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? Since neither MINUSCA nor the UN are parties to the Geneva Conventions, how could one argue that IHL nevertheless applies to them? (GC I-IV, Art. 2 and 3; P I, Art. 1; P II, Art. 1)
- d. Does MINUSCA have to actually enter into armed clashes with an armed group to become a party 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)
- e. How might the facts contained in Document A., para. 48 affect the classification of the conflict or the affiliation of some of the parties? How might these facts be relevant for determining which party is responsible for the possible IHL violations described?

II. Detention

2. (*Document A, paras 74-75, 107-113; Document B*)

- a. Under IHL, who may be detained in this conflict? On what grounds? (GC I-IV, Art. 3; CIHL, Rule 99)
- b. Under IHL, may the government of the Central African Republic lawfully detain individuals? May persons be detained in a NIAC if no criminal justice system exists? In which cases and with which safeguards? (GC I-IV, Art. 3; CIHL, Rule 99)
- c. May the various armed groups lawfully detain people? (GC I-IV, Art. 3; CIHL, Rule 99)
- d. May MINUSCA lawfully detain people? At least when no criminal justice system exists in the host States? Could it fulfil its mandate to protect civilians without detaining anyone? (GC I-IV, Art. 3; CIHL, Rule 99)
- e. What are the rules governing detention and treatment of detainees in NIAC? Do these rules vary depending on the detaining authority (i.e. whether it is the State, MINUSCA, or various armed groups that detain)? (GC I-IV, Art. 3; CIHL, Rule 99)
- f. Was the detention of children described in Document A., paras. 74-75 lawful? If the children had previously participated in hostilities? May children be kept in detention to obtain information from them about the armed group for which they were fighting? Were the detained children entitled to any protections while in detention? Were those entitled protections violated? (GC I-IV, Art. 3; P II, Art. 4; CIHL, Rule 99, 120, 135)
- g. How does IHL classify children mobilized by armed groups? Does classification change once the children are demobilized? What protections does IHL provide to mobilized and demobilized children? (GC I-IV, Art. 3; P II, Arts. 4; CIHL, Rules 135-137)

III. Implementation of IHL

3. (*Document A, paras 83-88*)

- a. Does IHL prohibit sexual exploitation? (GC I-IV, Art. 3; CIHL, Rule 93)
- b. Under IHL, was MINUSCA proscribed from committing acts of sexual exploitation and abuse? (GC I-IV, Art. 3; CIHL, Rule 93)
- c. 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? (GC I-IV, Art. 3; CIHL, Rule 93)
- d. Under IHL, who is responsible for the violations described in Document A., paras 83-88? (GC I-IV, Art. 3; CIHL, Rule 149)
- e. 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, 156 and 158; GC I, Art. 49; GC II, Art 50; GC III, Art. 129; GC IV, Art. 146; P I, Art 85)
- f. 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)
- g. 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? h. Does it depend on the extent of their mandate? (GC I-IV, Art. 3; CIHL, Rule 149)
- h. In your opinion, are the actions taken in response to the allegations of sexual abuse sufficient from an IHL perspective? Why or why not? (GC I-IV, Art. 3; CIHL, Rule 149)
- i. 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? (GC I-IV, Art. 3; CIHL, Rule 149)